

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN FOOTWEAR PRODUCTS

Investigation No. 337-TA-936
(Remand)

**NOTICE OF THE COMMISSION DETERMINATION TO
EXTEND THE TARGET DATE**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the target date in the above-captioned investigation to September 2, 2020.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone 202-205-2392. 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: The Commission instituted this investigation on November 17, 2014, based on a complaint filed on behalf of Converse Inc. ("Converse") of North Andover, Massachusetts. 79 FR 68482 (Nov. 17, 2014). The complaint alleges, inter alia, 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 footwear products by reason of infringement of U.S. Trademark Registration No. 4,398,753 ("the '753 Registration"), registered on September 10, 2013, and the common law trademark rights for the same mark (the "Converse Midsole Trademark" or "CMT"). *See id.* The Commission's notice of investigation names numerous respondents including Skechers U.S.A., Inc. ("Skechers") of Manhattan Beach, California, and Highline United LLC d/b/a Ash Footwear USA ("Highline"), now of Hyde Park, Massachusetts. *Id.* at 68482-483. New Balance Athletic Shoe, Inc. ("New Balance") of Boston, Massachusetts, was subsequently added to the investigation as a respondent-intervenor. 80 FR 9748 (Feb. 24, 2015). These three respondents remain active in the investigation. The following five respondents were found in default: Dioniso SRL of Perugia, Italy; Shenzhen Foreversun Industrial Co., Ltd. (a/k/a Shenzhen Foreversun Shoes Co., Ltd.) of Shenzhen, China; Fujian

Xinya I&E Trading Co. Ltd. of Jinjiang, China; and Zhejiang Ouhai International Trade Co. Ltd. and Wenzhou Cereals Oils & Foodstuffs Foreign Trade Co. Ltd., both of Wenzhou, China. Every other respondent was terminated from the investigation or settled with Complainant after the Commission's final determination. The Office of Unfair Import Investigations ("OUII") is also a party to the investigation. 79 FR 68483. The Commission issued its final determination on June 23, 2016. 81 FR 42377 (June 29, 2016). On appeal of that determination, the investigation was remanded to the Commission by the Federal Circuit in *Converse, Inc. v. International Trade Commission*, 909 F.3d 1110 (Fed. Cir. 2018). On April 9, 2019, the Commission, in turn, remanded the matter to the administrative law judge ("ALJ") who adjudicated the original investigation.

On October 9, 2019, the ALJ issued his remand initial determination ("RID") finding no violation of section 337 as to all accused products of each active respondent. Specifically, the RID found that Converse had not established secondary meaning of the CMT prior to the time of first infringement for any active respondent and, therefore, there were no valid common law trademark rights in the CMT. The RID also found that the active respondents' accused products do not infringe even if the CMT were found to have acquired secondary meaning, except for one Skechers product found to infringe. The RID further found a violation as to the accused products of the defaulting respondents because they infringe the CMT after the registration date of the '753 Registration.

On October 22, 2019, Converse, the active respondents, and OUII each filed a petition for review of the RID. On October 30, 2019, each of these parties filed responses to the other petitions for review.

On February 7, 2020, the Commission determined to review the RID in part. Specifically, the Commission determined to review the RID's infringement, validity, and injury analyses with respect to the '753 Registration and the common law trademark rights for the same mark. The Commission also requested additional briefing from the parties on the issue under review and invited the parties, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding. The active respondents and OUII filed timely initial and reply written submissions regarding the issues on review, and on remedy, the public interest, and bonding.

The Commission has determined to extend the target date in this investigation to September 2, 2020.

The Commission vote for this determination took place on May 28, 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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton
Secretary to the Commission

Issued: May 28, 2020