

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN KINESIOTHERAPY DEVICES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-823

**NOTICE OF COMMISSION DETERMINATION
TO GRANT PETITIONS TO RESCIND CONSENT ORDERS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has granted eleven joint petitions to rescind eleven consent orders issued during the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, 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 January 10, 2012, based on a complaint filed by Standard Innovation Corporation of Ottawa, ON, Canada and Standard Innovation (US) Corp. of Wilmington, Delaware (collectively, "Standard Innovation"). *77 Fed. Reg.* 1504-05 (Jan. 10, 2012). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by reason of infringement of certain claims of United States Patent Nos. 7,931,605 ("the '605 patent") and D605,779 ("the D'779 patent"). The complaint named twenty-one business entities as respondents, several of which were terminated from the investigation based upon consent orders or withdrawal of the complaint. On July 25, 2012, the Commission determined not to review an

ID (Order No. 25) granting Standard Innovation's motion to withdraw the D'779 patent from the investigation.

On January 8, 2013, the ALJ issued a final ID finding no violation of Section 337. The ALJ also issued a recommended determination on remedy and bonding on January 22, 2013. Specifically, the ALJ found that Standard Innovation had not satisfied the economic prong of the domestic industry requirement. The ALJ found, however, that the accused products infringe the asserted claims, that the asserted claims were not shown to be invalid, and that the technical prong of the domestic industry requirement was shown to be satisfied.

On January 22, 2013, Standard Innovation and the Commission investigative attorney filed petitions for review of the final ID, and the remaining respondents in the investigation filed a contingent petition for review. On January 30, 2013, each party filed a response.

On March 25, 2013, the Commission determined to review the ID in its entirety and posed questions to the parties concerning the satisfaction of the economic prong of the domestic industry and remedy, the public interest, and bonding. The parties and the IA submitted briefs on April 8, 2013, and briefs in reply on April 15, 2013.

On June 17, 2013, the Commission issued its final determination finding that Standard Innovation had satisfied the economic prong of the domestic industry requirement and that Standard Innovation had proven a violation of Section 337 by reason of infringement of the '605 patent. Based on evidence of a pattern of violation and difficulty ascertaining the source of the infringing products, the Commission issued a general exclusion order against certain kinesiotherapy devices that infringe the '605 patent. The Commission also issued cease and desist orders against the following respondents: LELO Inc. of San Jose, California; PHE, Inc. d/b/a Adam & Eve of Hillsborough, North Carolina; Nalpac Enterprises, Ltd. of Ferndale, Michigan; E.T.C. Inc. (d/b/a Eldorado Trading Company, Inc.) of Broomfield, Colorado; Williams Trading Co., Inc. of Pennsauken, New Jersey; Honey's Place Inc. of San Fernando, California; and Lover's Lane & Co. of Plymouth, Michigan.

On August 20, 2013, respondents LELO, Inc. and Leloi AB of Stockholm, Sweden (collectively, "LELO") filed a notice of appeal with the U.S. Court of Appeals for the Federal Circuit seeking review of the Commission's final determination. Standard Innovation intervened in the appeal. On May 11, 2015, the Federal Circuit issued its opinion in *Lelo Inc. v. International Trade Commission*, 786 F.3d 879 (Fed. Cir. 2015). The Court found that the Commission had erred in relying solely upon qualitative factors to find "significant investment in plant and equipment" and "significant employment of labor or capital" under prongs (A) and (B) of the domestic industry requirement. 19 U.S.C. § 1337(a)(3)(A and B). Accordingly, the Court reversed the Commission's finding of a violation of 19 U.S.C. § 1337. On July 21, 2015, the Commission issued an order rescinding the general exclusion order and cease and desist orders issued in the investigation.

On March 3, 2016, Standard Innovation and LELO filed eleven joint petitions asking the Commission to rescind the consent orders issued to eleven respondents during the investigation. They indicated that a settlement and cross-licensing agreement resolves the underlying dispute between Standard Innovation and LELO and authorizes the conduct prohibited under the consent orders. They asserted that when conduct becomes authorized by way of settlement and/or license, the Commission has found changed circumstances to exist, and has rescinded consent orders on that basis under Commission Rule 210.76. The Commission investigative attorney filed a response in support of the petitions on March 11, 2016. No oppositions to the petitions were filed.

Having reviewed the parties' submissions, the Commission found that the parties' petitions and settlement agreement satisfy the requirements for rescinding the consent orders under Commission Rule 210.76(a), 19 C.F.R. § 210.76(a). The Commission therefore rescinded the consent orders previously issued to: (1) Castle Megastore Group, Inc.; (2) Drugstore.com, Inc.; (3) Evolved Novelties, Inc.; (4) Love Boutique-Vista, LLC d/b/a Déjà vu; (5) Marsoner, Inc. d/b/a Fascinations; (6) Mile Inc. d/b/a Lions Den; (7) Momentum Management, LLC a/k/a Bushman Products; (8) Paris Intimates, LLC; (9) Peekay Inc.; (10) Shamrock 51 Management Company, Inc.; and (11) Toys in Babeland LLC.

This action is taken under the authority of Section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337(k) and Commission rule 210.76, 19 C.F.R. § 210.76.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: May 10, 2016