

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN RADIO CONTROL HOBBY
TRANSMITTERS AND RECEIVERS
AND PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-763

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW INITIAL
DETERMINATIONS FINDING BOTH RESPONDENTS IN DEFAULT AND
TERMINATING THE INVESTIGATION; REQUEST FOR WRITTEN SUBMISSIONS
ON REMEDY, THE PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review initial determinations (“IDs”) (Order Nos. 6, 7) of the presiding administrative law judge (“ALJ”) finding both respondents in the above-captioned investigation, Koko Technology, Ltd. (“Koko”) and Cyclone Toy & Hobby (“Cyclone”) of China, in default, and terminating the investigation. The Commission is also requesting briefing on remedy, the public interest, and bonding.

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, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://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 March 9, 2011, based on a complaint filed by Horizon Hobby, Inc. (“Horizon”) of Champaign, Illinois. 76 *Fed. Reg.* 12995-96 (March 9, 2011). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §§ 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio control hobby transmitters and receivers and products containing same by reason of infringement of certain claims of U.S. Patent No. 7,391,320, U.S. Copyright Reg. No. TX-7-

226-001, and U.S. Trademark Reg. No. 3,080,770. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Koko and Cyclone as the only respondents. The complaint and notice of investigation were served on respondents on March 3, 2011. No responses were received.

On April 11, 2011, Horizon moved, pursuant to 19 C.F.R. § 210.16, for the following: (1) an order directing respondents Koko and Cyclone to show cause why they should not be found in default for failure to respond to the complaint and notice of investigation as required by § 210.13; and (2) the issuance of an ID finding Koko and Cyclone in default upon their failure to show cause. Koko and Cyclone did not respond to the motion.

On April 22, 2011, the ALJ issued Order No. 5 which required Koko and Cyclone to show cause no later than May 12, 2011, as to why they should not be held in default and judgment rendered against them pursuant to § 210.16. No response was received from either Koko or Cyclone to the show cause order.

The ALJ issued Order No. 6 on May 16, 2011, finding both Koko and Cyclone in default, pursuant to §§ 210.13, 210.16, because neither respondent responded to the complaint and notice of investigation, or to Order No. 5 to show cause. On May 17, 2011, the ALJ issued Order No. 7 terminating the investigation because Koko and Cyclone are the only respondents in the investigation. No party petitioned for review of the IDs pursuant to 19 C.F.R. § 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 C.F.R. § 210.44. The Commission has determined not to review the IDs.

Section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission Rule 210.16(c) (19 C.F.R. § 210.16(c)) authorize the Commission to order limited relief against a respondent found in default, unless after consideration of the public interest factors in Section 337(g)(1)(E), it finds that such relief should not issue. The Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent 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 are either adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist order 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 or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles may 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: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. The Commission requests submitters to file a response to the following question:

Does section 337(j)(3) (19 U.S.C. § 1337(j)(3)) or any other statutory authority authorize the Commission to permit default respondents subject to an exclusion order under section 337(g)(1) to import infringing products under bond during the sixty (60) day Presidential period of review? Please cite any relevant statutory language and legislative history.

Complainant and the Commission investigative attorney are requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to state the date that the patent at issue expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on June 24, 2011. Reply submissions must be filed no later than the close of business on July 1, 2011. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.16, 210.42(h), and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16, 210.42(h), and 210.50).

By order of the Commission.

/s/
James R. Holbein
Secretary to the Commission

Issued: June 3, 2011