

Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 16, 2021.

Lisa Barton,

Secretary to the Commission.

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1213]

Certain Light-Emitting Diode Products, Fixtures, and Components Thereof Notice of a Commission Determination Finding a Violation of Section 337; Issuance of Limited Exclusion Order and Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined to affirm a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding a violation of section 337 by the accused products of respondent RAB Lighting Inc. (“RAB”) of Northvale, New Jersey. The Commission has issued a limited exclusion order (“LEO”) directed against infringing light-emitting diode products, fixtures, and components thereof of RAB and a cease and desist order (“CDO”) directed against RAB. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT:

Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-2310. 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: The Commission instituted this investigation on August 17, 2020, based on a complaint filed on behalf of Ideal Industries Lighting LLC d/b/a Cree

Lighting (“Cree”) of Durham, North Carolina. 85 FR 50047-48 (Aug. 17, 2020). The complaint, as supplemented, alleges violations of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-emitting diode products, fixtures, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,403,531 (“the ’531 patent”); 8,596,819 (“the ’819 patent”); 8,777,449 (“the ’449 patent”); 9,261,270 (“the ’270 patent”); and 9,476,570 (“the ’570 patent”). The complaint further alleges the existence of a domestic industry. The Commission’s notice of investigation (“NOI”) named RAB as the sole respondent. The Office of Unfair Import Investigations is not participating in the investigation. The Commission previously terminated the following claims from the investigation: (1) Claims 1-9 and 11-14 of the ’449 patent; (2) claims 3-12 of the ’270 patent; claims 17, 21, and 24 of the ’531 patent; and (3) claims 2, 6-9, and 11-24 of the ’570 patent. *See* Order No. 13 (Jan. 8, 2021), *unreviewed by Comm’n Notice* (Jan. 26, 2021); Order No. 25 (May 5, 2021), *unreviewed by Comm’n Notice* (May 21, 2021). The Commission also amended the complaint and NOI to add asserted claim 11 of the ’531 patent. *See* Order No. 13 (Jan. 8, 2021), *unreviewed by Comm’n Notice* (Jan. 26, 2021).

On August 17, 2021, the ALJ issued the final ID finding a violation of section 337 based on infringement of the asserted claims of the ’270 and ’570 patents. The ID finds no violation of section 337 with respect to the ’531 and ’819 patents on the basis of patent-ineligible subject matter, lack of enablement, and lack of written description. The ID also finds no violation with respect to the ’449 patent based on findings that the accused products do not infringe asserted claim 10; the asserted claims are invalid for lack of enablement; and the domestic industry products do not practice one or more claims. The ALJ recommended, should the Commission find a violation, issuing a limited exclusion order directed to RAB’s infringing products and a cease and desist order directed to RAB and requiring a bond in the amount of five (5) percent for importation of infringing articles during the period of Presidential review.

On October 25, 2021, the Commission determined to review the final ID in part. Specifically, the Commission determined to review the ID’s finding that: (1) The asserted claims of the ’531

patent and ’819 patent are invalid due to patent-ineligible subject matter, lack of enablement, and lack of written description and (2) the ’819 patent is prior art to claims 1, 10-12, and 26 of the ’531 patent. The Commission determined not to review the remainder of the ID, including the ID’s finding of a violation with respect to the ’270 and ’570 patents. 86 FR 60071-72 (Oct. 29, 2021). The Commission also requested written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding. *Id.*

On November 8 and 15, 2021, Cree and RAB each filed a brief and a reply brief, respectively, on remedy, the public interest, and bonding. The Commission received no other submissions.

Having reviewed the record in this investigation, including the final ID and the parties’ briefing, the Commission has determined, on review, to: (1) Affirm the ID’s finding that the asserted claims of the ’531 and ’819 patents are patent ineligible; (2) take no position on the ID’s finding that the asserted claims of the ’531 and ’819 patents are invalid due to lack of enablement and lack of written description; and (3) take no position on the ID’s finding that the ’819 patent is prior art to claims 1, 10-12, and 26 of the ’531 patent. Accordingly, the Commission affirms the ID’s finding of no violation as to the ’531 and ’819 patents.

The Commission has adopted the final ID’s finding of a violation of section 337 as to the ’270 and ’570 patents. The Commission has determined that the appropriate form of relief is an LEO prohibiting the entry of unlicensed light-emitting diode products, fixtures, and components thereof that infringe one or more of claims 1-2 of the ’270 patent and claims 1, 3-5, and 10 of the ’570 patent, and that are manufactured abroad by or on behalf of, or imported by or on behalf of RAB, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns (collectively, “the covered articles”). Appropriate relief also includes a CDO prohibiting RAB from conducting any of the following activities in the United States: Importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for light-emitting diode products, fixtures, and components thereof that infringe one or more of claims 1-2 of the ’270 patent and claims 1, 3-5, and 10 of the ’570 patent.

The Commission has further determined that the public interest factors enumerated in sections 337(d)(1) and 337(f)(1) (19 U.S.C. 1337(d)(1) and 1337(f)(1)) do not warrant denying relief. Finally, the Commission has determined that a bond in the amount of five (5) percent of the entered value of the covered articles is required during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission issues its opinion herewith setting forth its determinations on the remedy issues. The investigation is terminated.

