



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1143]

Certain Pickup Truck Folding Bed Cover Systems and Components Thereof; Commission Issuance of Limited Exclusion Order Against Infringing Products of Respondent Found in Default; Issuance of Cease and Desist Order Against Defaulting Respondent; Termination of 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 infringing products from Ningbo Huadian Cross Country Automobile Accessories Co., Ltd. (“Ningbo”) of Ningbo, China and a cease and desist order (“CDO”) against Ningbo. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-2310. 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 February 15, 2019, based on a complaint filed on behalf of Extang Corporation and Laurmark Enterprises, Inc. d/b/a BAK Industries (collectively, “Complainants”), both of Ann Arbor, Michigan. 84 FR 4534-35 (Feb. 15, 2019). The complaint alleges 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, sale for importation, and the sale within the United States after importation of certain pickup truck folding bed cover systems and components thereof by reason of infringement of certain claims of U.S. Patent Nos. D620,877; 7,188,888 (“the ’888 patent”); 7,484,788; 8,061,758; 8,182,021 (“the ’021 patent”); and 8,690,224; and U.S. Trademark Registration Nos. 5,104,393 (“the ’393 trademark”) and 3,904,016 (“the ’016 trademark”). The Commission’s notice of investigation names eleven respondents: Ningbo; DT Trading Inc. of Alhambra, California; JL Concepts Inc. and Stehlen Automotive, both of Walnut, California; Wenzhou Kouvi Hardware Products Co., Ltd. of Zhejiang Province, China; SynteticUSA of Pico Rivera, California; Topline Autoparts, Inc. and Velocity Concepts Inc., both of Hacienda Heights, California; Apex Auto Parts Mfg. Inc. and Syppo Marketing, Inc., both of City of Industry, California; and Sunwood Industries Co., Ltd. (“Sunwood”) of Jiangsu, China. The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. The Commission previously found Ningbo in default. Order No. 23 (May 3, 2019), *unreviewed by* Comm’n Notice (May 29, 2019). Apart from Ningbo, all of the respondents were terminated from the investigation via consent orders. *See* Order Nos. 13-19 (Apr. 12, 2019), *unreviewed by* Comm’n Notice (May 8, 2019); Order Nos. 20-21 (Apr. 26, 2019), *unreviewed by* Comm’n Notice (May 15, 2019); Order No. 27

(July 3, 2019), *unreviewed by Comm'n Notice* (July 29, 2019).

On March 12, 2019, Complainants filed a motion, pursuant to Commission Rule 210.16 (19 CFR 210.16), requesting: (1) an order directing, *inter alia*, Ningbo to show cause why it should not be found in default for failure to respond to the complaint and notice of investigation as required by Commission Rule 210.13 (19 CFR 210.13); and (2) the issuance of an initial determination (“ID”) finding, *inter alia*, Ningbo in default upon its failure to show cause. On March 19, 2019, the presiding administrative law judge (“ALJ”) issued Order No. 9 which required, *inter alia*, Ningbo to show cause no later than April 1, 2019, as to why it should not be held in default and have judgment rendered against it pursuant to Commission Rule 210.16 (19 CFR 210.16). No response was received from Ningbo to the motion or show cause order.

The ALJ issued an ID (Order No. 23) on May 3, 2019, finding Ningbo in default, pursuant to Commission Rule 210.16 (19 CFR 210.16), because it did not respond to the complaint, notice of investigation, and Order No. 9. Subsequently, the ALJ issued Order No. 27, which entered a consent order with respect to Sunwood. Order No. 27 also terminated the investigation before the ALJ because Sunwood was the last participating respondent. The Commission determined not to review Order No. 27 and requested written submissions on the issues of remedy, the public interest, and bonding. 84 *Fed. Reg.* 37673-74 (August 1, 2019).

Complainants and OUII submitted briefing responsive to the Commission’s request on August 12, 2019, and OUII submitted a reply brief on August 19, 2019. Complainants and OUII both argued that the Commission should issue an LEO directed to Ningbo’s infringing products and a CDO directed to Ningbo.

Having reviewed the record in the investigation, including the written submissions of the

parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined to issue relief directed solely to the defaulting respondent, Ningbo, pursuant to Section 337(g)(1), 19 U.S.C. 1337(g)(1). The Commission finds that the statutory requirements of Section 337(g)(1)(A)-(E) (19 U.S.C. 1337(g)(1)(A)-(E)) are met with respect to the defaulting respondent. Pursuant to Section 337(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. Based on the record in this investigation and the written submissions from the parties, the Commission has determined to issue an LEO directed to the defaulting respondent prohibiting the unlicensed entry of folding cover assemblies for pickup truck cargo boxes and components thereof that infringe one or more of claim 11 of the '888 patent, claim 18 of the '021 patent, the '393 trademark, and the '016 trademark, and that are manufactured abroad by or on behalf of, or imported by or on behalf of Ningbo, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission has also determined to issue a CDO prohibiting Ningbo from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for folding cover assemblies for pickup truck cargo boxes and components thereof that infringe one or more of claim 11 of the '888 patent, claim 18 of the '021 patent, the '393 trademark, and the '016 trademark. *See Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. (Feb. 13, 2017) (public version) (including Chairman Schmidlein's Separate Views on issuing cease and desist orders governed by Section 337(g)(1)).

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 issuance of the LEO or CDO. Finally, the Commission has determined that a bond in the amount of 100 percent of the entered value of the covered products is required during the period of Presidential review (19 U.S.C. 1337(j)).

The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission has terminated this investigation. 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: October 23, 2019.

Lisa Barton,

Secretary to the Commission.

Editorial note: This document was received for publication by the Office of the Federal Register on April 2, 2020.

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