

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

**In the Matter of**

**CERTAIN LASER ABRADED DENIM  
GARMENTS**

**Investigation No. 337-TA-930**

**NOTICE OF COMMISSION DECISION TO REVIEW IN PART AN INITIAL  
DETERMINATION CLARIFYING THE ADMINISTRATIVE PROTECTIVE ORDER**

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 107), clarifying the administrative protective order ("APO") (Order No. 1) in this investigation.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. 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 <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on September 23, 2014, based on a complaint filed by Revolaze, LLC and TechnoLines, LLC, both of Westlake, Ohio (collectively, "Revolaze"). 79 FR 56828 (Sept. 23, 2014). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laser abraded denim garments. The complaint alleged the infringement of seventy-one claims of six United States patents. The Notice of Investigation named twenty respondents. The complaint and Notice of Investigation were later amended to add nine respondents. Order No. 20 at 3-4 (Jan. 23, 2015), *not reviewed*, Notice at 2 (Feb. 20, 2015).

In the course of the investigation, the presiding ALJ disqualified complainants' former counsel Dentons USA LLP ("Dentons") in a non-ID order. Order No. 43 (May 7, 2015). At the conclusion of proceedings in the investigation, in its notice terminating the investigation, the Commission determined to review Order No. 43, and, on review, to vacate that Order as moot because all respondents had been terminated from the investigation. Notice at 2 (Apr. 12, 2016). Shortly thereafter, the Commission issued an Opinion more fully explaining, *inter alia*, its decision to review and find moot Order No. 43. Comm'n Op. 10-12 (May 16, 2016) (public version).

On April 24, 2018, counsel for Revolaze filed a motion to clarify or modify the administrative protective order, Order No. 1 (Sept. 23, 2014). In particular, Revolaze has a malpractice action against Dentons and Dentons has refused, based on Dentons' interpretation of APO, to search the documents in Dentons' possession for responsive information. Mot. 2-3. On May 22, 2018, the Commission issued an Order assigning the motion to the ALJ and requiring that the decision on the motion issue as an initial determination.

On October 11, 2018, the ALJ issued the decision on modification or clarification as the subject ID (Order No. 107). The ID grants the motion in part, and clarifies the APO. In particular, the ID finds that the APO does "not prohibit Dentons' attorneys who signed onto the [APO] from reviewing documents" and "producing documents that do not include" confidential business information ("CBI") in the malpractice action. ID at 6 (emphasis omitted). The ID further finds "that one or more of Dentons' attorneys who signed on to the [APO] in this Investigation and who still work for Dentons should be directed to review the relevant documents and produce documents in the Malpractice Action that do not contain Respondents' CBI." *Id.* at 6-7.

No petitions for review were filed. The Commission has determined to review the ID in part. The Commission does not review the ID's finding that, *to the extent documents are properly in Dentons' possession*, the APO does not prohibit appropriate Dentons' attorneys from reviewing and producing those documents that do not include CBI in the malpractice action. However, the ID also notes that several respondents contended that "Dentons' retention of Respondents' CBI violates the [APO] that issued in this Investigation in September 2014." ID at 4. In particular, paragraph 14 of the APO provides as follows:

Upon final termination of this investigation, each recipient of confidential business information that is subject to this order shall assemble and return to the supplier all items containing such information submitted in accordance with paragraph 2 above, including all copies of such matter which may have been made. Alternatively, the parties subject to this order may, with the written consent of the supplier, destroy all items containing confidential business information and certify to the supplier (or his counsel) that such destruction has taken place.

Order No. 1, ¶ 14, at 7-8.

It is unclear from the record below what documents in Dentons' possession contain CBI and whether those documents are subject to the obligation to return or destroy the documents at the termination of the Commission investigation. Accordingly, the Commission has determined to review the ID in part, in order to obtain further briefing whether Dentons properly possesses the documents in question and if not whether Dentons is authorized to produce such documents. The Commission will also determine whether it should open an inquiry into whether Dentons has breached the APO by violating paragraph 14.

Dentons and Revolaze shall, and the other parties may, brief their positions as to the application of paragraph 14 of the APO to the documents in Dentons' possession, and the effect of that paragraph on Dentons' authority to produce documents to Revolaze.

As part of its opening submission in response to this Notice, Dentons shall provide a detailed inventory of the materials, if any, in its possession subject to paragraph 14. Dentons shall also explain which documents in its possession that contain CBI under this APO are not subject to paragraph 14, and why. Dentons' submissions shall be accompanied by one or more declarations in support of its facts in compliance with 28 U.S.C. § 1746. Each declaration shall be made on personal knowledge, and shall show affirmatively that the declarant is competent to testify as to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in a declaration shall be attached thereto or served therewith.

Opening submissions shall be filed no later than December 18, 2018. Reply submissions shall be filed no later than January 8, 2019.

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: November 20, 2018