

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ARROWHEADS WITH
DEPLOYING BLADES AND
COMPONENTS THEREOF AND
PACKAGING THEREFOR**

Investigation No. 337-TA-977

**FINAL COMMISSION DETERMINATION OF VIOLATION; ISSUANCE OF A
GENERAL EXCLUSION ORDER AND A CEASE AND DESIST ORDER; AND
TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation with a finding of violation of section 337, and has issued a general exclusion order directed against infringing arrowheads with deploying blades and components thereof and packaging therefor, and a cease and desist order directed against respondent Shenzhen Zowaysoon Trading Company Ltd. (“Zowaysoon Trading”) of Shenzhen, China. The Commission has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 22, 2015, based on a complaint filed on behalf of FeraDyne Outdoors LLC and Out RAGE LLC, both of Cartersville, Georgia. 80 FR 79612-13. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based

upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain arrowheads with deploying blades and components thereof and packaging therefor by reason of infringement of certain claims of U.S. Patent Nos. RE44,144 (“the ’144 patent”); 6,517,454 (“the ’454 patent”); 8,758,176 (“the ’176 patent”); 8,986,141 (“the ’141 patent”); 9,068,806 (“the ’806 patent”); 7,771,298 (“the ’298 patent”); D710,962 (“the D’962 patent”); D711,489 (“the D’489 patent”); and of U.S. Trademark Registration No. 4,812,058 (“the RAGE mark”). The complaint further alleged the existence of a domestic industry. The Commission’s notice of investigation named the following nine respondents: Zowaysoon Trading; Linyi Junxing Sports Equipment Co., Ltd. (“Junxing Sports”) of Shandong, China; Ningbo Forever Best Import & Export Co., Ltd. (“Forever Best”) of Jiangsu, China; Ningbo Linkboy Outdoor Sports Co., Ltd. (“Linkboy Outdoor”) of Zhejiang, China; Xiamen Xinhongyou Industrial Trade Co. Ltd. (“Xinhongyou Industrial”) and Xiamen Zhongxinyuan Industry & Trade Ltd. (“Zhongxinyuan Industry”), both of Fujian, China; and Zhengzhou IRQ Trading Limited Company (“IRQ Trading”) and Zhengzhou Paiao Trade Co., Ltd. (“Paiao Trade”), both of Henan, China. The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation.

On April 28, 2016, complainants filed a motion for summary determination of a violation of section 337 pursuant to section 337(g)(2) and Commission Rule 210.16(c)(2) to support its request for entry of a general exclusion order with respect to all asserted intellectual property. OUII filed a response in support of the motion.

On May 10, 2016, the Commission issued notice of its determination not to review the ALJ’s ID (Order No. 6) finding the following seven respondents in default: Junxing Sports, Forever Best, Linkboy Outdoor, Zowaysoon Trading, Zhongxinyuan Industry, IRQ Trading, and Paiao Trade. On June 23, 2016, the Commission issued notice of its determination not to review the ALJ’s ID (Order No. 8) finding Xinhongyou Industrial in default. On June 28, 2016, the Commission issued notice of its determination not to review the ALJ’s ID (Order No. 9) terminating the investigation as to (1) Faith Sports based on withdrawal of the complaint as to Faith Sports; and (2) claims 2-3, 5, and 8 of the ’545 patent; claims 5 and 10 of the ’298 patent; claim 3 of the ’176 patent; claim 8 of the ’141 patent; and claim 3 of the ’806 patent based on withdrawal of these patent claims against all named respondents.

The ALJ issued the subject ID on August 22, 2016, granting complainants’ motion for summary determination. The ALJ found that all eight defaulting respondents met the importation requirement and that complainants satisfied the domestic industry requirement. *See* 19 U.S.C. § 1337(a)(1)(B), (a)(2). The ID finds that a violation of section 337 has occurred based on its finding that each of the defaulting respondents’ accused products infringe one or more of the asserted claims of the patents at issue and infringe the trademark at issue as established by substantial, reliable, and probative evidence in accordance with Commission Rule 210.16(c)(2). No petitions for review of the ID were filed. The ID also contained the ALJ’s recommended determination on remedy and bonding. The ALJ recommended issuance of a general exclusion order with respect to the asserted intellectual property, but did not recommend issuance of cease and desist orders directed against the defaulting respondents.

On October 6, 2016, the Commission issued notice of its determination to review in part the ALJ's ID. On review, the Commission (1) corrected typographical errors on pages 14, 18, and 24 of the ID; (2) modified page 8 of the ID; and (3) determined to take no position on the ID's finding that complainants satisfy the economic prong of the domestic industry requirement under section 337(a)(3)(C) with respect to all asserted patents and the asserted trademark. *See* 81 FR 70702-04 (Oct. 13, 2016). The Commission determined not to review the remainder of the ID. The Commission also requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties including specific questions directed to the parties regarding any request for cease and desist orders directed against one or more defaulting respondents. *Id.* On October 20 and 27, 2016, respectively, complainants and OUII each filed a brief and a reply brief regarding remedy, the public interest, and bonding.

The Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is both: (1) a general exclusion order prohibiting the unlicensed entry of arrowheads with deploying blades and components thereof and packaging therefor that infringe one or more of: claims 38, 42, 48, 68, and 75 of the '144 patent; claim 1 of the '454 patent; claim 1 of the '176 patent; claim 1 of the '141 patent; claim 1 of the '806 patent; claim 1 of the '298 patent; the D'962 patent; the D'489 patent; and the RAGE mark; and (2) a cease and desist order prohibiting Zowaysoon Trading from conducting any of the following activities in the United States: importing, selling, marketing (including via the internet or electronic mail), advertising (including via the internet or electronic mail), distributing, offering for sale (including via the internet or electronic mail), transferring (except for exportation), and soliciting U.S. agents or distributors for, arrowheads with deploying blades and components thereof and packaging therefor that infringe one or more of claims 38, 42, 48, 68, and 75 of the '144 patent; claim 1 of the '454 patent; claim 1 of the '298 patent; and the RAGE mark. Chairman Schmidlein and Commissioner Kieff disagree with the Commission's decision not to issue cease and desist orders against all of the defaulting respondents under section 337(g)(1), and Chairman Schmidlein has filed a dissenting opinion explaining her views.

The Commission further determined that the public interest factors enumerated in sections 337(d)(1) and (g)(1) (19 U.S.C. 1337(d)(1), (g)(1)) do not preclude issuance of the general exclusion order or the cease and desist order. Finally, the Commission determined that there shall be a bond in the amount of 100 percent of the entered value of the covered products to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: April 6, 2017