

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

In the Matter of

**CERTAIN EAR PROTECTION
DEVICES**

Investigation No. 337-TA-518

**NOTICE OF COMMISSION ISSUANCE OF A LIMITED EXCLUSION ORDER AND A
CEASE AND DESIST ORDER AGAINST A RESPONDENT FOUND IN DEFAULT;
TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order against a respondent found in default in the above-captioned investigation, and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3041. 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, S.W., 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 August 6, 2004, based on an amended complaint filed by 180s, Inc. and 180s, LLC of Baltimore, Maryland. 69 *Fed. Reg.* 47955-56. The amended complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ear protection devices by reason of infringement of claims 1, 3, 13, 17-19, and 21-22 of U.S. Patent No. 5,835,609. The complaint named nine respondents: Ningbo Electric and Consumer Goods, Import & Export Corp. (Ningbo) of China; Vollmacht Enterprise Co., Ltd. (Vollmacht) of Taiwan; March Trading of New York, NY; Alicia International, Inc., d/b/a Lincolnwood Merchandising, of Niles, IL; Hebron Imports of Chicago, IL; Ross Sales of Commack, NY; Value Drugs Rock, Inc. of New York, NY; Song's Wholesale

of Washington, DC; and Wang Da, Inc. Retail and Wholesales (Wang Da) of New York, NY. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

The ALJ issued an ID on November 2, 2004, finding that respondents Ningbo, Vollmacht, and Wang Da did not respond to the complaint, notice of investigation, or an order to show cause. Consequently, the ALJ found the three respondents in default, and pursuant to Commission Rule 210.16(b)(3), to have waived their right to appear, be served with documents, or contest the allegations in the complaint. No petitions for review of the ID were filed. The Commission did not review the ID, and it thereby became the determination of the Commission.

On March 23, 2005, the complainants filed six motions for termination of the investigation with respect to the six remaining respondents. The Commission Investigative Attorney (“IA”) filed a response in support of the motions on March 25, 2005. On April 1, 2005, the ALJ granted the motions for termination. No party petitioned for review of this ID. On April 19, 2005, the Commission published a notice indicating that it would not review the ID, thereby allowing the ALJ’s ID to become the Commission’s final determination. The Commission requested that the parties brief the issues of remedy, the public interest, and bonding with respect to the three defaulting respondents.

On April 29, 2005, complainants and the IA submitted their main briefs, and on May 5, 2005, complainants filed a reply brief. Complainants and the IA both maintained that the appropriate remedy is a limited exclusion order and a cease and desist order.

The Commission found that each of the statutory requirements of section 337(g)(1)(A)-(E), 19 U.S.C. § 1337(g)(1)(A)-(E), has been met with respect to the defaulting respondents. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. § 1337(g)(1), and Commission rule 210.16(c) 19 C.F.R. § 210.16(c), the Commission presumed the facts alleged in the amended complaint to be true.

The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain ear protection devices that are covered by one or more of claims 1, 3, 13, 17-19, and 21-22 of U.S. Patent No. 5,835,609. The order covers certain ear protection devices that are manufactured abroad by or on behalf of, or imported by or on behalf of the three defaulting respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission also determined to issue a cease and desist order prohibiting domestic respondent Wang Da from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for ear protection devices covered by the above-mentioned claims of the ‘609 patent. The Commission further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. § 1337(g)(1), do not preclude issuance of the limited exclusion order and cease and desist order. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of the entered value of the

imported articles. The Commission's orders were delivered to the President on the day of their issuance.

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 section 210.16(c) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.16(c)).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: June 3, 2005