

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOTORIZED VEHICLES
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1132
(Modification)**

MODIFIED LIMITED EXCLUSION ORDER

The United States International Trade Commission (“Commission”) has determined that there is a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation, sale for importation, or sale within the United States after importation by respondents Mahindra & Mahindra Ltd. of Mumbai, India and Mahindra Automotive North America, Inc. of Auburn Hills, Michigan (collectively, “Mahindra” or “Respondents”) of motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles that infringe the asserted trade dress in the above-captioned investigation (“the Jeep Trade Dress”). The Jeep Trade Dress consists of “the overall exterior appearance and styling of the [Jeep CJ and Jeep Wrangler] vehicle design,” including:

- (i) A boxy body shape with flat appearing vertical side and rear body panels ending at about the same height as the hood;
- (ii) Substantially flat hood with curved side edges that tapers to be narrower at the front;
- (iii) Trapezoidal front wheel wells with front fenders or fender flares that extend beyond the front of the grille;
- (iv) Flat appearing grille with vertical elongated grille slots and a trapezoidal outline that curves around round headlamps positioned on the upper part of the grille;
- (v) Exterior hood latches; and
- (vi) Door cutouts above a bottom portion of the side body panels.

Having reviewed the record of this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, public interest, and bonding. The Commission has determined that the appropriate form of relief includes a limited exclusion order prohibiting the unlicensed entry of covered motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles, manufactured abroad by or on behalf of, or imported by or on behalf of, Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude the issuance of the limited exclusion order, and that the bond during the period of Presidential review shall be in the amount of one hundred (100) percent of the entered value of infringing finished motorized vehicles and ten (10) percent of the entered value of any components thereof. Thereafter, the Commission conducted a modification proceeding to adjudicate Respondents' Post-2020 ROXOR vehicle and determined that it does not infringe the Jeep Trade Dress and is outside the scope of this Order. The Commission therefore modifies this Order to include an exemption with respect to Respondents' Post-2020 ROXOR vehicle.

Accordingly, the Commission hereby ORDERS that:

1. Motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles that infringe the Jeep Trade Dress and that are manufactured by, or on behalf of, or are imported by or on behalf of Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns ("covered articles"), are excluded from entry for consumption into the

United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, until the Jeep Trade Dress has been abandoned or rendered invalid or unenforceable, except under license from, or with the permission of, the trade dress owner or as provided by law, and except for service or repair components imported for use in servicing or repairing covered articles that were imported prior to the effective date of this Order.

2. For the purpose of assisting U.S. Customs and Border Protection (“CBP”) in the enforcement of this Order, and without in any way limiting the scope of the Order, the Commission has attached images of the Jeep CJ and Jeep Wrangler vehicles that feature the Jeep Trade Dress as Exhibit 1.

3. Prior to the importation of covered articles that may be subject to this Order, any of the persons listed in paragraph 1 of this Order must seek a ruling from the Commission to determine whether the covered articles sought to be imported are covered by this Order.

4. This Order does not apply to Respondents’ Post-2020 ROXOR vehicle, which, as the Commission determined in this modification proceeding, does not infringe the Jeep Trade Dress.

5. Notwithstanding paragraph 1 of this Order, the aforesaid covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of one hundred (100) percent of the entered value of infringing finished motorized vehicles and ten (10) percent of the entered value of any components thereof, pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(j)), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005, (70 FR 43251), from the day after this Order is received by the United States Trade Representative, and until such time as the

United States Trade representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to CBP in advance of the date of the entry, pursuant to procedures CBP establishes.

6. At the discretion of CBP, and pursuant to the procedures it establishes, persons seeking to import covered articles that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate this certification.

7. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

8. The Secretary shall serve copies of this Order upon each party of record in this Investigation and upon CBP.

9. Notice of this Order shall be published in the Federal Register.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: December 22, 2020

EXHIBIT 1





PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served via EDIS upon the Commission Investigative Attorney, **Vu Bui, Esq.** and the following parties as indicated, on **December 23, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

**On Behalf of Requester Mahindra & Mahindra Ltd. and
Mahindra Automotive North America, Inc.:**

R. David Hosp, Esq.
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- ☐ Via Hand Delivery
- ☐ Via Express Delivery
- ☐ Via First Class Mail
- ☒ Other: Email Notification
of Availability for Download

On Behalf of Respondent FCA US LLC:

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- ☐ Via First Class Mail
- ☒ Other: Email Notification
of Availability for Download

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOTORIZED VEHICLES
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1132
(Modification)**

MODIFIED CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT RESPONDENT Mahindra & Mahindra Ltd. cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting U.S. agents or distributors for, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles that infringe the Jeep Trade Dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin, or sponsorship, in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337). Thereafter, the Commission conducted a modification proceeding to adjudicate Respondents' Post-2020 ROXOR vehicle and determined that it does not infringe the Jeep Trade Dress and is outside the scope of this Order. The Commission therefore modifies this Order to include an exemption with respect to Respondents' Post-2020 ROXOR vehicle.

**I.
Definitions**

As used in this Order:

- (A) "Commission" shall mean the United States International Trade Commission.
- (B) "Complainant" shall mean FCA US LLC, 1000 Chrysler Drive, Auburn Hills, MI

48321.

(C) “Respondent” shall mean Mahindra & Mahindra Ltd., Mahindra Towers, Dr. G.M. Bhosle Marg, P.K. Kurne Chowk, Worli, Mumbai 400018, India.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “Jeep Trade Dress” shall mean the following: “the overall exterior appearance and styling of the [Jeep CJ and Jeep Wrangler] vehicle design,” including:

- (i) A boxy body shape with flat appearing vertical side and rear body panels ending at about the same height as the hood;
- (ii) Substantially flat hood with curved side edges that tapers to be narrower at the front;
- (iii) Trapezoidal front wheel wells with front fenders or fender flares that extend beyond the front of the grille;
- (iv) Flat appearing grille with vertical elongated grille slots and a trapezoidal outline that curves around round headlamps positioned on the upper part of the grille;
- (v) Exterior hood latches; and
- (vi) Door cutouts above a bottom portion of the side body panels.

Images of the Jeep CJ and Jeep Wrangler vehicles that feature the Jeep Trade Dress are attached as Exhibit 1.

(H) The term “covered products” shall mean motorized vehicles, kits and assemblies

for motorized vehicles, and replacement and aftermarket components for motorized vehicles that infringe the Jeep Trade Dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin, or sponsorship. The term “covered products” does not include Respondent’s Post-2020 ROXOR vehicle, which, as the Commission determined in this modification proceeding, does not infringe the Jeep Trade Dress.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. Until the Jeep Trade Dress has been abandoned or rendered invalid or unenforceable, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, Respondent shall be permitted:

(A) to engage in specific conduct otherwise prohibited by the terms of this Order if, in a written instrument, the owner of the Jeep Trade Dress licenses or authorizes such specific conduct; or

(B) to import, sell for importation, advertise, market, distribute, sell, or otherwise transfer in the United States components for use in servicing or repairing covered products that were imported prior to the effective date of this Order.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this Order through December 31, 2020. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to

the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1132") in a prominent place on the cover pages and/or the first page. (*See Handbook on Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Office of the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI. Recordkeeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States,

¹ Complainant must file a letter with the Secretary identifying the attorney to receive reports associated with this Order. The designated attorney must be on the protective order entered in the investigation.

and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal office during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this Order, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the Jeep Trade Dress has been abandoned or rendered invalid or unenforceable.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to sections V or VI of this Order should be made in accordance with section 201.6 of

the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

X. Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty-day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 FR 43251 (July 21, 2005)), subject to the Respondent's posting of a bond in the amount of one hundred (100) percent of the entered value of infringing finished motorized vehicles and ten (10) percent of the entered value of any components thereof. This bond provision does not apply to conduct that is otherwise permitted by section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry

bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainant in connection with the issuance of temporary exclusion orders. (*See* 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by Section III of this Order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves this Order (or does not disapprove it within the review period), unless (i) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event (i) the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, (ii) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (iii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission, upon service

² *See* note 1 above.

on Respondent of an order issued by the Commission based upon application therefore made by
Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton
Secretary to the Commission

Issued: December 22, 2020

EXHIBIT 1





PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served via EDIS upon the Commission Investigative Attorney, **Vu Bui, Esq.** and the following parties as indicated, on **December 23, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

