

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of

**CERTAIN LOOM KITS FOR
CREATING LINKED ARTICLES**

Inv. No. 337-TA-923

**NOTICE OF COMMISSION DETERMINATION TO REVIEW
AN INITIAL DETERMINATION IN PART AND, ON REVIEW, TO
AFFIRM A FINDING OF VIOLATION WITH MODIFICATIONS;
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 to review-in-part an initial determination (“ID”) (Order No. 13) issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation. Particularly, the Commission has determined to review the determination on domestic industry in the ID. Upon review, the Commission affirms a finding of domestic industry with modifications. The Commission’s determination results in a determination of a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337 or “section 337”). Accordingly, the Commission requests written submissions, under the schedule set forth below, on remedy, public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2661. 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 (<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 August 6, 2014, based on a complaint filed by Choon’s Design, Inc., of Wixom, Michigan (“Choon’s”). 79 Fed. Reg. 45844-45 (August 6, 2014). The complaint alleged violations of

section 337 by reason of the importation into the United States, the sale for importation, and the sale within the United States after importation of certain loom kits for creating linked articles that infringe U.S. Patent No. 8,485,565 (“the ’565 patent”). The notice of investigation named thirteen respondents, all of which either have been found in default or terminated from this investigation. *See* Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation as to Respondent Creative Kidstuff, LLC (September 26, 2014); Notice of Commission Determination Not to Review an Initial Determination Finding Respondent Island in the Sun LLC in Default (October 16, 2014); Notice of Commission Determination Not to Review Two Initial Determinations Finding Certain Respondents in Default and Terminating the Investigation with Respect to Another Respondent (January 9, 2015); Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation as to Respondent Altatac, Inc. (January 13, 2015). The respondents in default are Island in the Sun LLC; Quality Innovations Inc.; Yiwu Mengwang Craft & Art Factory; Shenzhen Xuncent Technology Co., Ltd.; My Imports USA LLC; Jayfinn LLC; Hongkong Haoguan Plastic Hardware Co., Ltd.; Blink.com, LLC; Eyyup Arga; and Itcoolnomore (collectively, “defaulting respondents”).

On December 5, 2014, Choon’s moved for a summary determination of a violation of section 337 and for issuance of a general exclusion order. On December 17, 2014, the Commission investigative attorney (“IA”) submitted a response supporting the motion. No other responses to the motion were received.

On February 3, 2015, the ALJ issued an ID granting Choon’s motion for summary determination of violation and recommending the issuance of a general exclusion order. *See* Order No. 13. On February 13, 2015, the IA submitted a petition for review of the ID in part. The IA argued that the ALJ improperly accepted alleged domestic industry investments in “paying a patent attorney to prosecute U.S. and international patent applications” and “visiting a Chinese factory for a week to investigate manufacturing the Rainbow Loom® kits.” *See* ID at 40. The IA also contended that certain foreign expenditures should have been excluded and other domestic expenditures should have been included in the total investment summarized by the ALJ on page 42 of the ID. The IA asserts that, notwithstanding these points, the Commission should affirm the ALJ’s conclusion that Choon’s has satisfied the domestic industry requirement and that a violation of section 337 has been proven.

On February 18, 2015, Choon’s filed a response to the IA’s petition. Choon’s took no position as to whether patent prosecution costs or visiting Chinese manufacturers count as domestic industry investments. Choon’s agreed with the IA that certain domestic expenditures should be included in the domestic investment total and that the economic prong of the domestic industry requirement has been met.

The Commission has determined to review only the domestic industry economic prong determination in the ID. Upon review, the Commission affirms a finding that Choon’s has shown a substantial investment in the exploitation of the ’565 patent through engineering, and research and development of articles protected by the ’565 patent, but the Commission modifies certain portions of the ID regarding the expenditures comprising the domestic industry investments. The Commission’s modifications will be specified in a later Commission opinion.

In connection with the final disposition of this investigation, 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 one or more 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 (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 orders 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 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 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. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date on which the '565 patent expires and the HTSUS subheadings under which the accused products are imported.

Written submissions must be filed no later than close of business on April 3, 2015. Reply submissions must be filed no later than the close of business on April 10, 2015. Such submissions should address the ALJ's recommended determinations on remedy and bonding which were made in Order No. 13. 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 and submit eight true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation

number (“Inv. No. 337-TA-923”) in a prominent place on the cover page and/or the first page. *See Handbook for Electronic Filing Procedures*, http://vwww.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.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 C.F.R. § 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 the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 C.F.R. Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: March 20, 2015