



7020-02

## INTERNATIONAL TRADE COMMISSION

### Investigation No. 337-TA-1015

#### Certain Hand Dryers and Housing for Hand Dryers

#### **Commission's Determination to Affirm the Domestic Industry Finding Under Modified Reasoning; Issuance of a General Exclusion Order; Issuance of Three Cease and Desist Orders; 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 affirm under modified reasoning the ALJ's finding with respect to the existence of a domestic industry. The Commission has also determined to issue a general exclusion order directed against infringing hand dryers and housings for hand dryers, and has issued three cease and desist orders against defaulted respondents US Air Hand Dryer, Penson & Co., and TC Bunny Co., Ltd. The investigation is hereby terminated.

**FOR FURTHER INFORMATION CONTACT:** Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 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 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 August 1, 2016, based on a complaint filed by Complainant Excel Dryer, Inc. of East Longmeadow, Massachusetts ("Excel"), alleging a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), based upon the importation into the United States, or in the sale of certain hand dryers and housings for hand dryers by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States. *See* 81 FR 50549-50 (Aug. 1, 2016). The notice of investigation identified twelve respondents: ACL Group (Intl.) Ltd. of Skelbrooke, United Kingdom ("ACL"); Alpine Industries Inc. of Irvington, New Jersey ("Alpine"); FactoryDirectSale of Ontario, California; Fujian Oryth Industrial Co., Ltd. (a/k/a Oryth) of Fujian, China ("Oryth"); Jinhua Kingwe Electrical Co. Ltd., (a/k/a Kingwe) of Jinhua City, China ("Kingwe"); Penson & Co. of Shanghai, China ("Penson"); Taizhou Dihour Electrical Appliances Co., Ltd., a/k/a Dihour of Wenling City, China ("Dihour"); TC Bunny Co., Ltd. of Shanghai, China ("TC Bunny"); Toolsempire of Ontario, California; US Air Hand Dryer of Sacramento, California ("US Air"); Sovereign Industrial (Jiaxing) Co. Ltd. d/b/a Vinovo of Jiaxing, China ("Vinovo"); and Zhejiang Aike Appliance Co., Ltd. of Zhejiang, China ("Aike"). *See id.* The Office of Unfair Import Investigations ("OUII") is also a party to this investigation. *See id.*

The Commission terminated six respondents from the investigation based on consent order stipulations and the entry of consent orders. These terminated respondents are: Alpine, Order No. 11 (Sept. 8, 2016), *not reviewed*, Notice (Oct. 11, 2016); Kingwe, Order No. 12 (Sept. 8, 2016), *not reviewed*, Notice (Oct. 11, 2016); ACL, Order No. 15 (Sept. 28, 2016), *not reviewed*, Notice (Oct. 27, 2016); Aike, Order No. 16 (Oct. 4, 2016), *not reviewed*, Notice (Nov.

3, 2016); Toolsempire, Order No. 18 (Oct. 11, 2016), *not reviewed*, Notice (Nov. 14, 2016); and FactoryDirectSale (Order No. 19 (Oct. 11, 2016), *not reviewed*, Notice (Nov. 14, 2016).

The Commission found the six remaining respondents in default based on their failure to respond to the complaint and notice of investigation. These respondents (“the Defaulted Respondents”) are: Penson, Dihour, US Air, Oryth, TC Bunny, and Vinovo. Order No. 21 (Oct. 31, 2016), *not reviewed*, Notice (Nov. 28, 2016); Order No. 24 (Feb. 2, 2017), *not reviewed*, Notice (Feb. 22, 2017).

On March 24, 2017, Excel filed a motion for summary determination on domestic industry and violation of section 337 by the Defaulting Respondents. Excel also requested a general exclusion order, cease and desist orders, and a bond rate of 100 percent of entered value during the period of Presidential review. On April 5, 2017, the OUII filed a response in support of Excel’s motion and requested remedy. On June 2, 2017, the ALJ issued the subject ID/RD (Order No. 27), granting the motion and recommending that the Commission issue a general exclusion order, issue cease and desist orders, and set a bond at 100 percent of entered value during the period of Presidential review. No petitions for review of the subject ID were filed.

On July 14, 2017, the Commission determined “to review the ID’s analysis and finding with respect to the existence of a domestic industry.” Notice (July 14, 2017). The Commission also sought written submissions on two issues from the parties, and written submissions on remedy, the public interest, and bonding from the parties and the public. The Commission received a main submission from OUII on July 27, 2017, a main submission from Excel on July 28, 2017, and a reply submission from OUII on August 2, 2017. No other submissions were received.

Having examined the record of this investigation, the Commission has determined to

affirm under modified reasoning the ALJ's finding with respect to the existence of a domestic industry. Here, although this investigation concerns an alleged violation of section 337(a)(1)(A)(i) based on trade dress infringement, the ALJ analyzed the existence of a domestic industry under section 337(a)(3), which applies to section 337(a)(1)(B)-(E). The Commission finds that the evidence credited by the ALJ is sufficient to satisfy the requirement of "an industry in the United States" under section 337(a)(1)(A)(i).

The Commission has determined that the appropriate form of relief in this investigation is: (a) a general exclusion order; and (b) cease and desist orders prohibiting US Air, Penson, and TC Bunny 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 hand dryers and housings for hand dryers that infringe the Excel Trade Dress. The Commission has further determined that the public interest factors enumerated in section 337(d)(2) (19 U.S.C. § 1337(d)(2)) and in section 337(g)(1) (19 U.S.C. § 1337(g)(1)) do not preclude the issuance of the general exclusion order and cease and desist orders, respectively. 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.

Chairman Schmittlein supports issuing all of the cease and desist orders requested by Excel, including against Vinovo. She has filed a dissenting opinion explaining her views.

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.

Lisa R. Barton  
Secretary to the Commission

Issued: October 30, 2017

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