

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

In the Matter of

**CERTAIN BLOOD FLOW RESTRICTION
DEVICES WITH ROTATABLE WINDLASSES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1364

**NOTICE OF A COMMISSION DETERMINATION THAT THE MARCH 19, 2024, INITIAL
DETERMINATION (ORDER NO. 23) IS AN ORDER AND RECOMMENDED
DETERMINATION RATHER THAN AN INITIAL DETERMINATION; REQUEST FOR
WRITTEN SUBMISSIONS ON REMEDY, THE PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined that the March 19, 2024, initial determination (“ID”) (Order No. 23) issued by the presiding administrative law judge (“ALJ”) granting a motion to withdraw Complainants’ request for a general exclusion order (“GEO”) in connection with the asserted trademarks and trade dress and to cancel the evidentiary hearing is properly issued in the form of an order rather than an initial determination. Order No. 23 also includes the ALJ’s recommended determination (“RD”) on remedy and bonding, and thus, the Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2737. 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 May 31, 2023, based on a complaint, as supplemented, filed by Composite Resources, Inc. of Rock Hill, South Carolina, and North American Rescue, LLC of Greer, South Carolina (collectively, “Complainants”). 88 FR 34893-95 (May 31, 2023). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, sale for importation, or sale in the United States after importation of certain blood flow restriction devices with rotatable windlasses and components thereof that infringe one or more of: claims 1-17 of U.S. Patent No. 7,842,067 (“the ’067 patent”), claims 1-30 of the U.S. Patent No. 8,888,807 (“the ’807 patent”), and claims 1-13 of the U.S. Patent No. 10,016,203 (“the ’203 patent”); United States Trademark Registration Nos. 3,863,064 and 5,064,378; and trade dress

infringement in violation of Section 43(a) of the Lanham Act (15 U.S.C. 1125) the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* at 34893-94; *see* Complaint, ¶¶9-15. The complaint also requested the issuance of a GEO with respect to all of these allegations.

The Commission's notice of investigation named the following respondents: (1) Anping Longji Medical Equipment Factory of Hengshui City, China; Dongguanwin Si Hai Precision Mold Co., Ltd. of Dongguan, China; Eiffel Medical Supplies Co., Ltd. of Shenzhen, China; Empire State Distributors Inc. of Brooklyn, New York; EMRN Medical Equipment of LaSalle, Canada; GD Tianwu New Material Tech Co., Ltd. of Guangzhou, China; Hengshui Runde Medical Instruments Co., Ltd. of Hengshui City, China; Putian Dima Trading Co., Ltd. of Putian City, China; Rhino Inc. of Lewes, Delaware; Shanghai Sixu International Freight Agent Co., Ltd. Of Shanghai, China; Shenzhen Anben E-Commerce Co., Ltd. of Shenzhen, China; Shenzhen TMI Medical Supplies Co., Ltd. of Shenzhen, China; Shenzhen Yujie Commercial and Trading Co., Ltd. of Shenzhen, China; Wuxi Emsrun Technology Co., Ltd. of Wuxi City, China; Wuxi Golden Hour Medical Technology Co., Ltd. of Wuxi City, China; and Wuxi Puneda Technology Co., Ltd. of Wuxi City, China (collectively, "the Defaulting Respondents"); (2) Chaozhou Jiduo Trading Co., Ltd. of Chaozhou City, China; Dongguan Hongsui Electronic Commerce, Co., Ltd. of Dongguan City, China; Fuzhou Meirun Medical Equipment Technology Co., Ltd. of Fuzhou, China; Henan Eyocean E-Commerce Co., Ltd. of Zhengzhou, China; Huang Xia of Sangzi Town, China; Jingcai Jiang of Shenzhen, China; Shen Yi of Shenzhen, China; Shenzhen Janxle E E Commerce Co. of Shenzhen, China; Shenzhen Smart Medical Co. Ltd. of Shenzhen, China; Sun Minghui of Shenzhen, China; Xia Guo Long of Dongguan City, China; and Yinping Yin of Shenzhen, China (collectively, "the Unserved Respondents"); and (3) Express Companies, Inc. of Oceanside, California, and SZY Holdings LLC of Brooklyn, New York (collectively, "the Participating Respondents"). *Id.* The Office of Unfair Import Investigations ("OUII") is also a party to this investigation.

