

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN TONER CARTRIDGES,
COMPONENTS THEREOF, AND
SYSTEMS CONTAINING SAME**

Investigation No. 337-TA-1174

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW
AN INITIAL DETERMINATION GRANTING COMPLAINANTS' MOTION
FOR SUMMARY DETERMINATION OF A VIOLATION OF SECTION 337;
SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON REMEDY, THE PUBLIC
INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on July 23, 2020, the presiding administrative law judge ("ALJ") issued an initial determination ("ID") (Order No. 40) in the above-captioned investigation, granting summary determination on violation of section 337 and including a recommended determination ("RD") on remedy and bonding. The Commission has determined not to review the ID. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On September 17, 2019, the Commission instituted this investigation based on a complaint filed by Brother Industries, Ltd. of Nagoya Japan; Brother International Corp. (U.S.A.) of Bridgewater, New Jersey; and Brother Industries (U.S.A.), Inc. of Bartlett, Tennessee (collectively, "Brother"). 84 FR 49762-63 (Sept. 23, 2019). The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain toner cartridges, components thereof, and systems containing same by reason of infringement of certain claims of U.S. Patent Nos. 9,568,856; 9,575,460; 9,632,456; 9,785,093; and 9,846,387 (collectively, "the Asserted Patents"). *Id.* The Commission's notice of investigation named the

following 32 respondents: AMI Brothers, Inc. of San Bruno, California (“AMI”); An An Beauty Limited of Kowloon, Hong Kong (“An An Beauty”); Aster Graphics, Inc. of Riverside, California (“Aster”); Aztech Enterprises Limited of Kowloon, Hong Kong (“Aztech”); Billiontree Technology USA Inc. of City of Industry, California (“Billiontree”); Carlos Imaging Supplies, Inc. of Hacienda Heights, California (“Carlos”); Cartridge Evolution, Inc. of Brooklyn, New York (“Cartridge Evolution”); Do it Wiser, LLC of Wilmington, Delaware (“Do it Wiser”); Eco Imaging Inc. of Irvine, California (“Eco Imaging”); Ecoosmart Co. of Rowland Heights, California (“Ecoosmart”); EPrinter Solution LLC of Pomona, California (“EPS”); E-Z Ink Inc. of Brooklyn, New York (“E-Z Ink”); Globest Trading Inc. of Ontario, California (“Globest”); Greencycle Tech, Inc. of South El Monte, California (“Greencycle”); Hongkong Boze Co., Ltd. of Kowloon, Hong Kong (“Hongkong Boze”); I8 International, Inc. of City of Industry, California (“I8”); IFree E-Commerce Co. of Kowloon, Hong Kong (“IFree”); Ikong E-Commerce of Walnut, California (“Ikong”); Intercon International Corp. of Brea, California (“Intercon”); IPrint Enterprise Limited of Kowloon, Hong Kong (“IPrint”); LD Products, Inc. of Long Beach, California (“LD Products”); Linkyo Corp. of La Puente, California (“Linkyo”); Mangoket LLC of Alhambra, California (“Mangoket”); New Era Image LLC of Corona, California (“New Era”); OW Supplies Corp. of Corona, California (“OW Supplies”); Solong E-Commerce Co., LLC of Wan Chai, Hong Kong (“Solong”); Smartjet E-Commerce Co., LLC of Wan Chai, Hong Kong (“Smartjet”); Super Warehouse Inc. of Blaine, Washington (“Super Warehouse”); Theresa Meng of Brooklyn, New York (“Ms. Meng”); Triple Best LLC of San Diego, California (“Triple Best”); V4ink, Inc. of Diamond Bar, California (“V4ink”); and Zhuhai Xiaohui E-Commerce Co., Ltd. of Zhuhai, China (“Xiaohui”). *Id.* at 49762-63. The notice of investigation also names the Office of Unfair Import Investigations (“OUII”) as a party. *Id.* at 49763.

Of the 32 respondents, only one, Aster, is participating at this stage. Aster, however, decided not to oppose the summary determination motion of violation as to the accused products, even though Aster’s products are subject to the motion. *See* Joint Stipulation of Brother and Aster for Resolution as to Aster in the Investigation (Mar. 4, 2020). EPS and IFree were terminated from the investigation based upon withdrawal of the complaint against them. *See* Order No. 32 (Jan. 28, 2020), *unreviewed by* Comm’n Notice (Feb. 25, 2020). Cartridge Evolution, E-Z Ink, Linkyo, New Era, OW Supplies, Ms. Meng, Triple Best, and V4ink were terminated from the investigation based upon entry of consent orders. *See* Order No. 36 (Mar. 12, 2020), *unreviewed by* Comm’n Notice (Mar. 31, 2020); Order No 38 (Mar. 12, 2020), *unreviewed by* Comm’n Notice (Mar. 31, 2020); Order No. 37 (Mar. 12, 2020), *unreviewed by* Comm’n Notice (Mar. 31, 2020); Order No. 10 (Oct. 18, 2019), *unreviewed by* Comm’n Notice (Nov. 6, 2019); Order No. 17 (Nov. 21, 2019), *unreviewed by* Comm’n Notice (Dec. 18, 2019); Order No. 28 (Dec. 30, 2019), *unreviewed by* Comm’n Notice (Jan. 29, 2020); Order No. 18 (Nov. 27, 2019), *unreviewed by* Comm’n Notice (Dec. 18, 2019); Order No. 33 (Fe. 3, 2020), *unreviewed by* Comm’n Notice (Mar. 4, 2020). The following 21 respondents defaulted: AMI, Globest, An An Beauty, Aztech, Xiaohui, Ecoosmart, Greencycle, Intercon, Do it Wiser, I8, Solong, Billiontree, Carlos Imaging, Eco Imaging, Hongkong Boze, Ikong, IPrint, Mangoket, Smartjet, Super Warehouse, and LD Products (collectively, “Defaulting Respondents”). *See* Order No. 35 (Mar. 5, 2020), *unreviewed by* Comm’n Notice (Mar. 19, 2020); Order No. 31 (Jan. 22, 2020), *unreviewed by* Comm’n Notice (Feb. 21, 2020); Order No. 26 (Dec. 20, 2019), *unreviewed by* Comm’n Notice (Jan 16, 2020); Order No. 25 (Dec. 18, 2019), *unreviewed by*