The Commission vote for this determination took place on December 16, 2021.

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.

Issued: December 16, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-27702 Filed 12-21-21; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1206]

Certain Percussive Massage Devices; Issuance of a General Exclusion Order and a Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue a general exclusion order ("GEO") and a cease and desist order ("CDO") directed to respondent Kinghood International Logistics Inc. ("Kinghood") in the above-captioned investigation. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT:

Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 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 July 22, 2020, based on a complaint filed on behalf of Hyper Ice, Inc. ("Hyperice") of Irvine, California. 85 FR 44322 (July 22, 2020). The complaint, as supplemented, alleged 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, or the sale within the United States after importation of certain percussive massage devices by reason of infringement of U.S. Design Patent Nos. D855,822 and D886,317 (collectively, "Asserted Design Patents") and claims 1-9, 14, and 15 of U.S. Patent No. 10,561,574 ("the '574 patent"). The complaint further alleged that a domestic industry exists. The Commission's notice of investigation named the following nineteen respondents: Laiwushiyu Xinuan Trading Company of Shandong District, China; Shenzhen Let Us Win-Win Technology Co., Ltd. of Guangdong, China; Shenzhen Qifeng Technology Co., Ltd. of Guangdong, China; Shenzhen QingYueTang E-commerce Co., Ltd. of Guangdong, China; and Shenzhen Shiluo Trading Co., Ltd. of Guangdong, China (collectively, the "Unserved Respondents"); Kinghood of La Mirada, California; Manybo Ecommerce Ltd. ("Manybo") of Hong Kong, China; Shenzhen Infein Technology Co., Ltd. ("Shenzhen Infein") of Guangdong, China; Hong Kong Yongxu Capital Management Co., Ltd. ("Hong Kong Yongxu") of Hong Kong, China; Kula eCommerce Co., Ltd. ("Kula") of Guangdong, China; Performance Health Systems, LLC ("Performance Health") of Northbrook, Illinois; Rechar, Inc. ("Rechar") of Strasburg, Colorado; Ning Chen of Yancheng, Jiangsu China; Opove, Ltd. ("Opove") of Azusa, California; Shenzhen Shufang E-Commerce Co., Ltd. ("Shufang E-Commerce") of Shenzhen, China; Fu Si ("Shenzhen Fusi Technology") of Guangdong, China; ¹ WODFitters of Lorton, Virginia;

¹ Respondent Fu Si's full name is Shenzhen Fusi Technology Co., Ltd. See Response of Opove Ltd., Shenzhen Shufang E-Commerce Co., Ltd., and Fu Si to the Complaint and Notice of Investigation at ¶ 40,

Massimo Motor Sports, LLC ("Massimo") of Garland, Texas; and Addaday LLC ("Addaday") of Santa Monica, California. The notice of investigation also named the Office of Unfair Import Investigations ("OUII") as a party.

On October 16, 2020, the Commission determined not to review Order No. 11 granting motions to intervene by third parties Shenzhen Xinde Technology Co., Ltd. ("Xinde") and Yongkang Aijiu Industrial & Trade Co., Ltd. ("Aijiu") in the investigation. See Order No. 11 (Sept. 25, 2020), *unreviewed by Comm'n Notice* (Oct. 16, 2020).

Respondents Addaday, WODFitters, Massimo, Performance Health, Rechar, Ning Chen, Opove, Shufang E-Commerce, Xinde, Aijiu, and Shenzhen Fusi Technology were terminated from the investigation based upon settlement agreements. See Order No. 10 (Sept. 16, 2020), *unreviewed by Comm'n Notice* (Oct. 15, 2020); Order No. 12 (Nov. 4, 2020), *unreviewed by Comm'n Notice* (Nov. 20, 2020); Order No. 30 (Apr. 8, 2021), *unreviewed by Comm'n Notice* (Apr. 22, 2021).

The Unserved Respondents were terminated from the investigation based upon withdrawal of the Complaint. See Order No. 36 at 2 (Aug. 3, 2021), *unreviewed by Comm'n Notice* (Aug. 19, 2021).

Respondents Kinghood, Manybo, Shenzhen Infein, Hong Kong Yongxu, and Kula (collectively, "the Defaulting Respondents") were found in default. See Order No. 17 (Dec. 17, 2020), *unreviewed by Comm'n Notice* (Jan. 5, 2021).

On May 6, 2021, OUII filed a motion to terminate the Asserted Design Patents from this investigation on the ground that Hyperice did not have sufficient rights to the design patents at the time the investigation was instituted. On May 17, 2021, Hyperice filed its response in opposition to OUII's motion to terminate, which included a cross-motion to amend the Complaint to reflect proper inventorship.

On May 7, 2021, Hyperice filed a motion for summary determination that the Defaulting Respondents have violated section 337 for infringing its three asserted patents. On May 14, 2021, Hyperice supplemented its motion with additional declarations. On May 20, 2021, Hyperice again supplemented its motion with claim charts and exhibits. OUII filed a response in support of the

EDIS Doc ID 716966 (Aug. 11, 2020). The principal place of business of Shenzhen Fusi Technology Co., Ltd. was changed to 14E, Building A, Guanghao International Center, No. 441 Meilong Road, Minzhi Street, Longhua District, Shenzhen, China, 518131 effective September 15, 2020. *Id.*