**On Behalf of Requester Mahindra & Mahindra Ltd. and
Mahindra Automotive North America, Inc.:**

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- ☐ Via Hand Delivery
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On Behalf of Respondent FCA US LLC:

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- ☐ Via Express Delivery
- ☐ Via First Class Mail
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**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN MOTORIZED VEHICLES
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1132
(Modification)**

MODIFIED CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT RESPONDENT Mahindra Automotive North America, Inc., cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting U.S. agents or distributors for, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles that infringe the Jeep Trade Dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin, or sponsorship, in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337). Thereafter, the Commission conducted a modification proceeding to adjudicate Respondents' Post-2020 ROXOR vehicle and determined that it does not infringe the Jeep Trade Dress and is outside the scope of this Order. The Commission therefore modifies this Order to include an exemption with respect to Respondents' Post-2020 ROXOR vehicle.

**I.
Definitions**

As used in this Order:

- (A) "Commission" shall mean the United States International Trade Commission.
- (B) "Complainant" shall mean FCA US LLC, 1000 Chrysler Drive, Auburn Hills, MI

48321.

(C) “Respondent” shall mean Mahindra Automotive North America, Inc., 275 Rex Boulevard, Auburn Hills, MI 48326.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “Jeep Trade Dress” shall mean the following: “the overall exterior appearance and styling of the [Jeep CJ and Jeep Wrangler] vehicle design,” including:

- (i) A boxy body shape with flat appearing vertical side and rear body panels ending at about the same height as the hood;
- (ii) Substantially flat hood with curved side edges that tapers to be narrower at the front;
- (iii) Trapezoidal front wheel wells with front fenders or fender flares that extend beyond the front of the grille;
- (iv) Flat appearing grille with vertical elongated grille slots and a trapezoidal outline that curves around round headlamps positioned on the upper part of the grille;
- (v) Exterior hood latches; and
- (vi) Door cutouts above a bottom portion of the side body panels.

Images of the Jeep CJ and Jeep Wrangler vehicles that feature the Jeep Trade Dress are attached as Exhibit 1.

1. (H) The term “covered products” shall mean motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles that infringe the Jeep Trade Dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin, or sponsorship. The term “covered products” does not include Respondent’s Post-2020 ROXOR vehicle, which, as the Commission determined in this modification proceeding, does not infringe the Jeep Trade Dress.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. Until the Jeep Trade Dress has been abandoned or rendered invalid or unenforceable, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after

importation, transfer, or distribution of covered products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, Respondent shall be permitted:

(A) to engage in specific conduct otherwise prohibited by the terms of this Order if, in a written instrument, the owner of the Jeep Trade Dress licenses or authorizes such specific conduct; or

(B) to import, sell for importation, advertise, market, distribute, sell, or otherwise transfer in the United States components for use in servicing or repairing covered products that were imported prior to the effective date of this Order.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this Order through December 31, 2020. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document

electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1132") in a prominent place on the cover pages and/or the first page. (*See Handbook on Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Office of the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI. Recordkeeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this Order and for

¹ Complainant must file a letter with the Secretary identifying the attorney to receive reports associated with this Order. The designated attorney must be on the protective order entered in the investigation.

no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal office during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this Order, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the Jeep Trade Dress has been abandoned or rendered invalid or unenforceable.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission

pursuant to sections V or VI of this Order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

X. Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty-day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 FR 43251 (July 21, 2005)), subject to the Respondent's posting of a bond in the amount of one hundred (100) percent of the entered value of infringing finished motorized vehicles and ten (10) percent of the entered value of any components thereof. This bond provision does not apply to conduct that is otherwise permitted by section IV of this Order.

Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainant in connection with the issuance of temporary exclusion orders. (*See* 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by Section III of this Order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves this Order (or does not disapprove it within the review period), unless (i) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event (i) the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, (ii) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (iii) Respondent exports or destroys the products subject to this

² *See* note 1 above.

bond and provides certification to that effect that is satisfactory to the Commission, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton
Secretary to the Commission

Issued: December 22, 2020

EXHIBIT 1





PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served via EDIS upon the Commission Investigative Attorney, **Vu Bui, Esq.** and the following parties as indicated, on **December 23, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

**On Behalf of Requester Mahindra & Mahindra Ltd. and
Mahindra Automotive North America, Inc.:**

R. David Hosp, Esq.
ORRICK, HERRINGTON & SUTCLIFFE LLP
222 Berkeley Street
Boston, MA 02116
Email: dhosp@orrick.com

- ☐ Via Hand Delivery
- ☐ Via Express Delivery
- ☐ Via First Class Mail
- ☒ Other: Email Notification
of Availability for Download

On Behalf of Respondent FCA US LLC:

Frank C. Cimino, Esq.
VENABLE LLP
600 Massachusetts Avenue, NW
Washington, DC 20001
Email: FCCimino@venable.com

- ☐ Via Hand Delivery
- ☐ Via Express Delivery
- ☐ Via First Class Mail
- ☒ Other: Email Notification
of Availability for Download

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOTORIZED VEHICLES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1132

LIMITED EXCLUSION ORDER

The United States International Trade Commission (“Commission”) has determined that there is a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation, sale for importation, or sale within the United States after importation by respondents Mahindra & Mahindra Ltd. of Mumbai, India and Mahindra Automotive North America, Inc. of Auburn Hills, Michigan (collectively, “Mahindra” or “Respondents”) of motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles that infringe the asserted trade dress in the above-captioned investigation (“the Jeep Trade Dress”). The Jeep Trade Dress consists of “the overall exterior appearance and styling of the [Jeep CJ and Jeep Wrangler] vehicle design,” including:

- (i) A boxy body shape with flat appearing vertical side and rear body panels ending at about the same height as the hood;
- (ii) Substantially flat hood with curved side edges that tapers to be narrower at the front;
- (iii) Trapezoidal front wheel wells with front fenders or fender flares that extend beyond the front of the grille;
- (iv) Flat appearing grille with vertical elongated grille slots and a trapezoidal outline that curves around round headlamps positioned on the upper part of the grille;
- (v) Exterior hood latches; and
- (vi) Door cutouts above a bottom portion of the side body panels.

Having reviewed the record of this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, public interest, and bonding. The Commission has determined that the appropriate form of relief includes a limited exclusion order prohibiting the unlicensed entry of covered motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles, manufactured abroad by or on behalf of, or imported by or on behalf of, Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude the issuance of the limited exclusion order, and that the bond during the period of Presidential review shall be in the amount of one hundred (100) percent of the entered value of infringing finished motorized vehicles and ten (10) percent of the entered value of any components thereof.

Accordingly, the Commission hereby ORDERS that:

1. Motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles that infringe the Jeep Trade Dress and that are manufactured by, or on behalf of, or are imported by or on behalf of Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns (“covered articles”), are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, until the Jeep Trade Dress has been abandoned or rendered invalid or unenforceable, except under license from, or with the permission of, the trade dress owner or as

provided by law, and except for service or repair components imported for use in servicing or repairing covered articles that were imported prior to the effective date of this Order.

2. For the purpose of assisting U.S. Customs and Border Protection (“CBP”) in the enforcement of this Order, and without in any way limiting the scope of the Order, the Commission has attached images of the Jeep CJ and Jeep Wrangler vehicles that feature the Jeep Trade Dress as Exhibit 1.

3. Prior to the importation of covered articles that may be subject to this Order, any of the persons listed in paragraph 1 of this Order must seek a ruling from the Commission to determine whether the covered articles sought to be imported are covered by this Order.

4. Notwithstanding paragraph 1 of this Order, the aforesaid covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of one hundred (100) percent of the entered value of infringing finished motorized vehicles and ten (10) percent of the entered value of any components thereof, pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(j)), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005, (70 FR 43251), from the day after this Order is received by the United States Trade Representative, and until such time as the United States Trade representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to CBP in advance of the date of the entry, pursuant to procedures CBP establishes.

5. At the discretion of CBP, and pursuant to the procedures it establishes, persons seeking to import covered articles that are potentially subject to this Order may be required to

certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate this certification.

6. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

7. The Secretary shall serve copies of this Order upon each party of record in this Investigation and upon CBP.

8. Notice of this Order shall be published in the Federal Register.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton
Secretary to the Commission

Issued: June 11, 2020

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served via EDIS upon the Commission Investigative Attorney, **Vu Bui, Esq.** and the following parties as indicated, on **June 11, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant FCA US LLC:

Frank C. Cimino, Esq.
VENABLE LLP
600 Massachusetts Avenue NW
Washington, DC 20001
Email: FCCimino@venable.com

- ☐ Via Hand Delivery
- ☐ Via Express Delivery
- ☐ Via First Class Mail
- ☒ Other: Email Notification
of Availability to Download

**On Behalf of Respondents Mahindra & Mahindra Ltd. and
Mahindra Automotive North America, Inc.:**

R. David Hosp, Esq.
ORRICK, HERRINGTON & SUTCLIFFE LLP
222 Berkeley Street
Boston, MA 02116
Email: dhosp@orrick.com

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- ☐ Via Express Delivery
- ☐ Via First Class Mail
- ☒ Other: Email Notification
of Availability to Download

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

In the Matter of

**CERTAIN MOTORIZED VEHICLES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1132

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT RESPONDENT Mahindra Automotive North America, Inc., cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting U.S. agents or distributors for, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles that infringe the Jeep Trade Dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin, or sponsorship, in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I.
Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean FCA US LLC, 1000 Chrysler Drive, Auburn Hills, MI 48321.
- (C) “Respondent” shall mean Mahindra Automotive North America, Inc., 275 Rex Boulevard, Auburn Hills, MI 48326.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “Jeep Trade Dress” shall mean the following: “the overall exterior appearance and styling of the [Jeep CJ and Jeep Wrangler] vehicle design,” including:

- (i) A boxy body shape with flat appearing vertical side and rear body panels ending at about the same height as the hood;
- (ii) Substantially flat hood with curved side edges that tapers to be narrower at the front;
- (iii) Trapezoidal front wheel wells with front fenders or fender flares that extend beyond the front of the grille;
- (iv) Flat appearing grille with vertical elongated grille slots and a trapezoidal outline that curves around round headlamps positioned on the upper part of the grille;
- (v) Exterior hood latches; and
- (vi) Door cutouts above a bottom portion of the side body panels.

Images of the Jeep CJ and Jeep Wrangler vehicles that feature the Jeep Trade Dress are attached as Exhibit 1.

(H) The term “covered products” shall mean motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles that infringe the Jeep Trade Dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin, or sponsorship.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. Until the Jeep Trade Dress has been abandoned or rendered invalid or unenforceable, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, Respondent shall be permitted:

- (A) to engage in specific conduct otherwise prohibited by the terms of this Order if, in a written instrument, the owner of the Jeep Trade Dress licenses or authorizes such specific conduct; or

(B) to import, sell for importation, advertise, market, distribute, sell, or otherwise transfer in the United States components for use in servicing or repairing covered products that were imported prior to the effective date of this Order.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this Order through December 31, 2020. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1132") in a prominent place on the cover pages and/or the first page. (*See Handbook on Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Office of the Secretary (202-205-2000). If Respondent desires to submit a document to the

Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI. Recordkeeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal office during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive reports associated with this Order. The designated attorney must be on the protective order entered in the investigation.

VII.
Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this Order, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the Jeep Trade Dress has been abandoned or rendered invalid or unenforceable.

VIII.
Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to sections V or VI of this Order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.
Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

X. Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty-day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 FR 43251 (July 21, 2005)), subject to the Respondent's posting of a bond in the amount of one hundred (100) percent of the entered value of infringing finished motorized vehicles and ten (10) percent of the entered value of any components thereof. This bond provision does not apply to conduct that is otherwise permitted by section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainant in connection with the issuance of temporary exclusion orders. (*See* 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the

commencement of conduct that is otherwise prohibited by Section III of this Order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves this Order (or does not disapprove it within the review period), unless (i) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event (i) the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, (ii) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (iii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: June 11, 2020

² See note 1 above.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served via EDIS upon the Commission Investigative Attorney, **Vu Bui, Esq.** and the following parties as indicated, on **June 11, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant FCA US LLC:

Frank C. Cimino, Esq.
VENABLE LLP
600 Massachusetts Avenue NW
Washington, DC 20001
Email: FCCimino@venable.com

