

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN TIRES AND PRODUCTS
CONTAINING SAME**

Investigation No. 337-TA-894

**ISSUANCE OF A LIMITED EXCLUSION ORDER AND CEASE AND DESIST
ORDERS AGAINST RESPONDENTS 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 (1) a limited exclusion order against infringing products of respondents previously found in default, *i.e.*, WestKY Customs, LLC of Benton, Kentucky (“WestKY”); Tire & Wheel Master, Inc. of Stockton, California (“Tire & Wheel Master”); Vittore Wheel & Tire of Asheboro, North Carolina (“Vittore”); RTM Wheel & Tire of Asheboro, North Carolina (“RTM”); Turbo Wholesale Tires, Inc. of Irwindale, California (“Turbo”); Lexani Tires Worldwide, Inc. of Irwindale, California (“Lexani”); WTD Inc. of Cerritos, California (“WTD”); and Simple Tire of Cookeville, Tennessee (“Simple Tire”) (collectively, “Defaulting Respondents”); and (2) cease and desist orders directed against each of the Defaulting Respondents. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. 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 at <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 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on September 20, 2013, based on a complaint filed by Toyo Tire & Rubber Co., Ltd. of Japan; Toyo Tire Holdings of Americas Inc. of Cypress, California; Toyo Tire U.S.A. Corp. of Cypress, California; Nitto Tire

U.S.A. Inc. of Cypress, California; and Toyo Tire North America Manufacturing Inc. of White, Georgia (collectively, “Toyo”). The complaint, as supplemented, alleges violation of section 337 by reason of infringement of certain claims of U.S. Design Patent Nos. D487,424 (“the ‘424 patent”); D610,975; D610,976 (“the ‘976 patent”); D610,977 (“the ‘977 patent”); D615,031; D626,913 (“the ‘913 patent”); D458,214 (“the ‘214 patent”); and D653,200 by numerous respondents. 78 *Fed. Reg.* 57882-83 (Sept. 20, 2013). Subsequently, the complaint and notice of investigation were amended to add Shandong Hengyu Science & Technology Co., Ltd. (“Shandong Hengyu”) as a respondent. Several respondents were terminated from the investigation based on settlement agreements and consent orders.

On November 18, 2013, the ALJ ordered certain respondents, including WestKY, Tire & Wheel Master, Vittore, and RTM, to show cause by December 4, 2013, why they should not be held in default for failing to respond to the Complaint and Notice of Investigation. *See* Order No. 10 (Nov. 18, 2013). No submissions were filed on behalf of WestKY, Tire & Wheel Master, Vittore, or RTM in response to ALJ Order No. 10. On December 5, 2013, the ALJ issued an ID finding respondents WestKY, Tire & Wheel Master, Vittore, and RTM to be in default. *See* ALJ Order 17 (Dec. 5, 2013) (not reviewed on December 27, 2013).

On December 24, 2013, the ALJ ordered respondents Turbo, Lexani, and WTD to show cause by January 10, 2014, why they should not be held in default for failing to respond to the Complaint and Notice of Investigation. *See* Order No. 24 (Dec. 24, 2013). No submissions were filed in response to ALJ Order No. 24. On February 3, 2014, the ALJ issued an ID finding respondents Turbo, Lexani, and WTD to be in default. *See* ALJ Order 30 (Feb. 3, 2014) (not reviewed on March 6, 2014).

On January 28, 2014, the ALJ ordered respondent Simple Tire to show cause by February 12, 2014, why it should not be held in default for failing to respond to the Complaint and Notice of Investigation. *See* Order No. 29 (Jan. 28, 2014). No submissions were filed in response to ALJ Order No. 29. On February 18, 2014, the ALJ issued an ID finding respondent Simple Tire to be in default. *See* ALJ Order 34 (Feb. 18, 2014) (not reviewed on March 20, 2014).

The Commission found that the statutory requirements of section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission rule 210.16(a) (19 C.F.R. § 210.16(a)) are met with respect to the Defaulting Respondents. 79 *Fed. Reg.* 21484-86 (Apr. 16, 2014). 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 presumes the facts alleged in the complaint to be true and finds that Defaulting Respondents are in violation of section 337.

The Commission requested briefing from the parties and the public on the issues of remedy, the public interest, and bonding. 79 *Fed. Reg.* at 21484-85. Complainant Toyo and the Commission investigative attorney (“IA”) filed timely opening submissions. The IA further filed a timely responsive submission on May 2, 2014. Also, two submissions, both dated May 2, 2014, were filed on behalf of certain of Defaulting Respondents: a “Reply Submission Of Katana Racing, Inc d/b/a WTD Respecting Remedy, the Public Interest and Bonding,” and a “Reply

Submission of Turbo Tire Corporation Respecting Remedy, the Public Interest, and Bonding.” On May 7, 2014, complainant Toyo filed “Complainants’ Response to the Reply Submissions of Katana Racing, Inc. d/b/a WTD, TURBO Tire Corp., and LEXANI, Inc.” No other submissions in response to the Commission notice were received.

The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain tires and products containing same that are manufactured abroad by or on behalf of, or imported by or on behalf of, the Defaulting Respondents by reason of infringement of one or more of the ‘424 patent; the ‘976 patent; the ‘977 patent; the ‘913 patent; and the ‘214 patent. The Commission has also determined to issue cease and desist orders directed against each of the Defaulting Respondents which prohibit, *inter alia*, the importation, sale, advertising, marketing, and distribution of covered products in the United States by the Defaulting Respondents. The Commission has 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 remedial orders. Finally, the Commission has determined that the bond for importation during the period of Presidential review shall be in the amount of 100 percent of the entered value of the imported subject articles of the Defaulting Respondents. The Commission’s orders were delivered to the President and the United States Trade Representative 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 Part 210 of the Commission’s Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: July 24, 2014