



7020-02

## INTERNATIONAL TRADE COMMISSION

### [Investigation No. 337-TA-1008 (Remand)]

#### **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 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 eleven respondents found in default. 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 product inserts, and components thereof by reason of infringement of one or more of U.S. Patent No. 6,090,058 (“the ’058 patent”), U.S. Trademark Registration No. 3,476,656 (“the ’656 trademark”), U.S. Copyright Registration Nos. VA 1-879-023 and VA 1-879-026, or by reason of trade dress misappropriation and infringement. *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. and Medsource Factory, Inc. of PuDong, China; and Basic Medical Supply, LLC of Richmond, Texas (collectively, “Respondents”). *Id.* at 41350. The Office of Unfair Import Investigations was also named as a party. *Id.*

On November 21, 2016, the ALJ issued an initial determination finding all of the Respondents in default for failing to respond to the complaint and notice of investigation, Order No. 6 (Nov. 21, 2016). The Commission declined to review that determination, Notice (Dec. 20, 2016). The Commission determined to issue an LEO and a CDO with respect to the '058 patent and the '656 trademark, but declined to issue any relief with respect to Laerdal's trade dress or copyright claims. Comm'n Op. (Jun. 14, 2017). The Commission found that, even when the facts in Laerdal's complaint were taken as true, Laerdal's trade dress allegations were inadequate because Laerdal failed to specify its trade dresses, failed to show that its trade dress was nonfunctional, and failed to allege an adequate injury. *Id.* at 8-11. The Commission also found that Laerdal's copyright allegations were legally erroneous. *Id.* at 5-8.

Laerdal appealed the Commission's denial of trade dress relief. On December 7, 2018, the Federal Circuit held that the Commission erred by refusing to issue trade dress relief based on the allegations in the amended complaint, and remanded the proceeding to the Commission for a determination on the proper trade dress remedy and the public interest. *Laerdal Med. Corp. v. Int'l Trade Comm'n*, 910 F.3d 1207, 1210, 1216 (Fed. Cir. 2018). The Court's mandate issued on January 29, 2019.

On March 26, 2019, the Commission ordered Laerdal and OUII to: (1) define each trade dress at issue; (2) explain what remedy is appropriate for each trade dress; (3) explain the effect of each remedy on the public interest; and (4) provide proposed remedial orders. Order (Mar. 26, 2019). Laerdal and OUII each provided responses on April 15, 2019, and reply submissions on April 29, 2019. On April 30, 2019, Laerdal provided corrected versions of its proposed LEO and CDO. The submissions agreed that

the appropriate remedy is the entry of an LEO against Respondents and the entry of a CDO against Basic Medical Supply, LLC (“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 has determined that the appropriate form of relief in this investigation is: (a) an LEO against Respondents prohibiting the unlicensed entry of products that infringe Laerdal’s trade dresses; 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 Laerdal’s trade dresses. 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 LEO and CDO. 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: July 22, 2019.

William Bishop,  
Supervisory Hearings and Information Officer.

[FR Doc. 2019-15801 Filed: 7/24/2019 8:45 am; Publication Date: 7/25/2019]