- ☐ Via Hand Delivery
- ☐ Via Express Delivery
- ☐ Via First Class Mail
- ☒ Other: Email Notification
of Availability to Download

**On Behalf of Respondents Mahindra & Mahindra Ltd. and
Mahindra Automotive North America, Inc.:**

R. David Hosp, Esq.
ORRICK, HERRINGTON & SUTCLIFFE LLP
222 Berkeley Street
Boston, MA 02116
Email: dhosp@orrick.com

- ☐ Via Hand Delivery
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- ☒ Other: Email Notification
of Availability to Download

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

In the Matter of

**CERTAIN MOTORIZED VEHICLES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1132

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT RESPONDENT Mahindra & Mahindra Ltd. cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting U.S. agents or distributors for, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles that infringe the Jeep Trade Dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin, or sponsorship, in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I.
Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean FCA US LLC, 1000 Chrysler Drive, Auburn Hills, MI 48321.
- (C) “Respondent” shall mean Mahindra & Mahindra Ltd., Mahindra Towers, Dr. G.M. Bhosle Marg, P.K. Kurne Chowk, Worli, Mumbai 400018, India.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “Jeep Trade Dress” shall mean the following: “the overall exterior appearance and styling of the [Jeep CJ and Jeep Wrangler] vehicle design,” including:

- (i) A boxy body shape with flat appearing vertical side and rear body panels ending at about the same height as the hood;
- (ii) Substantially flat hood with curved side edges that tapers to be narrower at the front;
- (iii) Trapezoidal front wheel wells with front fenders or fender flares that extend beyond the front of the grille;
- (iv) Flat appearing grille with vertical elongated grille slots and a trapezoidal outline that curves around round headlamps positioned on the upper part of the grille;
- (v) Exterior hood latches; and
- (vi) Door cutouts above a bottom portion of the side body panels.

Images of the Jeep CJ and Jeep Wrangler vehicles that feature the Jeep Trade Dress are attached as Exhibit 1.

(H) The term “covered products” shall mean motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles that infringe the Jeep Trade Dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin, or sponsorship.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. Until the Jeep Trade Dress has been abandoned or rendered invalid or unenforceable, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, Respondent shall be permitted:

- (A) to engage in specific conduct otherwise prohibited by the terms of this Order if, in a written instrument, the owner of the Jeep Trade Dress licenses or authorizes such specific conduct; or

(B) to import, sell for importation, advertise, market, distribute, sell, or otherwise transfer in the United States components for use in servicing or repairing covered products that were imported prior to the effective date of this Order.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this Order through December 31, 2020. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1132") in a prominent place on the cover pages and/or the first page. (*See Handbook on Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Office of the Secretary (202-205-2000). If Respondent desires to submit a document to the

Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI. Recordkeeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal office during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive reports associated with this Order. The designated attorney must be on the protective order entered in the investigation.

VII.
Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen days after the succession of any persons referred to in subparagraph VII(A) of this Order, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the Jeep Trade Dress has been abandoned or rendered invalid or unenforceable.

VIII.
Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to sections V or VI of this Order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.
Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for

civil penalties under section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

X. Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty-day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 FR 43251 (July 21, 2005)), subject to the Respondent's posting of a bond in the amount of one hundred (100) percent of the entered value of infringing finished motorized vehicles and ten (10) percent of the entered value of any components thereof. This bond provision does not apply to conduct that is otherwise permitted by section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainant in connection with the issuance of temporary exclusion orders. (*See* 19 C.F.R. § 210.68). The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by Section III of this Order. Upon the

Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves this Order (or does not disapprove it within the review period), unless (i) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

The bond is to be released in the event (i) the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, (ii) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (iii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: June 11, 2020

² See note 1 above.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served via EDIS upon the Commission Investigative Attorney, **Vu Bui, Esq.** and the following parties as indicated, on **June 11, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant FCA US LLC:

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- ☐ Via Hand Delivery
- ☐ Via Express Delivery
- ☐ Via First Class Mail
- ☒ Other: Email Notification
of Availability to Download

**On Behalf of Respondents Mahindra & Mahindra Ltd. and
Mahindra Automotive North America, Inc.:**

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