

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN PILLOWS AND SEAT
CUSHIONS, COMPONENTS THEREOF,
AND PACKAGING THEREOF**

Investigation No. 337-TA-1328

**NOTICE OF A COMMISSION DETERMINATION EXTENDING THE DATE FOR
THE COMMISSION'S DECISION ON WHETHER TO REVIEW SIX INITIAL
DETERMINATIONS TERMINATING THE INVESTIGATION
AS TO SIX RESPONDENTS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the "Commission") has determined to extend the date for the Commission's decision on whether to review six initial determinations ("IDs") (Order Nos. 23, 24, 25, 26, 27, and 28) issued by the presiding administrative law judge ("ALJ") to May 19, 2023.

FOR FURTHER INFORMATION CONTACT: Paul Lall, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2043. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket system ("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: The Commission instituted this investigation on September 13, 2022, based on a complaint filed by Purple Innovation, LLC of Lehi, Utah ("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 '092 patent"); claims 1-16, 18, 19, 21-33, and 35 of U.S. Patent No. 10,772,445; claims 1-4, 6, 10-12, 19, and 20 of U.S. Patent No. 10,863,837; 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.* at 56086. 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.* at 56086-87. The Commission’s notice of investigation names forty-one (41) respondents. *Id.* at 56087-88. The Office of Unfair Import Investigations (“OUII”) is also a party to this investigation. *Id.* at 56088.

In early January 2023, Purple filed seven separate motions for partial termination as to the following respondents based on settlement agreements and consent order stipulations and proposed consent orders: Bedmate-U Co., Ltd. (“Bedmate-U”) of Gwangju-si, Gyeonggi-do, Republic of Korea; Henson Holdings, LLC d.b.a. SelectSoma Henson Holdings, LLC d.b.a. SelectSoma (“Henson Holdings”) of Lafayette, Louisiana; Hetaibao of Linquan, Anhui, China; Lei Lei Wang of Linquan, Anhui, China; Ningbo Bolian Import & Export Co., Ltd. (“Ningbo Bolian”) of Ningbo, Zhejiang, China; Ningbo Minzhou Import & Export Co., Ltd. (“Ningbo Minzhou”) of Haishu, Beijing, China; and Shenzhen Shi Xin Shangpin Dianzi Shangwu Youxian Gongsu Co., Ltd. (“Shenzhen Shi Xin”) of Shenzhen, Guangdong, China. Thereafter, OUII filed six responses opposing each respective motion (except as to Bedmate-U) on the grounds that the proposed consent orders were broader than what Purple would achieve through a limited exclusion order. *See, e.g.*, Staff Response to Purple’s Motion for Partial Termination of Investigation as to Respondent Hetaibao on the Basis of Consent Order Stipulation and Proposed Consent Order (Motion No. 1328-016), EDIS Doc. ID 788254 (Jan. 18, 2023). Purple withdrew all seven motions, including its motion with respect to Bedmate-U.

Thereafter, on February 3, 2023, Purple filed an unopposed motion to (1) withdraw its claims against 22 unserved respondents; (2) withdraw its claims based on the allegations of trade dress, trademark (the ’556 mark and the ’053 mark), and design patent (the ’092 patent) infringement; and (3) withdraw its claims against Respondents Guang Zhou Wen Jie Shang Mao Youxian Gongsu Co., Ltd., Shandong Jiu Hui Xinxi Keji Youxian Gongsu Co., Ltd., and Shenzhen Shi Mai Rui Ke Dianzi Shangwu Co., Ltd., which were accused of infringing only the trade dress, trademark and design patents. In its motion, Purple stated that for seven respondents, renewed motions for partial termination based on settlement and a consent order stipulation would be filed shortly. *See* Motion at 3-4. Purple represented that “the termination of the respondents and claims requested herein would result in the Investigation having no remaining participating respondents.” *Id.* at 11. The Chief ALJ granted Purple’s motion to withdraw its claims. Order No. 19 (Feb. 16, 2023), *unreviewed by* Comm’n Notice (March 20, 2023). On February 27, 2023, the Chief ALJ issued a notice reassigning this investigation to ALJ Doris Johnson Hines (the “presiding ALJ”). *See* Notice to the Parties, EDIS Doc. ID 791313 (Feb. 27, 2023).

Purple later filed renewed motions for partial termination of this investigation as to seven respondents: Shenzhen Shi Xin, Henson Holdings, Ningbo Minzhou, Lei Lei Wang, Hetaibo, Ningbo Bolian (the “Participating Respondents”), and Bedmate-U. On March 16, 2023, the presiding ALJ issued an order asking for “briefing from the parties regarding whether entry of any consent order in this investigation is appropriate as to respondent Shenzhen Shi Xin and as to the remaining respondents against which only trade dress, trademark, and/or design patent infringement claims were asserted.” Order No. 22, at 12. On March 22, 2023, Purple, the Participating Respondents, Bedmate-U, and the Staff each filed a response.

Subsequently, the presiding ALJ granted Purple's motions to terminate based on settlement and consent order stipulations and proposed consent orders in six IDs with different periods for Commission review: Order No. 23 (Shenzhen Shi Xin) (absent review becomes final on May 1, 2023); Order No. 24 (Bedmate-U) (absent review becomes final on May 3, 2023); Order No. 25 (Henson Holdings) (absent review becomes final on May 9, 2023); Order No. 26 (Ningbo Minzhou) (absent review becomes final on May 10, 2023); Order No. 27 (Lei Lei Wang) (absent review becomes final on May 12, 2023); and Order No. 28 (Hetaibao) (absent review becomes final on May 15, 2023).

On May 1, 2023, the Commission issued a notice extending the deadline for determining whether to review five of the above-referenced IDs, Order Nos. 23, 24, 25, 26, and 27, to May 15, 2023, so all six IDs would have the same whether to review date. On May 10, 2023, the presiding ALJ issued a seventh ID, Order No. 29, granting Purple's motion to terminate Ningbo Bolian based on a settlement and consent order stipulation and proposed consent order. Absent review, this ID will become final on June 9, 2023.

The Commission has determined to extend the deadline for determining whether to review six of the above-referenced IDs, Order Nos. 23, 24, 25, 26, 27, and 28 to May 19, 2023.

The Commission voted to approve this determination on May 15, 2023.

The authority for the Commission's determinations 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.



Lisa R. Barton
Secretary to the Commission

Issued: May 15, 2023