

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN TONER CARTRIDGES,
COMPONENTS THEREOF, AND
SYSTEMS CONTAINING SAME**

Investigation No. 337-TA-1174

**ISSUANCE OF A GENERAL EXCLUSION ORDER AND CEASE AND DESIST
ORDERS; TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has affirmed a summary determination of violation of section 337 and has determined to issue (1) a general exclusion order (“GEO”) denying entry of certain toner cartridges, components thereof, and systems containing same; and (2) cease and desist orders (“CDOs”) against 20 respondents (listed below). The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. 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, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On September 23, 2019, the Commission instituted this investigation based on a complaint filed by Brother Industries, Ltd. of Nagoya Japan; Brother International Corp. (U.S.A.) of Bridgewater, New Jersey; and Brother Industries (U.S.A.), Inc. of Bartlett, Tennessee (collectively, “Brother”). 84 FR 49762-63 (Sept. 23, 2019). The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain toner cartridges, components thereof, and systems containing same by reason of infringement of certain claims of U.S. Patent Nos. 9,568,856 (“the ’856 patent”); 9,575,460 (“the ’460 patent”); 9,632,456 (“the ’456 patent”); 9,785,093 (“the ’093 patent”); and 9,846,387 (“the ’387 patent”) (collectively, “the Asserted Patents”). *Id.* The Commission’s notice of investigation named the following 32 respondents: AMI Brothers, Inc. of San Bruno, California (“AMI”); An An Beauty Limited of Kowloon, Hong Kong (“An An Beauty”); Aster Graphics, Inc. of Riverside, California (“Aster”); Aztech Enterprises Limited of Kowloon, Hong Kong (“Aztech”);

Billiontree Technology USA Inc. of City of Industry, California (“Billiontree”); Carlos Imaging Supplies, Inc. of Hacienda Heights, California (“Carlos”); Cartridge Evolution, Inc. of Brooklyn, New York (“Cartridge Evolution”); Do it Wiser, LLC of Wilmington, Delaware (“Do it Wiser”); Eco Imaging Inc. of Irvine, California (“Eco Imaging”); Ecoosmart Co. of Rowland Heights, California (“Ecoosmart”); EPrinter Solution LLC of Pomona, California (“EPS”); E-Z Ink Inc. of Brooklyn, New York (“E-Z Ink”); Globest Trading Inc. of Ontario, California (“Globest”); Greencycle Tech, Inc. of South El Monte, California (“Greencycle”); Hongkong Boze Co., Ltd. of Kowloon, Hong Kong (“Hongkong Boze”); I8 International, Inc. of City of Industry, California (“I8”); IFree E-Commerce Co. of Kowloon, Hong Kong (“IFree”); Ikong E-Commerce of Walnut, California (“Ikong”); Intercon International Corp. of Brea, California (“Intercon”); IPrint Enterprise Limited of Kowloon, Hong Kong (“IPrint”); LD Products, Inc. of Long Beach, California (“LD Products”); Linkyo Corp. of La Puente, California (“Linkyo”); Mangoket LLC of Alhambra, California (“Mangoket”); New Era Image LLC of Corona, California (“New Era”); OW Supplies Corp. of Corona, California (“OW Supplies”); Solong E-Commerce Co., LLC of Wan Chai, Hong Kong (“Solong”); Smartjet E-Commerce Co., LLC of Wan Chai, Hong Kong (“Smartjet”); Super Warehouse Inc. of Blaine, Washington (“Super Warehouse”); Theresa Meng of Brooklyn, New York (“Ms. Meng”); Triple Best LLC of San Diego, California (“Triple Best”); V4ink, Inc. of Diamond Bar, California (“V4ink”); and Zhuhai Xiaohui E-Commerce Co., Ltd. of Zhuhai, China (“Xiaohui”). *Id.* at 49762-63. The notice of investigation also named the Office of Unfair Import Investigations (“OUII”) as a party. *Id.* at 49763.

