

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN RADIO CONTROL HOBBY
TRANSMITTERS AND RECEIVERS
AND PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-763

**NOTICE OF COMMISSION ISSUANCE OF LIMITED EXCLUSION ORDER AGAINST
INFRINGEMENT PRODUCTS OF 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 terminated the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1337), and has issued a limited exclusion order against infringing products of respondents previously found in default, Koko Technology, Ltd. ("Koko") and Cyclone Toy & Hobby ("Cyclone") of China.

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 <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 9, 2011, based on a complaint filed by Horizon Hobby, Inc. ("Horizon") of Champaign, Illinois. 76 *Fed. Reg.* 12995-96 (March 9, 2011). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio control hobby transmitters and receivers and products containing same by reason of infringement of certain claims of U.S. Patent No. 7,391,320 ("the '320 patent"), U.S. Copyright Reg. No. TX-7-226-001 ("the '001 copyright"), and U.S. Trademark Reg. No. 3,080,770 ("the '770 mark"). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Koko and Cyclone as the only respondents. The complaint and

notice of investigation were served on respondents on March 3, 2011. No responses were received.

On April 11, 2011, Horizon moved, pursuant to 19 C.F.R. § 210.16, for: (1) an order directing respondents Koko and Cyclone to show cause why they should not be found in default for failure to respond to the complaint and notice of investigation as required by § 210.13; and (2) the issuance of an ID finding Koko and Cyclone in default upon their failure to show cause. Koko and Cyclone did not respond to the motion. On April 22, 2011, the presiding administrative law judge ("ALJ") issued Order No. 5 which required Koko and Cyclone to show cause no later than May 12, 2011, as to why they should not be held in default and judgment rendered against them pursuant to § 210.16. No response was received from either Koko or Cyclone to the show cause order.

The ALJ issued an initial determination ("ID") (Order No. 6) on May 16, 2011, finding both Koko and Cyclone in default, pursuant to §§ 210.13, 210.16, because both respondents did not respond to the complaint and notice of investigation, or to Order No. 5 to show cause. Also, on May 17, 2011, the ALJ issued an ID (Order No. 7) terminating the investigation because Koko and Cyclone are the only respondents in the investigation. On June 3, 2011, the Commission issued notice of its determination not to review the ALJ's IDs finding Koko and Cyclone in default and terminating the investigation. 76 *Fed. Reg.* 33362-63 (June 8, 2011). In the same notice, the Commission requested written submissions on the issues of remedy, the public interest, and bonding with respect to respondents found in default.

Horizon and the Commission investigative attorney ("IA") submitted briefing responsive to the Commission's request on June 24, 2011, and the IA submitted a reply brief on July 1, 2011. Horizon requested both a limited exclusion order directed to Koko's and Cyclone's infringing products and a general exclusion order as well. The IA recommended a limited exclusion order and opposed Horizon's request for a general exclusion order.

Having reviewed the record in the investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined to issue relief directed solely to the defaulting respondents pursuant to Section 337(g)(1). 19 U.S.C. § 1337(g)(1). The Commission found that the statutory requirements of section 337(g)(1)(A)-(E) (19 U.S.C. § 1337(g)(1)(A)-(E)) were met with respect to the defaulting respondents. Pursuant to section 337(g)(1) and Commission Rule 210.16(c) (19 C.F.R. § 210.16(c)), the Commission presumed the facts alleged in the complaint to be true. Based on the record in this investigation and the written submissions of the parties, the Commission has determined that the appropriate form of relief is a limited exclusion order directed to the defaulting respondents prohibiting the unlicensed entry of radio control hobby transmitters and receivers and products containing same that are covered by one or more of claims 1-5 of the '320 patent, the '001 copyright, or the '770 mark, and that are manufactured abroad by or on behalf of, or are imported by or on behalf of, Koko or Cyclone, or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or its successors or assigns. 19 U.S.C. § 1337(g)(1). The Commission has determined not to issue a general

exclusion order because Horizon did not establish the evidentiary showing required by 19 U.S.C. § 1337(g)(2) and it did not declare that it sought a general exclusion order under Commission rule 210.16(c)(2) (19 C.F.R. 210.16(c)(2)).

