

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN FOOTWEAR PRODUCTS

Investigation No. 337-TA-936
(Remand)

**NOTICE OF A COMMISSION DECISION TO REMAND THE INVESTIGATION TO
AN ADMINISTRATIVE LAW JUDGE FOLLOWING A DECISION OF THE UNITED
STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to remand the above-captioned investigation to an administrative law judge (“ALJ”) to make findings and issue a remand initial determination (“RID”) in accordance with the decision of the United States Court of Appeals for the Federal Circuit in *Converse, Inc. v. ITC*, 909 F.3d 1110 (Fed. Cir. 2018) (“*Converse*”).

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. 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’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 17, 2014, based on a complaint filed on behalf of Converse Inc. of North Andover, Massachusetts. 79 *Fed. Reg.* 68482-83. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by reason of infringement of certain U.S. Trademark Registration Nos.: 4,398,753 (“the ’753 trademark” or “CMT design”); 3,258,103; and 1,588,960. The complaint further alleged violations of section 337 based upon unfair competition/false designation of origin, common law trademark infringement and unfair competition, and trademark dilution, the threat or effect of which is to destroy or substantially injure an industry in the United States. The Commission’s notice of investigation named numerous respondents including Wal-Mart Stores, Inc. (“Wal-Mart”) of Bentonville, Arkansas;

Skechers U.S.A., Inc. of Manhattan Beach, California; and Highline United LLC d/b/a Ash Footwear USA of New York City, New York. New Balance Athletic Shoe, Inc. was subsequently added to the investigation as a respondent-intervenor. These four respondents (“the remaining respondents”) remained active in the investigation after every other respondent had been terminated from the investigation based on good cause, settlement, consent order stipulation and proposed consent order, or found in default. The Office of Unfair Import Investigations was also a party to the investigation. *Id.*

On November 17, 2015, the presiding administrative law judge (“ALJ”) issued his final ID finding a violation of section 337 as to the CMT design and the two other federally-registered marks asserted by Converse. Converse asserted the CMT design as a registered mark and separately as a common law mark. The ALJ found that the ’753 trademark (the mark as registered) was not invalid and was infringed by certain of the remaining respondents’ accused products as well as all of the accused products of each of the defaulting respondents. The ALJ found that the common law trademark was invalid based on lack of secondary meaning. The ALJ also found a violation as to the two other marks asserted by Converse. On review on June 23, 2016, the Commission issued a final determination agreeing with the ALJ as to the CMT design as a common law mark, but reversing the ID’s finding of validity as to the registered CMT design, finding it invalid based on lack of secondary meaning. The Commission therefore found no violation of section 337 as to the ’753 trademark. The Commission did find a violation of section 337 as to the two other federally-registered marks and issued a general exclusion order as to them.

Converse appealed the Commission’s final determination as to the ’753 trademark to the Federal Circuit. Wal-Mart was subsequently terminated from the appeal based on settlement. On October 30, 2018, the Federal Circuit issued its judgment. The Court vacated the Commission’s final determination and remanded the case for further proceedings consistent with its opinion. *See Converse*, 909 F.3d 1110.

In view of the Federal Circuit’s decision, and as detailed in a contemporaneously issued Order, the Commission has determined to remand the investigation to an ALJ to make findings and issue an RID with respect to the CMT design under Commission Rule 210.42(a)(1)(i) and in accordance with the Federal Circuit’s decision in *Converse*.

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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: April 9, 2019