Of the 32 respondents, only one, Aster, is participating at this stage. Aster, however, did not oppose the summary determination motion of violation as to the accused products, even though Aster’s products are subject to the motion. *See* Joint Stipulation of Brother and Aster for Resolution as to Aster in the Investigation (Mar. 4, 2020). EPS and IFree were terminated from the investigation based upon withdrawal of the complaint against them. *See* Order No. 32 (Jan. 28, 2020), *unreviewed by* Comm’n Notice (Feb. 25, 2020). Cartridge Evolution, E-Z Ink, Linkyo, New Era, OW Supplies, Ms. Meng, Triple Best, and V4ink were terminated from the investigation based upon entry of consent orders. *See* Order No. 36 (Mar. 12, 2020), *unreviewed by* Comm’n Notice (Mar. 31, 2020); Order No 38 (Mar. 12, 2020), *unreviewed by* Comm’n Notice (Mar. 31, 2020); Order No. 37 (Mar. 12, 2020), *unreviewed by* Comm’n Notice (Mar. 31, 2020); Order No. 10 (Oct. 18, 2019), *unreviewed by* Comm’n Notice (Nov. 6, 2019); Order No. 17 (Nov. 21, 2019), *unreviewed by* Comm’n Notice (Dec. 18, 2019); Order No. 28 (Dec. 30, 2019), *unreviewed by* Comm’n Notice (Jan. 29, 2020); Order No. 18 (Nov. 27, 2019), *unreviewed by* Comm’n Notice (Dec. 18, 2019); Order No. 33 (Fe. 3, 2020), *unreviewed by* Comm’n Notice (Mar. 4, 2020). The following 21 respondents defaulted: AMI, Globest, An An Beauty, Aztech, Xiaohui, Ecoosmart, Greencycle, Intercon, Do it Wiser, I8, Solong, Billiontree, Carlos Imaging, Eco Imaging, Hongkong Boze, Ikong, IPrint, Mangoket, Smartjet, Super Warehouse, and LD Products (collectively, “Defaulting Respondents”). *See* Order No. 35 (Mar. 5, 2020), *unreviewed by* Comm’n Notice (Mar. 19, 2020); Order No. 31 (Jan. 22, 2020), *unreviewed by* Comm’n Notice (Feb. 21, 2020); Order No. 26 (Dec. 20, 2019), *unreviewed by* Comm’n Notice (Jan 16, 2020); Order No. 25 (Dec. 18, 2019), *unreviewed by* Comm’n Notice (Jan. 16, 2020); Order No. 24 (Dec. 18, 2019), *unreviewed by* Comm’n Notice (Jan. 16, 2020); Order No. 8 (Oct. 15, 2019), *unreviewed by* Comm’n Notice (Nov. 7, 2019).

On March 12, 2020, Brother filed a motion for summary determination of violation of section 337 by Aster and the Defaulting Respondents and for a recommendation that the Commission issue a GEO and CDOs. *See* Complainants' Motion for Summary Determination of Violation and for Recommended Determination on Remedy and Bonding. On March 23, 2020, OUII filled a response in support of Brother's motion. *See* Commission Investigative Staff's Response to Brother's Motion for Summary Determination of Violation. No respondent filed a response to Brother's motion. *Id.*

On July 23, 2020, the presiding administrative law judge ("ALJ") issued an initial determination ("ID") (Order No. 40) granting Brother's motion for summary determination on violation of section 337 and issued a recommended determination ("RD") on remedy and bonding. The ID found that the Commission has subject matter jurisdiction over the investigation. ID at 34. The ID further found that none of the respondents contest the Commission's personal jurisdiction over them or in rem jurisdiction as to the accused products. ID at 34-35. The ID found that Brother: (1) established the importation requirement as to Aster and Defaulting Respondents, ID at 36-79; (2) demonstrated that the accused products infringe the asserted claims, *id.* at 118-133; and (3) demonstrated that the domestic industry ("DI") products practice at least one claim of each Asserted Patent and that a DI exists in the United States, *id.* at 84-118. The RD recommended issuance of a general exclusion order ("GEO") (or, in the alternative, a limited exclusion order directed to Aster and each of the Defaulting Respondents). RD at 134-44. The RD further recommended issuance of cease and desist orders ("CDOs") directed to Aster and each defaulting respondent that has domestic operations. *Id.* at 144-46. The RD also recommended setting different bond rates for entry of the different products covered by the GEO during the period of Presidential review. *Id.* at 146-48 (recommended bond rate table at 147). No one petitioned for review of the ID.

