



INTERNATIONAL TRADE COMMISSION

Certain Pillows and Seat Cushions, Components Thereof, and Packaging Thereof

[Investigation No. 337-TA-1328]

Notice of a Commission Determination to Review in Part an Initial Determination

Granting Complainant's Motion for Summary Determination of Violation of Section 337

and on Review, to Vacate Part of the Initial Determination; Request for Written

Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review in part an Initial Determination (“ID”) (Order No. 31) of the presiding administrative law judge (“ALJ”), granting a motion for summary determination of violation of section 337 and on review, to vacate part of the ID and to take no position on certain findings in the ID. The Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Edward S. Jou, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3316. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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 September 13, 2022, based on a complaint (the “Complaint”) filed by Purple Innovation, LLC of Lehi, Utah (the “Complainant”). 87 FR 56086-88 (Sept. 13, 2022). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation, the sale for importation, or sale within the United States after importation of certain pillows and seat cushions, components thereof, and packaging thereof by reason of infringement of the sole claim of U.S. Design Patent No. D909,092 (“the D’092 patent”); claims 1-16, 18, 19, 21-33, and 35 of U.S. Patent No. 10,772,445 (“the ’445 patent”); claims 1-4, 6, 10-12, 19, and 20 of U.S. Patent No. 10,863,837 (“the ’837 patent”); U.S. Trademark Registration No. 5,661,556 (“the ’556 mark”); and U.S. Trademark Registration No. 6,551,053 (“the ’053 mark”). *Id.* at 56086-87. The Complaint further alleges the existence of a domestic industry. *Id.* The Complaint also alleges violations of section 337 in the importation into the United States, or sale of certain products identified above by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.*

The Commission’s notice of investigation names 41 respondents: Bedmate-U Co., Ltd. (“Bedmate-U”) of Gyeonggi-do, Korea; Chuang Fan Handicraft Co., Ltd. of Zhejiang, China; Dongguan Bounce Technology Co., Ltd. of Guangdong, China; Dongguan Jingrui Silicone Technology Co., Ltd. (“Dongguan Jingrui”) of Guangdong, China; Foshan Dirani Design Furniture Co., Ltd. (“Dirani Design”) of Guangdong, China; Global Ocean Trading Co., Ltd. of Guangdong, China; Guang An Shi Lin Chen Zai Sheng Wuzi Co., Ltd. of Zhejiang, China; Guang Zhou Wen Jie Shang Mao Youxian Gongsì Co., Ltd. of Shanghai, China; Guangzhou Epsilon Import and Export Co., Ltd. of Guangdong, China; Guangzhoushi Baixiangguo Keji Youxian Gongsì Co., Ltd. of Guangdong, China; Haircrafters LLC of Chattanooga, TN; Hangzhou Lishang Import & Export Co., Ltd. of Zhejiang, China; Hangzhou Lydia Sports Goods Co., Ltd. (“Hangzhou Lydia”) of Zhejiang, China; Hebei Zeyong Technology Co., Ltd. of Hebei, China; Henson Holdings, LLC (“Henson Holdings”) of Lafayette, Louisiana; Hetaibao of

Anhui, China; Hubei Sheng Bingyi Dianzi Keji Youxian Gongsi Co., Ltd. of Hubei, China; Kaifeng Shi Long Ting Qu Chen Yi of Henan, China; Lankao Junchang Electronic Commerce Co., Ltd. of Henan, China; Lei Lei Wang of Anhui, China; Liu Lin Xian Xu Bin Dian Zi Chan Pin Dian of Shanxi, China; Nanchang Shirong Bao Er Guanggao Youxian Gongsi Co., Ltd. of Jiangxi, China; Ningbo Bolian Import & Export Co., Ltd. (“Ningbo Bolian”) of Beijing China; Ningbo Minzhou Import & Export Co., Ltd. (“Ningbo Minzhou”) of Beijing, China; Ruian Xiu Yuan Guoji MaoYi Youxian Gongso Co., Ltd. of Zhejiang, China; Shandong Jiu Hui Xinxi Keji Youxian Gongsi Co., Ltd. (“Shangdong Jiu Hui”) of Shandong, China; Shanxi Chao Ma Xun Keji Youxian Gongsi Co., Ltd. of Shanxi, China; Shenzhen Baibaikang Technology Co., Ltd. of Guangdong, China; Shenzhen Leadfar Industry Co., Ltd. (“Shenzhen Leadfar”) of Guangdong, China; Shenzhen Shi Mai Rui Ke Dianzi Shangwu Co., Ltd. of Guangdong, China; Shenzhen Shi Xin Shangpin Dianzi Shangwu Youxian Gongsi Co., Ltd. (“Shenzhen Shi Xin”) of Guangdong, China; Shenzhen Shi Yan Huang Chu Hai Keji Youxian Gongsi Co., Ltd. of Guangdong, China; Shenzhen Shi Yuxiang Meirong Yongju of Guangdong, China; Shenzhen Tianrun Material Co., Ltd. of Guangdong, China; Wuhan Chenkuxuan Technology Co., Ltd. of Hubei, China; Xiao Dawei of Fujian, China; Xiao Xiao Pi Fa Shang Mao You Xian Ze Ren Gongsi Co. of Shanxi, China; YaRu Wang of Shanxi, China; Yiwu Youru E-commerce Co., Ltd. of Zhejiang, China; Zhejiang Xinhui Import & Export Co., Ltd. of Zhejiang, China; and Zhou Meng Bo of Guangdong, China. *Id.* at 56087-88. The Office of Unfair Import Investigations (“OUII”) is also a party to this investigation. *Id.* at 56088.