The Commission terminated the Participating Respondents based on the entry of consent orders. *See* Order No. 7 (Aug. 9, 2023), *unreviewed by* Comm'n Notice (Sept. 5, 2023); Order No. 13 (Oct. 3, 2023), *unreviewed by* Comm'n Notice (Nov. 2, 2023). The Commission also terminated the Unserved Respondents based on the withdrawal of the complaint as to those respondents. *See* Order No. 10 (Aug. 22, 2023), *unreviewed by* Comm'n Notice (Sept. 20, 2023). The Commission also found the Defaulting Respondents in default. *See* Order No. 11 (Aug. 29, 2023), *unreviewed by* Comm'n Notice (Sept. 22, 2023).

On November 1, 2023, Complainants filed a motion to partially terminate the investigation with respect to the '807 and '203 patents. On November 2, 2023, the ALJ issued Order No. 14 granting the motion. Order No. 14 (Nov. 2, 2023), *unreviewed by* Comm'n Notice (Dec. 4, 2023).

On January 23, 2024, Complainants filed a motion to terminate claims 2, 3, 5-14, and 17 of the '067 patent. On January 25, 2024, the ALJ issued Order No. 19 granting the motion. Order No. 19 (Jan. 25, 2024), *unreviewed by* Comm'n Notice (Feb. 15, 2024). Therefore, only claims 1, 4, 15, and 16 remained asserted.

On December 22, 2023, Complainants filed a motion for summary determination on violation of section 337 with regard to the '067 patent, trademarks, and trade dress by those respondents who

had been found in default in this investigation. Complainants later withdrew the portion of the motion concerning the trademark and trade dress violations. On February 7, 2024, the ALJ issued Order No. 20, granting the motion in part with respect to the claims 1, 4, 15, and 16 of the '067 patent. Order No. 20 (Feb. 7, 2024), *unreviewed by Comm'n Notice* (Mar. 6, 2024).

On March 1, 2024, Complainants filed a motion to terminate the investigation in part based on a withdrawal of its request for a GEO as to the trademark and trade dress claims and to cancel the hearing.

On March 19, 2024, the ALJ granted the motion and issued the subject order (Order No. 23) styled as an initial determination. Order No. 23 also includes the ALJ's RD on remedy and bonding. Specifically, the RD recommends that the Commission issue a GEO as to claims 1, 4, 15, and 16 of the '067 patent. Order No. 23 at 9-12. The RD further recommends that a limited exclusion order and a cease and desist order issue against each of the Defaulting Respondents in connection with the asserted claims of the '067 patent, as well as the asserted trademarks and the trade dress. *Id.* at 13-15. Finally, the RD recommends that the Commission set the bond at one hundred percent (100%). *Id.* at 15-16.

Upon review of Commission Rules 210.16, 210.21, and 210.42, 19 CFR 210.16, 210.21, 210.42, the Commission has determined that the ALJ's March 19, 2024, initial determination (Order No. 23) granting Complainants' motion to withdraw its request for a GEO as to the asserted trademark and trade dress claims and to cancel the hearing is an order rather than an initial determination. Commission Rule 210.42 does not include declaration or withdrawal of the requested remedies and/or cancellation of the hearing in the list of issues that must be decided in the form of an initial determination. Nor are such requests properly the subject of motions for termination of the investigation under Rule 210.21. Accordingly, the Commission treats Order No. 23 as an order and an RD on remedy and bonding, not subject to the procedures and deadlines in Rules 210.42-43, 19 CFR 210.42-43.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in

the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. In their initial submission, Complainants are also requested to identify the remedy sought and Complainants and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on May 2, 2024. Reply submissions must be filed no later than the close of business on May 9, 2024. 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 deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number ("Inv. No. 337-TA-1364") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.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 by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). 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, solely for cybersecurity purposes. All contract personnel will sign

appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on April 18, 2024.

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, loopy oval shape.

Lisa R. Barton
Secretary to the Commission

Issued: April 18, 2024