



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-823]

Certain Kinesiotherapy Devices And Components Thereof;

Commission Decision To Rescind A

General Exclusion Order And Cease And Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has rescinded the general exclusion order and cease and desist orders issued at the conclusion of the above-captioned investigation. The general exclusion order was directed against infringing kinesiotherapy devices and components thereof, and the cease and desist orders were directed against certain respondents.

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.* 1504-05 (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 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. 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 filed petitions for review of the final ID, and the remaining respondents in the investigation filed a contingent petition for review. On January 30, 2013, each party filed a response.

On March 25, 2013, the Commission determined to review the ID in its entirety and posed questions to the parties concerning the satisfaction of the economic prong of the domestic industry and remedy, the public interest, and bonding. The parties and the IA submitted briefs on April 8, 2013, and briefs in reply on April 15, 2013. The target date for completion of the investigation was also extended until June 17, 2013.

On June 17, 2013, the Commission issued its final determination finding that Standard Innovation had satisfied the economic prong of the domestic industry requirement and that Standard Innovation had proven a violation of Section 337 by reason of infringement of the '605 patent. Based on evidence of a pattern of violation and difficulty ascertaining the source of the infringing products, the Commission issued a general exclusion order against certain kinesiotherapy devices that infringe the '605 patent. The Commission also issued cease and desist orders against the following 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 Commission's remedial orders allowed entry under bond during the Presidential review period.

On August 20, 2013, respondents LELO, Inc. and Leloi AB filed a notice of appeal with the U.S. Court of Appeals for the Federal Circuit seeking review of the Commission's final determination. Standard Innovation intervened in the appeal and the parties filed briefs with the

Court. On May 11, 2015, the Federal Circuit issued its opinion in *Lelo Inc. v. International Trade Commission*, 786 F.3d 879 (Fed. Cir. 2015). The Court indicated that the Commission had erred in relying solely upon qualitative factors to find “significant investment in plant and equipment” and “significant employment of labor or capital” under prongs (A) and (B) of the domestic industry requirement. Accordingly, the Court reversed the Commission’s finding of a violation of 19 U.S.C. § 1337. The Court issued its mandate on July 2, 2015.

As the U.S. Court of Appeals for the Federal Circuit has reversed the Commission’s finding of violation, the Commission has determined that there is no longer a basis for the general exclusion order or the cease and desist orders previously issued in this investigation. The Commission has therefore rescinded the orders.

This action is taken under the authority of Section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337(k) and Commission rule 210.76, 19 C.F.R. § 210.76.

By order of the Commission.

Issued: July 21, 2015.

Lisa R. Barton,
Secretary to the Commission.

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