

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN LASER ABRADED DENIM
GARMENTS**

Investigation No. 337-TA-930

**NOTICE OF THE COMMISSION'S DETERMINATION TO AFFIRM-IN-PART AN
INITIAL DETERMINATION CLARIFYING THE ADMINISTRATIVE PROTECTIVE
ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

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

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5453. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 23, 2014, based on a complaint filed by Revolaze, LLC and TechnoLines, LLC, both of Westlake, Ohio (collectively, "Revolaze"). 79 FR 56828 (Sep. 23, 2014). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laser abraded denim garments. The complaint alleged the infringement of seventy-one claims of six United States patents. The notice of investigation named twenty respondents. The complaint and notice of investigation were later amended to add nine respondents. Order No. 20 at 3-4 (Jan. 23, 2015), *not reviewed*, Notice at 2 (Feb. 10, 2015).

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

On April 24, 2018, counsel for Revolaze filed a motion to clarify or modify the APO in this investigation. Mot. No. 930-117 ("Mot."). The motion follows from a discovery dispute in the Cuyahoga County, Ohio Court of Common Pleas where Revolaze is currently prosecuting a malpractice claim against Dentons. *See Revolaze, LLC v. Dentons US LLP*, Case No. CV 16-861410. In particular, Dentons has refused, based on its interpretation of the APO, to search documents from the Commission investigation still in Dentons' possession for information responsive to discovery requests in the malpractice action. Mot. at 2-3. Revolaze's motion seeks clarification that Dentons would not violate the APO if one or more of its attorneys who signed on to the APO searched Dentons' files for non-CBI documents related to the investigation. *Id.* at 4. Alternatively, Revolaze's motion seeks modification of the APO to permit such a search. *Id.* On May 22, 2018, the Commission issued an Order assigning the motion to an ALJ and requiring that the decision on the motion issue as an initial determination.

On October 11, 2018, the ALJ issued the subject ID (Order No. 107) on modification or clarification of the APO. The ID grants the motion in part and clarifies the APO. ID at 4, 7. In particular, the ID finds that the APO does "not prohibit Dentons' attorneys who signed onto the [APO] from reviewing documents" and "producing documents that do not include" confidential business information in the malpractice action. *Id.* at 6 (emphasis omitted). The ID further states "that one or more of Dentons' attorneys who signed on to the [APO] in this Investigation and who still work for Dentons should be directed to review the relevant documents and produce documents in the Malpractice Action that do not contain Respondents' CBI." *Id.* at 6. No petitions for review were filed.

On November 20, 2018, the Commission issued notice of its decision to review the ID in part. Notice at 1 (Apr. 20, 2018). In particular, the Commission determined "to obtain further briefing [regarding] whether Dentons properly possesses the documents in question and if not whether Dentons is authorized to produce such documents," and to determine "whether it should open an inquiry into whether Dentons has breached the APO by violating paragraph 14," *id.* at 3, which requires recipients of materials containing CBI to return or destroy those materials upon final termination of the investigation, *see* Order No. 1 at ¶ 14. The Commission required Revolaze and Dentons to "brief their positions as to the application of paragraph 14 of the APO to the documents in Dentons' possession, and the effect of that paragraph on Dentons' authority to produce documents to Revolaze." Notice at 3 (Apr. 20, 2018). The Commission permitted, but did not require, the other parties to the investigation to submit briefing on the same topics. *Id.* The Commission determined not to review the ID's finding that, to the extent documents are properly in Dentons' possession, the APO does not prohibit appropriate Dentons' attorneys from

reviewing and producing those documents that do not include CBI in the Malpractice Action. *Id.* at 2.

On December 20, 2018, Dentons filed an opening submission in response to the Commission's Notice and pursuant to an extension of time granted by the Chairman. On December 21, 2018, Revolaze filed its opening submission, also pursuant to an extension of time granted by the Chairman. No other opening submissions were filed. On February 5, 2019, following the government shutdown, Dentons filed a reply submission, the deadline for which originally occurred during the lapse in government appropriations. No other reply submissions were received, including from Revolaze.

Having examined the record of this investigation, including the submissions from Revolaze and Dentons, the Commission has determined to affirm-in-part the ALJ's initial determination clarifying the APO. Particularly, the Commission affirms the ALJ's determination that paragraph 14 of the APO does not "prohibit Dentons' attorneys who signed on to the [APO] from reviewing documents to exclude CBI-designated documents from production in the Malpractice Action." ID at 6. Moreover, Revolaze has represented that it is not seeking documents containing CBI in the malpractice action, and thus the question of whether production of CBI in the malpractice action would violate the APO is not presently before the Commission. *See, e.g.*, Revolaze Br. at 4 (explaining that in the malpractice action "RevoLaze requested documents received or created by Dentons during the Investigation that do not contain CBI of any respondent to the investigation."). As such, the instant determination need not reach that issue.

The Commission vacates the portion of the ID that states "that one or more of Dentons' attorneys who signed on to the [APO] in this Investigation and who still work for Dentons should be directed to review the relevant documents and produce documents in the Malpractice Action that do not contain Respondents' CBI." ID at 6-7. Revolaze's motion does not seek an order from the Commission directing Dentons to produce documents in the malpractice action, and the Commission lacks jurisdiction to render such an order.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: July 19, 2019