On August 24, 2020, Aster filed a public interest statement in response to the Commission's notice soliciting public interest comments pursuant to 19 CFR 210.50(a)(4)(i). In its submission, Aster argued that any Commission remedial orders issued in this investigation should not cover its new products pursuant to its stipulation with Brother. *See* Respondent Aster Graphics, Inc.'s Statement of Public Interest. On August 26, 2020, Brother filed a response. *See* Complainants' Motion to Strike Aster Graphics, Inc.'s Statement on the Public Interest for Failure to Comply with Commission Rule 210.15 Or, in the Alternative, for Leave to Respond.

On September 8, 2020, the Commission determined not to review the ID and requested written submissions on remedy, the public interest, and bonding. 85 FR 56628-31 (Sept. 14, 2020). The Commission rejected Aster's August 24, 2020 public interest submission as improper under 19 CFR 210.50(a)(4)(i). *Id.* at 56630. The Commission noted that while 19 CFR 210.50(a)(4)(i) provides that parties may file information with the Commission relating to the public interest, Aster's submission concerned the scope of the remedy and thus did not fall within the ambit of the public interest submissions provided for under 19 CFR 210.50(a)(4)(i). *Id.* The Commission stated that "Aster will have an opportunity to raise its arguments regarding the scope of any remedial orders in a remedy submission before the Commission in response to the instant notice, which invites parties to file submissions addressing remedy, bonding and the public interest as noted below." *Id.*

On September 22, 2020, Brother, Aster, and OUII filed initial submissions in response to the Commission’s request. *See* Complainants’ Submission on Remedy, the Public Interest, and Bonding; Respondent Aster Graphics, Inc.’s Submission on Remedy, the Public Interest and Bonding; Response of the Office of Unfair Import Investigations to the Commission’s Request for Written Submissions Regarding Remedy, the Public Interest, and Bonding. On September 29, 2020, the parties filed reply submissions. *See* Complainants’ Reply Submission on Remedy, the Public Interest, and Bonding;¹ Respondent Aster Graphics, Inc.’s Reply to the Submission of the Office of Unfair Import Investigations and Complainants on Remedy, the Public Interest and Bonding; Reply of the Office of Unfair Import Investigations to the Private Parties’ Written Submissions Regarding Remedy, the Public Interest, and Bonding.

As noted above, the Commission affirmed the ID’s finding that there is a violation of section 337 with respect to Aster and Defaulting Respondents. The Commission also finds that the statutory requirements for issuance of a GEO under section 337(d)(2) are met. *See* 19 U.S.C. 1337(d)(2). The Commission further finds that issuance of CDOs against Aster and 19 of the defaulting respondents (noted below) is appropriate under section 337(f)(1). *See* 19 U.S.C. 1337(f)(1). In addition, the Commission finds that the public interest factors do not preclude issuance of the requested relief. *See* 19 U.S.C. 1337(d)(1), (f)(1).

The Commission therefore has determined that the appropriate remedy in this investigation is: (1) a GEO prohibiting the unlicensed importation of certain toner cartridges, components thereof, and systems containing same that infringe one or more of claims 1-5, 10, and 12-15 of the ’093 patent; claims 1, 7-11, 15, and 16 of the ’460 patent; claims 1-7, and 9 of the ’856 patent; claims 1, 4, 5, and 9 of the ’456 patent; and claims 1, 3, 5, 7-12, and 18 of the ’387 patent; and (2) CDOs directed to Aster, AMI, Billiontree, Carlos Imaging, Do It Wiser, Eco Imaging, Ecoalmart, Globest, Greencycle, Hongkong Boze, I8, Ikong, Intercon, IPrint, LD Products, Mangoket, Smartjet, Solong, Super Warehouse, and Xiaohui. The Commission has also determined that the bond during the period of Presidential review shall be in the amount of the following percentages of the entered value for respondents AMI, Aster, and Globest:

Infringing Products	AMI	Aster	Globest
Accused 221/225 Products	568%	1463%	900%
Accused 223/227 Products	274%	336%	372%
Accused 420/450 Products	-	623%	682%
Accused 630/660 Products	575%	886%	635%
Accused 730/760/770 Products	589%	354%	369%

The bond for all other infringing articles shall be in the amount of one hundred percent (100%) of the entered value.

The Commission’s orders were delivered to the President and to the United States Trade Representative on the day of their issuance. The investigation is terminated.

¹ The Chair granted Brother’s motion for leave to file one day late. Brother filed on time but inadvertently omitted to include the certificate of service. Brother corrected the omission the next day.

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 complete service for any party 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).

The Commission vote for this determination took place on November 23, 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).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: November 23, 2020