



## INTERNATIONAL TRADE COMMISSION

### Investigation No. 337-TA-823

# CERTAIN KINESIOTHERAPY DEVICES AND COMPONENTS THEREOF FINAL COMMISSION DETERMINATION OF VIOLATION; ISSUANCE OF A GENERAL EXCLUSION ORDER AND CEASE AND DESIST ORDERS; AND 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 terminated the above-captioned investigation with a finding of violation of section 337, and has issued a general exclusion order directed against infringing kinesiotherapy devices and components thereof, and cease and desist orders directed against respondents LELO Inc. of San Jose, California; PHE, Inc. d/b/a Adam & Eve of Hillsborough, North Carolina; Nalpac Enterprises, Ltd. of Ferndale, Michigan; E.T.C. Inc. (d/b/a Eldorado Trading Company, Inc.) of Broomfield, Colorado; Williams Trading Co., Inc. of Pennsauken, New Jersey; Honey's Place Inc. of San Fernando, California; and Lover's Lane & Co. of Plymouth, Michigan. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3041. 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 January 10, 2012, based on a complaint filed by Standard Innovation Corporation of Ottawa, ON, Canada and Standard Innovation (US) Corp. of Wilmington, Delaware (collectively, "Standard Innovation"). *77 Fed. Reg.* 1504 (Jan. 10, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by reason of infringement of certain claims of United States Patent Nos. 7,931,605 ("the '605 patent") and D605,779 ("the D'779 patent"). The complaint named twenty-one business entities as respondents, several of which have since been terminated from the investigation based upon consent orders or withdrawal of the complaint. On July 25, 2012, the Commission determined not to review an ID (Order No. 25) granting Standard Innovation's motion to withdraw the D'779 patent from the investigation.

An evidentiary hearing was held from August 21, 2012, to August 24, 2012.

On January 8, 2013, the ALJ issued a final initial determination ("ID") finding no violation of section 337. The ALJ also issued a recommended determination on remedy and bonding on January 22, 2013. Specifically, the ALJ found that Standard Innovation had not satisfied the economic prong of the domestic industry requirement of section 337. The ALJ found, however, that the accused products infringe the asserted claims, that the asserted claims were not shown to

be invalid, and that the technical prong of the domestic industry requirement was shown to be satisfied.

On January 22, 2013, Standard Innovation and the Commission investigative attorney (“IA”) filed petitions for review of the final ID. Also on January 22, 2013, the respondents remaining in the investigation filed a joint contingent petition for review. On January 30, 2013, the parties filed responses to the petitions.

On March 25, 2013, the Commission determined to review the ID in its entirety and posed four questions to the parties concerning the economic prong of the domestic industry requirement of section 337. The parties and the IA submitted briefs on April 8, 2013, and briefs in reply on April 15, 2013 concerning the Commission’s questions and remedy, the public interest, and bonding. The Commission extended the target date to June 7, 2013 and then to June 17, 2013.

Having examined the record in this investigation, including the ID, the petitions for review, and the submissions on review and responses thereto, the Commission has determined that Standard Innovation has satisfied the domestic industry requirement and that there is a violation of section 337 with respect to claims 1-7, 9-21, 23, 24, 33-40, 42-54, 56, 57, 66-73, 75-87, 89, and 90 of the ‘605 patent.

The Commission has also made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is both: (1) a general exclusion order prohibiting the unlicensed entry of kinesiotherapy devices and components thereof that infringe claims 1-7, 9-21,23, 24, 33-40, 42-54, 56, 57, 66-73, 75-87, 89, or 90 of the ‘605 patent; and (2) cease and desist orders prohibiting LELO Inc. of San Jose, California; PHE, Inc. d/b/a Adam & Eve of Hillsborough, North Carolina; Nalpac Enterprises,

Ltd. of Ferndale, Michigan; E.T.C. Inc. (d/b/a Eldorado Trading Company, Inc.) of Broomfield, Colorado; Williams Trading Co., Inc. of Pennsauken, New Jersey; Honey's Place Inc. of San Fernando, California; and Lover's Lane & Co. of Plymouth, Michigan 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, kinesiotherapy devices and components with respect to the same claims.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) and (f)(1) (19 U.S.C. §§ 1337(d)(1), (f)(1)) do not preclude issuance of the general exclusion order or the cease and desist orders. Finally, the Commission determined that there shall be a bond in the amount of zero percent of entered value to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)). The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. 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 section 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.50).

By order of the Commission.

William R. Bishop

Supervisory Hearings and Information Officer

Issued: June 17, 2013

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