



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1008]

Certain Carbon Spine Board, Cervical Collar, CPR Masks and Various Medical Training Manikin Devices, and Trademarks, Copyrights of Product Catalogues, Product Inserts and Components Thereof

Issuance of a Limited Exclusion Order Against Three Respondents Found in Default; Issuance of 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 issued a limited exclusion order (“LEO”) against certain products of Medsource International Co., Ltd.; Medsource Factory, Inc.; and Basic Medical Supply, LLC. The Commission has also issued a cease and desist order (“CDO”) against respondent Basic Medical Supply, LLC. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-5468. 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, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<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 June 24, 2016, based on an amended complaint, as supplemented, filed by Laerdal Medical Corp. of Wappingers Falls, New York, and Laerdal Medical AS of Stavanger, Norway (together, "Laerdal"). 81 FR 41349-50. The investigation was instituted to determine whether there is a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain carbon spine board, cervical collar, CPR masks, various medical training manikin devices, trademarks, copyrights of product catalogues and products inserts, and components thereof by reason of one or more of: (1) infringement of claim 1 of U.S. Patent No. 6,090,058 ("the '058 patent"); (2) infringement of U.S. Trademark Registration No. 3,476,656 ("the '656 mark"); (3) infringement of U.S. Copyright Registration Nos. VA 1-879-023 or VA 1-879-026 ("the '023 and '026 copyrights"); and (4) infringement and misappropriation of certain Laerdal trade dresses. *Id.* at 41349. The Commission's notice of investigation named as respondents Shanghai Evenk International Trading Co., Ltd., Shanghai Honglian Medical Instrument Development Co., Ltd., and Shanghai Jolly Medical Education Co., Ltd., all of Shanghai, China; Zhangjiagang Xiehe Medical Apparatus & Instruments Co., Ltd., Zhangjiagang New Fellow Med Co., Ltd., Jiangsu Yongxin Medical Equipment Co., Ltd., and Jiangsu

Yongxin Medical-Use Facilities Making, Co., Ltd, all of Zhangjiagang City, China; Jiangyin Everise Medical Devices Co., Ltd., of Jiangyin City, China; Medsource International Co., Ltd. (“Medsource International”) and Medsource Factory, Inc. (“Medsource Factory”), both of PuDong, China; and Basic Medical Supply, LLC (“Basic Medical”) of Richmond, Texas (collectively, “Respondents”). *Id.* at 41350. The Office of Unfair Import Investigations (“OUII”) was also named as a party. *Id.*

On November 7, 2016, the presiding administrative law judge (“ALJ”) ordered all of the respondents to show cause why they should not be held in default for failing to respond to the amended complaint and Notice of Investigation, and set a response deadline of November 14, 2016. Order No. 5. No responses were filed. On November 21, 2016, the ALJ issued an initial determination (Order No. 6) finding all respondents in default pursuant to Commission Rules 210.16 and 210.17. No petitions for review of the ID were filed. On December 20, 2016, the Commission determined not review the ID, and sought submission from the parties and the public on remedy, the public interest, and bonding.

The Commission received responsive submissions from Laerdal and OUII on January 5, 2017, and reply submissions from Laerdal and OUII on January 10, 2017. The submissions agreed that the appropriate remedy is the entry of a limited exclusion order against all respondents and the entry of a cease and desist order against Basic Medical, that the public interest factors do not weigh against granting these remedial orders, and that bonding should be set at 100 percent of the entered value of the infringing products.

The Commission finds that the statutory requirements of section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission Rule 210.16(a)(1) (19 CFR 210.16(a)(1)) are met

with respect to all respondents. Pursuant to section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission Rule 210.16(c) (19 CFR 210.16(c)), the Commission presumes the facts alleged in the complaint to be true. The Commission finds that Laerdal's amended complaint sufficiently alleged a violation of section 337 by Medsource International, Medsource Factory, and Basic Medical with respect to claim 1 of the '058 patent and the '656 mark. The Commission, however, finds that even when the factual allegations of Laerdal's amended complaint are presumed true, Laerdal has not shown a violation of section 337 with respect to the '023 copyright, the '026 copyright, the trade dresses, or any of the other respondents.

The Commission has determined that the appropriate form of relief in this investigation is: (a) a limited exclusion order against Medsource International, Medsource Factory, and Basic Medical prohibiting the unlicensed entry of cervical collars that infringe claim 1 of the '058 patent and CPR masks that infringe the '656 mark; and (b) an order that Basic Medical cease and desist from importing, selling, offering for sale, marketing, advertising, distributing, offering for sale, transferring (except for exportation), or soliciting U.S. agents or distributors of imported cervical collars that infringe claim 1 of the '058 patent and CPR masks that infringe the '656 mark. The Commission has further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. § 1337(g)(1)) do not preclude the issuance of the limited exclusion order and cease and desist order. Finally, the Commission has determined that the bond for importation during the period of Presidential review shall be in the amount of 100 percent of the entered value of the imported subject articles of the respondents. The investigation is terminated.

The Commission's orders and opinion were delivered to the President and the United States Trade Representative on the day of their 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.

Issued: June 14, 2017

Lisa R. Barton
Secretary to the Commission

[FR Doc. 2017-12689 Filed: 6/16/2017 8:45 am; Publication Date: 6/19/2017]