

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

**In the Matter of**

**CERTAIN ARTIFICIAL EYELASH  
EXTENSION SYSTEMS,  
PRODUCTS, AND COMPONENTS  
THEREOF**

**Investigation No. 337-TA-1226 (Remand)**

**NOTICE OF A COMMISSION REQUEST FOR WRITTEN SUBMISSIONS  
PURSUANT TO A COURT REMAND**

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to request written submissions following a remand from the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit” or “Court”).

**FOR FURTHER INFORMATION CONTACT:** Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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:** On October 28, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Lashify, Inc. of Glendale, California (“Lashify”). See 85 FR 68366-67 (Oct. 28, 2020). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain artificial eyelash extension systems, products, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,660,388 (“the ’388 patent”) and 10,721,984 (“the ’984 patent”), and the sole claims of U.S. Design Patent Nos. D877,416 (“the D’416 patent”) and D867,664 (“the D’664 patent”), respectively (collectively, the “Asserted Patents”). The complaint also alleges the existence of a domestic industry. The notice of investigation (“NOI”) names nine respondents, including: KISS Nail Products, Inc. of Port Washington, New York (“KISS”); Ulta Beauty, Inc. of Bolingbrook, Illinois (“Ulta”); CVS Health Corporation of Woonsocket, Rhode Island (“CVS”); Walmart, Inc.

of Bentonville, Arkansas (“Walmart”); Qingdao Hollyren Cosmetics Co., Ltd. d/b/a Hollyren of Shandong Province, China; Qingdao Xizi International Trading Co., Ltd. d/b/a Xizi Lashes of Shandong Province, China; Qingdao LashBeauty Cosmetic Co., Ltd. d/b/a Worldbeauty of Qingdao, China; Alicia Zeng d/b/a Lilac St. and Artemis Family Beginnings, Inc. of San Francisco, California; and Rachael Gleason d/b/a Avant Garde Beauty Co. of Dallas, Texas (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations is also a party to the investigation. *Id.*

The Commission later amended the complaint and NOI to substitute CVS Pharmacy, Inc. of Woonsocket, Rhode Island in place of named respondent CVS Health Corporation and Ulta Salon, Cosmetics & Fragrance, Inc. of Bolingbrook, Illinois in place of named respondent Ulta Beauty, Inc. *See* Order No. 10, *unreviewed by* Comm’n Notice (Feb. 10, 2021); *see also* 86 FR 9535 (Feb. 16, 2021).

The Commission previously terminated the investigation as to claims 2-4 and 7 of the ’388 patent and claims 6-8, 12, 18-19, 25-26, and 29 of the ’984 patent based on Complainant’s partial withdrawal of the complaint. *See* Order No. 24 (Apr. 23, 2021), *unreviewed by* Comm’n Notice (May 11, 2021). The Commission also previously terminated claims 2-5, 10-11, 14, 17, 21-22, and 24 of the ’984 patent from the investigation. *See* Order No. 38 (June 22, 2021), *unreviewed by* Comm’n Notice (July 6, 2021).

The Commission previously terminated Rachael Gleason d/b/a Avant Garde Beauty Company from the investigation based on a Consent Order. *See* Order No. 28, *unreviewed by* Comm’n Notice (May 20, 2021).

The Commission previously determined that Lashify failed to satisfy the technical prong of the domestic industry requirement for the ’388 patent, thus terminating that patent from the investigation. *See* Order No. 35, *unreviewed by* Comm’n Notice (July 9, 2021).

On October 28, 2021, the presiding administrative law judge issued a final initial determination (“FID”), finding that no violation of section 337 had occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain artificial eyelash extension systems, products, and components thereof. FID at 141-142. The FID finds that two of the accused products infringe the ’984 patent, and that the ’984 patent is not invalid, but also finds that Lashify failed to satisfy the technical prong of the domestic industry requirement with respect to the ’984 patent. The FID further finds that the D’416 patent and D’664 patent are infringed and not invalid, and that Lashify satisfied the technical prong with respect to both design patents. The FID further finds that Lashify failed to satisfy the economic prong of the domestic industry requirement with respect to any of the Asserted Patents remaining in the investigation.

