



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1226 (Remand)]

Certain Artificial Eyelash Extension Systems, Products, and Components Thereof; Notice of Commission Determination to Grant a Joint Motion to Terminate 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 grant a joint motion to terminate the remand investigation in its entirety based on settlement. The remand investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. 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: On October 28, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), based on a complaint filed by Lashify, Inc. of Glendale, California ("Lashify"). See 85 FR 68366-67 (Oct. 28, 2020). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain artificial eyelash extension systems, products, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,660,388 ("the '388 patent") and 10,721,984 ("the '984 patent"), and the sole claims of U.S. Design Patent

Nos. D877,416 (“the D’416 patent”) and D867,664 (“the D’664 patent”), respectively (collectively, the “Asserted Patents”). The complaint also alleges the existence of a domestic industry. The notice of investigation (“NOI”) names nine respondents, including: KISS Nail Products, Inc. of Port Washington, New York (“KISS”); Ulta Beauty, Inc. of Bolingbrook, Illinois (“Ulta”); CVS Health Corporation of Woonsocket, Rhode Island (“CVS”); Walmart, Inc. of Bentonville, Arkansas (“Walmart”); Qingdao Hollyren Cosmetics Co., Ltd. d/b/a Hollyren of Shandong Province, China; Qingdao Xizi International Trading Co., Ltd. d/b/a Xizi Lashes of Shandong Province, China; Qingdao LashBeauty Cosmetic Co., Ltd. d/b/a Worldbeauty of Qingdao, China; Alicia Zeng d/b/a Lilac St. and Artemis Family Beginnings, Inc. of San Francisco, California; and Rachael Gleason d/b/a Avant Garde Beauty Co. of Dallas, Texas (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *Id.*

The Commission later amended the complaint and NOI to substitute CVS Pharmacy, Inc. of Woonsocket, Rhode Island in place of named respondent CVS Health Corporation and Ulta Salon, Cosmetics & Fragrance, Inc. of Bolingbrook, Illinois in place of named respondent Ulta Beauty, Inc. *See* Order No. 10, *unreviewed by* Comm’n Notice (Feb. 10, 2021); *see also* 86 FR 9535 (Feb. 16, 2021).

The Commission later terminated the investigation as to claims 2-4 and 7 of the ’388 patent and claims 6-8, 12, 18-19, 25-26, and 29 of the ’984 patent based on Complainant’s partial withdrawal of the complaint. *See* Order No. 24 (Apr. 23, 2021), *unreviewed by* Comm’n Notice (May 11, 2021). The Commission also previously terminated claims 2-5, 10-11, 14, 17, 21-22, and 24 of the ’984 patent from the investigation. *See* Order No. 38 (June 22, 2021), *unreviewed by* Comm’n Notice (July 6, 2021).

The Commission later terminated Rachael Gleason d/b/a Avant Garde Beauty Company from the investigation based on a Consent Order. *See* Order No. 28, *unreviewed by* Comm’n Notice (May 20, 2021).

The Commission later determined that Lashify failed to satisfy the technical prong of the domestic industry requirement for the '388 patent, thus terminating that patent from the investigation. *See* Order No. 35, *unreviewed by* Comm'n Notice (July 9, 2021).

On October 6, 2022, the Commission issued a final determination finding no violation of section 337 as to any Asserted Patent and terminated the investigation. 87 FR 62455-56 (Oct. 14, 2022). Specifically, with respect to the '984 patent, the Commission determined to: (1) find that Lashify has failed to satisfy the technical prong of the domestic industry requirement; and (2) take no position regarding whether claims 1, 9, 23, and 27 of the '984 patent are invalid for obviousness under 35 U.S.C. 103. The Commission further found that Lashify failed to satisfy the economic prong of the domestic industry requirement for any of the Asserted Patents.¹

Lashify timely appealed the Commission's final determination to the Federal Circuit. *Lashify v. Int'l Trade Comm'n*, Appeal No. 2023-1245. Respondents intervened in the appeal.

On March 5, 2025, the Federal Circuit vacated the Commission's determination as to the economic prong of the domestic industry requirement for all three Asserted Patents and affirmed the Commission's determination that Lashify failed to satisfy the technical prong of the domestic industry requirement for the '984 patent. *Lashify v. Int'l Trade Comm'n*, 130 F.4th 948 (Fed. Cir. 2025). The Court remanded for the Commission to determine whether there is "significant employment of labor or capital" with respect to the two design patents, the D'416 and D'664 patents.

The Commission filed a combined petition for panel rehearing and rehearing en banc, which the Court denied on June 25, 2025. *Lashify v. Int'l Trade Comm'n*, Appeal No. 2023-1245, ECF No. 128 (June 25, 2025).

¹ Chair Karpel and Commissioner Schmidlein dissented from the majority's decision as to the economic prong of the domestic industry requirement.

On July 2, 2025, the Court issued its formal mandate returning jurisdiction to the Commission for further proceedings.

On July 30, 2025, the Commission issued a notice seeking written submissions regarding what further proceedings must be conducted on remand. Comm'n Notice (July 30, 2025).

On August 7, 2024, the two remaining respondents, Qingdao Hollyren Cosmetics Co., Ltd. d/b/a Hollyren and Qingdao Xizi International Trading Co., Ltd. d/b/a Xizi Lashes (collectively, "Hollyren") and Lashify filed a "Joint Motion to Terminate the Investigation as to Respondents [Hollyren] Based on the Moving Parties' Settlement Agreement and Consent Arbitration Award Under 19 CFR 210.21(b)." Exhibits to the motion included confidential and public versions of the settlement agreement. The motion further included a statement that "there are no other agreements, written or oral, express or implied between Lashify and Hollyren concerning the subject matter of this Investigation." The motion also served as the parties' response to the Commission's July 30, 2025 Notice. That same day, OUII filed a response to the July 30 Notice, stating that the motion, if granted, would obviate the need for further proceedings. OUII also filed a separate response in support of the motion.

The Commission has determined that the motion complies with the requirements of Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)), and that there are no extraordinary circumstances that would prevent the requested termination. The Commission also finds that granting the motion would not be contrary to the public interest pursuant to Commission Rule 210.50(b)(2) (19 CFR 210.50(b)(2)). Accordingly, the Commission hereby grants the motion.

The remand investigation is terminated.

The Commission vote for this determination took place on August 28, 2025.

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: August 28, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025-16799 Filed: 9/2/2025 8:45 am; Publication Date: 9/3/2025]