

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**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**

**Investigation No. 337-TA-1008
(Remand)**

**NOTICE OF COMMISSION REQUEST FOR WRITTEN SUBMISSIONS
PURSUANT TO COURT REMAND**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to request written submissions following a remand from the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”).

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 (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://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 products 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 a limited exclusion order and cease-and-desist order 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.

During the appeal, Laerdal made statements characterizing the scope of its trade dresses. Laerdal stated that trade dresses are “the image itself, not the words used to describe the image,” and argued that its trade dresses are the “total image” of the products as depicted in the attachments to the amended complaint. Laerdal Opening Br. at 25-26. Laerdal also stated that its trade dresses are a combination of text and images. Corrected Reply Br. of Laerdal Medical Corp. at 20-24, *Laerdal Med. Corp. v. Int’l Trade Comm’n*, 910 F.3d 1207 (Fed. Cir. 2018) (No. 17-2445).

Pursuant to the Court's remand, the Commission requests the following written submissions.

WRITTEN SUBMISSIONS: Laerdal and the Commission investigative attorney are requested to file written submissions addressing the following:

- a. Provide a clear definition of each trade dress at issue in this investigation;
- b. Explain the appropriate remedy in this investigation with respect to each such trade dress;
- c. Explain the effect of any such remedy on the public health and welfare, competitive conditions in the United States, the production of like or directly competitive articles in the United States, and United States consumers; and
- d. Provide proposed remedial orders incorporating the requested trade dress relief.

Written submissions and proposed remedial orders must be filed no later than the close of business three weeks after issuance of this order. Reply submissions must be filed no later than the close of business two weeks after service of the initial written submission. 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 deadline stated above and submit eight true paper copies to the Office of the Secretary pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1008") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.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. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. 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^[1], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on [EDIS](#).

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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a large, stylized oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: March 25, 2019

^[1] All contract personnel will sign appropriate nondisclosure agreements.