On November 29, 2021, respondents KISS, Ulta, Walmart, and CVS filed a joint submission on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50 (a)(4)). Lashify and OUII did not file a statement on the public interest. No submissions were received in response to the Commission notice seeking public interest submissions. 86 FR 62844-45 (Nov. 12, 2021).

On January 20, 2022, the Commission determined to review the FID in part. 87 FR 4044-46 (Jan. 26, 2022). Specifically, for the '984 patent, the Commission reviewed the FID's findings regarding the technical prong of the domestic industry requirement and the FID's findings that the asserted claims of the '984 patent are not invalid as obvious. *Id.* at 4045. The Commission also reviewed the FID's findings regarding the economic prong of the domestic industry requirement. *Id.* The Commission asked the parties to address two questions related to the issues under review with respect to the economic prong of the domestic industry requirement. *Id.*

On February 3, 2022, Lashify, Respondents, and OUII each filed an initial written response to the Commission's request for briefing. On February 10, 2022, Lashify, Respondents, and OUII each filed a reply submission.

On October 6, 2022, the Commission issued a final determination affirming the FID's finding of no violation of section 337 as to any Asserted Patent and terminated the investigation. 87 FR 62455-56 (Oct. 14, 2022). Specifically, with respect to the '984 patent, the Commission determined to: (1) affirm, with supplemental analysis, the FID's finding that Lashify has failed to satisfy the technical prong of the domestic industry requirement; and (2) take no position regarding whether claims 1, 9, 23, and 27 of the '984 patent are invalid for obviousness under 35 U.S.C. 103. The Commission further determined to affirm, with supplemental reasoning, the FID's finding that Lashify failed to satisfy the economic prong of the domestic industry requirement for any of the Asserted Patents.<sup>1</sup>

Lashify timely appealed the Commission's final determination to the Federal Circuit. *Lashify v. Int'l Trade Comm'n*, Appeal No. 2023-1245. Respondents intervened in the appeal.

On March 5, 2025, the Federal Circuit vacated the Commission's determination as to the economic prong of the domestic industry requirement for all three Asserted Patents and affirmed the Commission's determination that Lashify failed to satisfy the technical prong of the domestic industry requirement for the '984 patent. *Lashify v. Int'l Trade Comm'n*, 130 F.4th 948 (Fed. Cir. 2025). The Court remanded for the Commission to determine whether there is "significant employment of labor or capital" with respect to the two design patents, the D'416 and D'664 patents.

The Commission filed a combined petition for panel rehearing and rehearing en banc, which the Court denied on June 25, 2025. *Lashify v. Int'l Trade Comm'n*, Appeal No. 2023-1245, ECF No. 128 (June 25, 2025).

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<sup>1</sup> Chair Karpel and Commissioner Schmidlein dissented from the majority's decision as to the economic prong of the domestic industry requirement.

On July 2, 2025, the Court issued its formal mandate returning jurisdiction to the Commission for further proceedings.

Pursuant to the Court's remand, the Commission requests written submissions from the parties to address the specific proceedings to be conducted on remand.

**WRITTEN SUBMISSIONS:** The parties to the investigation are requested to file written submissions regarding what further proceedings must be conducted to comply with the March 5, 2025 judgment of the U.S. Court of Appeals for the Federal Circuit in *Lashify, Inc. v. ITC*, No. 2023-1245.

Written submissions must be filed no later than the close of business on **August 7, 2025**, and are limited to **15 pages**. Reply submissions must be filed no later than the close of business on **August 14, 2025**, and are limited to **15 pages**. No further submissions on these issues will be permitted unless ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above pursuant to 19 CFR 210.4(f). Submissions should refer to the investigation number (Inv. No. 337-TA-1226 (**Remand**)) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on July 30, 2025.

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 CFR Part 210.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a large, loopy oval shape.

Lisa R. Barton  
Secretary to the Commission

Issued: July 30, 2025