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 limited exclusion order. Finally, the Commission has determined that a bond of 100 percent of the entered value of the covered products is required during the period of Presidential review (19 U.S.C. §§ 1337(j)). The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission has terminated this investigation. 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 sections 210.16(c) and 210.41 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16(c) and 210.41).

By order of the Commission.


James R. Holbein
Secretary to the Commission

Issued: September 27, 2011

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN RADIO CONTROL HOBBY
TRANSMITTERS AND RECEIVERS AND
PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-763

LIMITED EXCLUSION ORDER

The Commission has previously found Respondents Koko Technology Ltd. ("Koko") and Cyclone Toy & Hobby ("Cyclone") (collectively "Respondents") of China in default for failing to respond to the Notice of Investigation and the Complaint that alleged 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, and sale after importation of certain radio control hobby transmitters and receivers and products containing same by reason of infringement of claims 1-5 of U.S. Patent No. 7, 391,320 ("the '320 patent"), U.S. Copyright Reg. No. TX-7-226-001 ("the '001 copyright"), and U.S. Trademark Reg. No. 3,080,770 ("the '770 mark").

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of radio control hobby transmitters and receivers and products containing same that are covered by one or more of claims 1-5 of the '320 patent, the '001 copyright, or the '770 mark, and that are manufactured abroad by or on behalf of, or imported by or on behalf of either Respondent.

The Commission has further determined that the public interest factors enumerated in 19

U.S.C. § 1337(g)(1) do not preclude issuance of the limited exclusion order, and that a bond in the amount of 100 percent of the articles in question shall be required during the period of Presidential review.

Accordingly, the Commission hereby **ORDERS** that:

1. Radio control hobby transmitters and receivers and products containing same covered by one or more of claims 1-5 of the '320 patent, the '001 copyright, or the '770 mark (or any marks confusingly similar thereto) that are manufactured abroad by or on behalf of, or imported by or on behalf of, either Respondent or any of their affiliated companies, parents, subsidiaries, successors, assigns, or other related business entities, 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, for the remaining terms of the intellectual property rights, except under license of the owner or as provided by law.

2. Notwithstanding paragraph 1 of this Order, the aforesaid products are entitled to entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100 percent of entered value of such articles 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 *Fed. Reg.* 43251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this action is approved or disapproved but, in any event, not later than 60 days after the date of receipt of this action.

3. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to

procedures it establishes, persons seeking to import radio control hobby transmitters and receivers and products containing same 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 the certification.

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to radio control hobby transmitters and receivers and products containing same that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

5. Complainant Horizon Hobby, Inc. ("Horizon") shall file a written statement with the Commission, made under oath, each year on the anniversary of the issuance of this Order stating whether Horizon continues to use the '770 mark in commerce in the United States in connection with radio control hobby transmitters and receivers and products containing the same, whether the aforesaid trademark has been abandoned, canceled, or rendered invalid or unenforceable, and whether Horizon continues to satisfy the economic requirements of Section 337(a)(2).

6. The Commission may modify this Order in accordance with the procedures described in section 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 the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and CBP.

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

By Order of the Commission.



James R. Holbein
Secretary to the Commission

Issued: September 27, 2011

CERTAIN VAGINAL RING BIRTH CONTROL DEVICES

337-TA-763

CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, Thomas S. Fusco, Esq., and the following parties as indicated, on **September 27, 2011**.


James R. Holbein, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

On Behalf of Complainants, Horizon Hobby, Inc.:

Sean Patrick Suiter, Esq.
SUITER SWANTZ PC LLO
14301 FNB Parkway, Suite 220
Omaha, NE 68154

☐ Via Hand Delivery
☐ Via Overnight Mail
☒ Via First Class Mail
☐ Other: _____

Respondents:

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Bantian Shenzhen Guangdong
China

☐ Via Hand Delivery
☐ Via Overnight Mail
☐ Via First Class Mail
☒ INTERNATIONAL

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Shenzhen, Guangdong
China

☐ Via Hand Delivery
☐ Via Overnight Mail
☐ Via First Class Mail
☒ INTERNATIONAL