Five respondents were terminated by withdrawal of allegations in the Complaint pursuant to Order No. 15 (Jan. 10, 2023), *unreviewed by* Comm’n Notice (Feb. 8, 2023). Twenty-five additional respondents were terminated by withdrawal of allegations in the Complaint pursuant to Order No. 19 (Feb. 16, 2023), *unreviewed by* Comm’n Notice (Mar. 20, 2023), *reconsidered in part by* Comm’n Notice (May 19, 2023). Complainant also withdrew its allegations with respect to trade dress, the ’556 mark, and the D’092 patent pursuant to Order No. 19. *Id.* Seven

additional respondents were terminated by consent order pursuant to Order No. 23 (Mar. 30, 2023) (Shenzhen Shi Xin), Order No. 24 (Apr. 3, 2023) (Bedmate-U), Order No. 25 (Apr. 7, 2023) (Henson Holdings), Order No. 26 (Apr. 10, 2023) (Ningbo Minzhou), Order No. 27 (Apr. 12, 2023) (Lei Lei Wang), Order No. 28 (Apr. 13, 2023) (Hetaibao), and Order No. 29 (May 10, 2023) (Ningbo Bolian), *unreviewed by Comm'n Notice* (May 19, 2023).

Dirani Design, Dongguan Jingrui, Hangzhou Lydia, and Shenzhen Leadfar (collectively, the “Defaulting Respondents”) were found in default pursuant to Order No. 16 (Jan. 11, 2023), *unreviewed by Comm'n Notice* (Feb. 8, 2023), and Order No. 21 (Mar. 8, 2023), *unreviewed by Comm'n Notice* (Mar. 30, 2023).

On March 15, 2023, Complainant filed a motion for summary determination of violation with respect to infringement of certain claims of the '837 patent and the '445 patent by the Defaulting Respondents. On March 29, 2023, OUII filed a response in support of the motion.

On July 13, 2023, the ALJ granted Complainant's motion in an Initial Determination and issued a Recommended Determination on Remedy and Bond (Order No. 31, the “ID” and “RD”). The ID finds a violation of section 337 by reason of infringement of certain claims of the '445 patent by Dongguan Jingrui, Hangzhou Lydia, and Shenzhen Leadfar. The ALJ notes that “a finding of violation as to Dirani Design is unnecessary because Purple seeks only a limited exclusion order.” RD at 50. The RD recommends that a limited exclusion order issue with respect to the products of Dirani Design accused of infringing certain claims of the '837 patent and that a general exclusion order issue with respect to articles that infringe certain claims of the '445 patent. The RD further recommends that cease and desist orders issue with respect to each of the Defaulting Respondents and that a 100% bond be set during Presidential review.

No petitions for review of the ID were filed.

The Commission has determined to review the ID in part to address (i) the ID's consideration of the alleged indefiniteness of the term “threshold pressure level” and (ii) the ID's findings with respect to the significance of domestic industry investments.

On review, the Commission has determined to vacate the ID's consideration of the alleged indefiniteness of the term "threshold pressure level." ID at 28-33. Consistent with *Lannom Mfg. Co. v. U.S. Int'l Trade Comm'n*, 799 F.2d 1579 (Fed. Cir. 1986), the Commission declines to address invalidity arguments raised solely by a party that has been terminated from the investigation before invalidity is decided. *See id.* at 1579-80 ("Congress did not authorize the Commission to redetermine patent validity when no defense of invalidity has been raised."); *see also Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-918, Initial Determination at 68-69 (May 12, 2015) (declining to address indefiniteness arguments raised by terminated respondents), *unreviewed in relevant part by* Comm'n Notice (Jun. 24, 2015). The Commission affirms the ID's finding that no construction of the term "threshold pressure level" is necessary as the surrounding claim language already defines the term as the pressure at which the claimed "deformable wall members" are "configured to buckle." ID at 33-34.

With respect to the economic prong of the domestic industry requirement, the Commission takes no position with respect to the ID's finding that the investments are "quantitatively significant in absolute terms." ID at 45.^{1,2} The Commission affirms the ID's

¹ Commissioner Kearns and Commissioner Stayin also take no position on the ID's comparisons of Complainant's allocated domestic expenditures on manufacturing and R&D relating to the domestic industry product to department-wide expenditures related to the domestic industry products. *See* ID at 46.

² Commissioner Karpel would adopt the ID's analysis of the economic prong of the domestic industry requirement. ID at 38-47. The ID identifies in numerical terms the particular investments that are claimed by Purple with respect to the articles protected by the '445 patent and notes that Purple's investments within these statutory categories "are quantitatively significant in absolute terms." ID at 45-46. The ID then reviews the significance of these investments in context, comparing them to total manufacturing and R&D expenditures for the DI product, Purple's overall U.S. expenditures on its DI products, and its revenues from sales of these products and finds these indicia show the investments to be quantitatively significant. *Id.* at 46-47. The ID's approach is consistent with the Commission's practice to review the asserted investments in numerical terms and then review those investments in the context of the company's operations, the marketplace, or the industry in question. Therefore, Commissioner Karpel would affirm the ID's domestic industry economic prong analysis in its entirety.

finding that Complainant's domestic investments in plant and equipment and employment of labor and capital are significant. *Id.* at 45-47.

The Commission has determined not to review the remainder of the ID, including the determination that there is a violation of section 337 by reason of infringement of certain claims of the '445 patent by Dongguan Jingrui, Hangzhou Lydia, and Shenzhen Leadfar.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005, 70 FR 43251

(July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on September 11, 2023. Reply submissions must be filed no later than the close of business on September 18, 2023. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number ("Inv. No. 337-TA-1328") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document

contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on August 28, 2023.

This action is taken under the authority of 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: August 28, 2023.

Lisa Barton,
Secretary to the Commission.

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