

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

In the Matter of

**CERTAIN FISH-HANDLING PLIERS
AND PACKAGING THEREOF**

Investigation No. 337-TA-1169

**NOTICE OF A COMMISSION FINAL DETERMINATION OF VIOLATION OF
SECTION 337; ISSUANCE OF A GENERAL EXCLUSION ORDER; TERMINATION
OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission has issued a general exclusion order (“GEO”) barring entry of certain fish-handling pliers and packaging thereof that infringe the two trademarks asserted in this investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. 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 July 29, 2019, based on a complaint filed by complainant United Plastic Molders, Inc. of Jackson, Mississippi (“UPM”). 84 FR 36620-21 (July 29, 2019). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain fish-handling pliers and packaging thereof by reason of infringement of claims 1-11 of U.S. Patent No. 6,256,923 (“the ’923 patent”) and U.S. Trademark Registration

Nos. 4,980,923 (“the ’923 mark”) and 5,435,944 (“the ’944 mark”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation named as respondents Yixing Five Union Industry & Trade Co., Ltd. of Yixing City, China (“Five Union”); NOEBY Fishing Tackle Co., Ltd. of Weihai, China (“NOEBY”); Weihai iLure Fishing Tackle Co., Ltd. of Weihai, China (“iLure”); SamsFX of Yangzhou City, China (“SamsFX”); and Weihai Lotus Outdoor Co., Ltd. of Weihai, China (“Lotus”) (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) is participating in the investigation. *Id.*

All five Respondents defaulted. On December 18, 2019, the Commission found NOEBY, iLure, Weihai Lotus, and Five Union in default for failing to respond to the complaint and notice of investigation. Order No. 11 (Nov. 19, 2019), *not reviewed*, Notice (Dec. 18, 2019). Also on December 18, 2019, the Commission found SamsFX in default for failing to respond to the complaint and notice of investigation. Order No. 12 (Nov. 25, 2019), *not reviewed*, Notice (Dec. 18, 2019).

On December 5, 2019, UPM moved for a summary determination of violation and for a recommendation for the issuance of a general exclusion order (“GEO”). In its motion, UPM dropped its allegations with respect to claims 2-6 and 8-11 of the ’923 patent, but continued to assert claims 1 and 7 of the ’923 patent. On January 3, 2020, OUII filed a motion that largely supported UPM’s motion.

On April 10, 2020, the ALJ issued the subject ID, Order No. 14, granting in part UPM’s motion. Specifically, the ALJ issued a summary of determination of violation finding that SamsFX, Lotus, and NOEBY violated section 337 with respect to claims 1 and 7 of the ’923 patent, as well as the ’923 and ’944 marks; that iLure violated section 337 with respect to claims 1 and 7 of the ’923 patent; and that Five Union violated section 337 with respect to the ’923 mark. The ALJ also found that UPM failed to show that iLure violated section 337 with respect to the ’923 and ’944 marks, as the only evidence of importation predates the registration of those marks. No petitions for review of the ID were filed.

On May 27, 2020, the Commission determined to review in part the ID granting summary determination of a section 337 violation. 85 FR 33705-07 (Jun. 2, 2020). Specifically, the Commission determined to review the ID’s finding of violation with respect to the ’923 patent, the ID’s finding that UPM satisfied the economic prong of the domestic industry requirement, and the ID’s finding of violation with respect to Lotus and Five Union.

The Commission also requested written submissions on certain questions and the issues of remedy, the public interest, and bonding. 83 FR 51706 (Oct. 12, 2018). UPM and OUII filed initial written submissions, and OUII also filed a reply to UPM’s submission. No other submissions were filed in response to the Commission notice.

Having reviewed the written submissions and the evidentiary record, the Commission has determined to: (1) vacate the ID's finding of violation with respect to the '923 patent, as well as all other findings related solely to the '923 patent, based on that patent's expiration; (2) affirm the ALJ's findings on the economic prong of the domestic industry requirement; and (3) reverse the ID's findings of violation with respect to Five Union and Lotus based on UPM's failure to provide substantial, reliable, and probative evidence that those entities manufacture the accused SamsFX products. Based on the findings in the ID as modified above, the Commission has determined that UPM has shown a violation of section 337(a)(1)(C), 19 U.S.C. 1337(a)(1)(C), by NOEBY and SamsFX with respect to the '923 and '944 marks. The Commission finds that UPM failed to show a violation by the remaining defaulted respondents.

The Commission has determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed importation of certain fish-handling pliers and packaging thereof that infringe the '923 and '944 marks. The Commission has further determined that the public interest factors enumerated in section 337(d) (19 U.S.C. 1337(d)) do not preclude issuance of the GEO. Finally, the Commission has determined that a bond in the amount of one hundred (100) percent of the entered value of the imported articles that are subject to the GEO is required to permit temporary importation of the articles in question during the period of Presidential review (19 U.S.C. 1337(j)). The investigation is hereby terminated in its entirety.

The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury and Customs and Border Protection of the order.

The Commission vote for these determinations took place on August 10, 2020.

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).

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: August 10, 2020