



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-988

Certain Pumping Bras

Issuance of a General Exclusion 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 issued a general exclusion order (GEO) denying entry of certain pumping bras. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., 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 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 SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 March 14, 2016, based on a complaint filed on behalf of Simple Wishes, LLC ("Simple Wishes")

of Sacramento, California. 81 FR 13419-20 (Mar. 14, 2016). The complaint alleges 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 U.S. Patent Nos. 8,192,247 (“the ’247 patent”) and 8,323,070 (“the ’070 patent”). The complaint further alleges that a domestic industry exists. The Commission’s notice of investigation named Buywish, TANZKY, BabyPreg, and Deal Perfect, all of China, as respondents. Simple Wishes asserted the ’247 patent only against respondent Buywish. The Office of Unfair Import Investigations (OUII) is also a party to the investigation.

The Commission previously determined not to review an initial determination finding respondents TANZKY, BabyPreg, and Deal Perfect in default pursuant to 19 CFR 210.16 and 210.17. *See* Commission Notice (Jul. 8, 2016); Order No. 8. The Commission also previously determined not to review an initial determination terminating the investigation as to the last remaining respondent, Buywish, based on withdrawal of the complaint. *See* Commission Notice (Aug. 9, 2016); Order No. 9. As a result of the termination of the investigation as to Buywish, the ’247 patent is no longer at issue in this investigation.

On August 30, 2016, Simple Wishes filed a motion for summary determination on domestic industry and violation of section 337 by the defaulting respondents. On October 31, 2016, the ALJ issued an ID (Order No. 11) granting Simple Wishes’ motion for summary determination and recommending that the Commission issue a GEO and set a bond of 100 percent during the Presidential review period. On December 14, 2016, the Commission determined to review the ID in-part, and on review, to modify the ID to set aside the patent and trademark prosecution and maintenance expenses from the domestic industry analysis. *See* 81 FR 92852-53 (Dec. 20, 2016). The Commission’s determination resulted in a finding of a section 337

violation. *See id.* The Commission requested written submissions on remedy, the public interest, and bonding. *See id.*

On January 3, 2017, Simple Wishes submitted a brief on remedy, the public interest, and bonding, requesting that the Commission issue a GEO and set a bond of 100 percent during the Presidential review period. On January 4, 2017, the Commission Investigative Attorney (“IA”) also submitted a brief on remedy, the public interest, and bonding, supporting the ALJ’s recommended GEO and bond of 100 percent. The IA further filed a response brief on January 11, 2017.

The Commission finds that the statutory requirements for relief under section 337(g)(2) and section 337(d)(2) (19 U.S.C. 1337(g)(2) and 1337(d)(2)) are met with respect to the defaulting respondents. In addition, the Commission finds that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the statutory relief.

The Commission has determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed entry of certain pumping bras that infringe one or more of claims 10, 12, 14, and 27-37 of the ’070 patent. The Commission has also determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the GEO. The Commission’s order was delivered to the President and to the United States Trade Representative on the day of its issuance.

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.

Katherine M. Hiner
Acting Supervisory Attorney

Issued: April 7, 2017

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