Comm'n Notice (Jan. 16, 2020); Order No. 24 (Dec. 18, 2019), *unreviewed by* Comm'n Notice (Jan. 16, 2020); Order No. 8 (Oct. 15, 2019), *unreviewed by* Comm'n Notice (Nov. 7, 2019).

On March 12, 2020, Brother filed a motion for summary determination of violation of section 337 by Aster and the Defaulting Respondents and for a recommendation that the Commission issue a general exclusion order and cease and desist orders. *See* Complainants' Motion for Summary Determination of Violation and for Recommended Determination on Remedy and Bonding. On March 23, 2020, OUII filed a response in support of Brother's motion. *See* Commission Investigative Staff's Response to Brother's Motion for Summary Determination of Violation. No respondent filed a response to Brother's motion. *Id.*

On July 23, 2020, the ALJ issued the subject ID granting summary determination of violation of section 337 by Aster and Defaulting Respondents. The ID finds that the Commission has subject matter jurisdiction over the investigation. ID at 34. The ID further finds that none of the respondents contest the Commission's personal jurisdiction over them or in rem jurisdiction as to the accused products. ID at 34-35. The ID finds that Brother: (1) established the importation requirement as to Aster and Defaulting Respondents, ID at 36-79; (2) demonstrated that the accused products infringe the asserted claims, *id.* at 118-133; and (3) demonstrated that the domestic industry ("DI") products practice at least one claim of each Asserted Patent and that a DI exists in the United States, *id.* at 84-118. The RD recommends issuance of a general exclusion order ("GEO") (or, in the alternative, a limited exclusion order directed to Aster and each of the Defaulting Respondents). *Id.* at 134-44. The RD further recommends issuance of cease and desist orders ("CDOs") directed to Aster and each defaulting respondent that has domestic operations. *Id.* at 144-46. The RD also recommends setting different bond rates for entry of the different products covered by the GEO during the period of Presidential review. *Id.* at 146-48 (recommended bond rate table at 147). No one petitioned for review of the ID.

The Commission has determined not to review the ID.

On August 24, 2020, Aster filed a public interest statement in response to the Commission's notice soliciting public interest comments pursuant to 19 CFR 210.50(a)(4)(i). In its submission, Aster argued that any Commission remedial orders issued in this investigation should not cover its new products pursuant to its stipulation with Brother. *See* Respondent Aster Graphics, Inc.'s Statement of Public Interest. On August 26, 2020, Brother filed a response. *See* Complainants' Motion to Strike Aster Graphics, Inc.'s Statement on the Public Interest for Failure to Comply with Commission Rule 210.15 Or, in the Alternative, for Leave to Respond. The Commission has determined to reject Aster's submission as improper under 19 CFR 210.50(a)(4)(i). 19 CFR 210.50(a)(4)(i) provides that parties may file information with the Commission relating to the public interest. Aster's submission, however, concerns the scope of the remedy and therefore does not fall within the ambit of the public interest submissions provided for under 19 CFR 210.50(a)(4)(i). Brother's response is thereby moot. The Commission notes that Aster will have an opportunity to raise its arguments regarding the scope of any remedial orders in a remedy submission before the Commission in response to the instant notice, which invites parties to file submissions addressing remedy, bonding and the public interest as noted below.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) one or more cease and desist orders that could result in Aster and the Defaulting Respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or CDO would have on: (1) the public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005. 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to this investigation, interested government agencies, and any other interested parties are invited to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should include views on the recommended determination by the ALJ on remedy and bonding.

In their initial written submissions, Brother is also requested to identify the remedy sought and Brother and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Brother is further requested to identify the dates the Asserted Patents expire, to provide the HTSUS subheadings under which the subject articles are imported, and to supply identification information for all known importers of the subject articles.

Initial written submissions, including proposed remedial orders, must be filed no later than close of business on September 22, 2020. Reply submissions must be filed no later than the close of business on September 29, 2020. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the

investigation number (Inv. No. 337-TA-1174) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission vote for these determinations took place on September 8, 2020.

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.



Lisa R. Barton
Secretary to the Commission

Issued: September 8, 2020