

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, DC 20436**

**In the Matter of**

**CERTAIN ACTIVE COMFORT  
FOOTWEAR**

**Inv. No. 337-TA-660**

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL  
DETERMINATION TERMINATING THE INVESTIGATION BASED ON A  
SETTLEMENT AGREEMENT AND WITHDRAWAL OF THE COMPLAINT;  
REQUEST FOR BRIEFING ON BONDING AND THE PUBLIC INTEREST.**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 12) of the presiding administrative law judge (“ALJ”) granting motions for termination of the investigation; based on a settlement agreement and withdrawal of the complaint. The Commission has also requested briefing on remedy, bonding, and the public interest in connection with issuing a default limited exclusion order.

**FOR FURTHER INFORMATION:** Mark B. Rees, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-205-3116. Copies of the ID and all other nonconfidential 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, SW, Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on 202-205-1810. 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>.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on November 25, 2008, based on the complaint of Masai Marketing & Trading AG of Romanshorn, Switzerland and Masai USA Corp. of Haley, Idaho (“Complainants”). *73 Fed. Reg.* 73884 (Nov. 25, 2008). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain active comfort footwear that infringes certain claims of U.S. Patent No. 6,341,432. Complainants named as respondents RYN Korea Co., Ltd. of Seoul, Korea (RYN); Main d/b/a WalkingShoesPlus.com of Los Angeles,

California (“WalkingShoesPlus”); and Feet First Inc. of Boca Raton, Florida (“Feet First”). The Tannery of Cambridge, Massachusetts and A Better Way to Health of West Melbourne, Florida were subsequently added as respondents in the investigation by an unreviewed ID. 74 *Fed. Reg.* 11378 (Mar. 17, 2009).

On May 21, 2009, the Commission determined not to review an ID (Order No. 6) finding WalkingShoesPlus and Feet First in default for failure to respond to the complaint and notice of investigation.

On July 13, 2009, the ALJ issued the subject ID (Order 12), terminating the investigation based on a settlement agreement as to RYN and withdrawal of the complaint as to the remaining respondents. No party petitioned for review of the subject ID.

The Commission has determined not to review the ID.

Section 337(g)(1), 19 U.S.C. § 1337(g)(1) and Commission Rule 210.16(c), 19 U.S.C. § 210.16(c) authorize the Commission to order relief against respondents found in default unless, after consideration of the public interest, it finds that such relief should not issue. Complainants did not file a declaration stating that they were seeking a general exclusion order as provided in Commission Rule 210.16(c).

In conjunction with the final disposition of this investigation, therefore, the Commission may: (1) issue an order that could result in the exclusion of articles manufactured or imported by the defaulting respondents; and/or (2) issue a cease and desist order that could result in the defaulting 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 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 for consumption, they 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 *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. 2843 (Dec. 1994)(Comm’n Op.).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or 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 or disapprove the Commission’s action. See Presidential Memorandum of July 21, 2005. 70 *Fed. Reg.* 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 the public interest, and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the HTSUS numbers under which the accused products are imported and the date on which the patent at issue expires. Main written submissions must be filed no later than close of business on August 24, 2009. Reply submissions must be filed no later than the close of business on August 31, 2009. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 and 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16; 210.42-46).

By order of the Commission.

/s/  
Marilyn R. Abbott  
Secretary to the Commission

Issued: August 5, 2009