

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ARTIFICIAL EYELASH
EXTENSION SYSTEMS, PRODUCTS, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1226

NOTICE OF A COMMISSION DECISION TO EXTEND TARGET DATE

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to extend the target date in the above-captioned investigation to September 14, 2022.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On October 28, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Lashify, Inc. of Glendale, California (“Lashify”). See 85 FR 68366-67 (Oct. 28, 2020). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain artificial eyelash extension systems, products, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,660,388 (“the ’388 patent”) and 10,721,984 (“the ’984 patent”), and the sole claim of U.S. Design Patent Nos. D877,416 and D867,664, respectively (collectively, the “Asserted Patents”). The complaint also alleges the existence of a domestic industry. The notice of investigation (“NOI”) names nine respondents, including: KISS Nail Products, Inc. of Port Washington, New York (“KISS”); Ulta Beauty, Inc. of Bolingbrook, Illinois; CVS Health Corporation of Woonsocket, Rhode Island; Walmart, Inc. of Bentonville, Arkansas (“Walmart”); Qingdao Hollyren Cosmetics Co., Ltd. d/b/a Hollyren of Shandong Province, China; Qingdao Xizi International Trading Co., Ltd. d/b/a Xizi Lashes of Shandong Province, China; Qingdao LashBeauty Cosmetic Co., Ltd. d/b/a Worldbeauty of Qingdao, China; Alicia Zeng d/b/a Lilac St. and

Artemis Family Beginnings, Inc. of San Francisco, California; and Rachael Gleason d/b/a Avant Garde Beauty Co. of Dallas, Texas. *Id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *Id.*

The Commission amended the complaint and NOI to substitute CVS Pharmacy, Inc. of Woonsocket, Rhode Island (“CVS”) in place of named respondent CVS Health Corporation and Ulta Salon, Cosmetics & Fragrance, Inc. of Bolingbrook, Illinois (“Ulta”) in place of named respondent Ulta Beauty, Inc. *See* Order No. 10, *unreviewed by* Comm’n Notice (Feb. 10, 2021); *see also* 86 FR 9535 (Feb. 16, 2021).

The Commission terminated the investigation as to claims 2-4 and 7 of the ’388 patent and claims 6-8, 12, 18-19, 25-26, and 29 of the ’984 patent based on Complainant’s partial withdrawal of the complaint. *See* Order No. 24 (Apr. 23, 2021), *unreviewed by* Comm’n Notice (May 11, 2021). The Commission also terminated claims 2-5, 10-11, 14, 17, 21-22, and 24 of the ’984 patent from the investigation. *See* Order No. 38 (June 22, 2021), *unreviewed by* Comm’n Notice (July 6, 2021).

The Commission terminated Rachael Gleason d/b/a Avant Garde Beauty Company from the investigation based on a Consent Order. *See* Order No. 28, *unreviewed by* Comm’n Notice (May 20, 2021).

The Commission determined that Lashify failed to satisfy the technical prong of the domestic industry requirement for the ’388 patent, thus terminating that patent from the investigation. *See* Order No. 35, *unreviewed by* Comm’n Notice (July 9, 2021).

On October 28, 2021, the presiding administrative law judge (“ALJ”) issued a final initial determination (“FID”), finding that no violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain artificial eyelash extension systems, products, and components thereof. FID at 141-142. The FID also includes the ALJ’s recommended determination on remedy and bonding should the Commission find a violation of section 337.

On November 29, 2021, KISS, Ulta, Walmart, and CVS (“Respondents”) filed a joint submission on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). Lashify and OUII did not file a statement on the public interest. No submissions were received in response to the Commission notice seeking public interest submissions. 86 FR 62844-45 (Nov. 12, 2021).

On January 20, 2022, the Commission determined to review the FID in part. 87 FR 4044-46 (Jan. 26, 2022). Specifically, for the ’984 patent, the Commission reviewed the FID’s findings regarding the technical prong of the domestic industry requirement and the FID’s findings that the asserted claims of the ’984 patent are not invalid as obvious. *Id.* at 4045. The Commission also reviewed the FID’s findings regarding the economic prong of the domestic industry requirement. *Id.* The Commission asked the parties to address two questions related to the issues under review with respect to the economic prong of the domestic industry

requirement. *Id.*

On February 3, 2022, Lashify, Respondents, and OUII all filed their initial written responses to the Commission's request for briefing. On February 10, 2022, Lashify, Respondents, and OUII all filed their respective reply submissions.

The Commission has determined to extend the target date for completing this investigation until September 14, 2022.

The Commission vote for this determination took place on September 12, 2022.

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.



Katherine M. Hiner
Acting Secretary to the Commission

Issued: September 12, 2022