

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN PERCUSSIVE MASSAGE
DEVICES**

Investigation No. 337-TA-1206

**ISSUANCE OF A GENERAL EXCLUSION ORDER AND
A CEASE AND DESIST ORDER; TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue a general exclusion order (“GEO”) and a cease and desist order (“CDO”) directed to respondent Kinghood International Logistics Inc. (“Kinghood”) in the above-captioned investigation. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone (202) 205-2392. 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. 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: The Commission instituted this investigation on July 22, 2020, based on a complaint filed on behalf of Hyper Ice, Inc. (“Hyperice”) of Irvine, California. 85 FR 44322 (July 22, 2020). The complaint, as supplemented, alleged 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, or the sale within the United States after importation of certain percussive massage devices by reason of infringement of U.S. Design Patent Nos. D855,822 and D886,317 (collectively, “Asserted Design Patents”) and claims 1-9, 14, and 15 of U.S. Patent No. 10,561,574 (“the ’574 patent”). The complaint further alleged that a domestic industry exists. The Commission’s notice of investigation named the following nineteen respondents: Laiwushiyu Xinuan Trading Company of Shandong District, China; Shenzhen Let Us Win-Win Technology Co., Ltd. of Guangdong, China; Shenzhen Qifeng Technology Co., Ltd. of Guangdong, China; Shenzhen QingYueTang E-commerce Co., Ltd. of Guangdong, China; and Shenzhen Shiluo Trading Co., Ltd. of Guangdong, China (collectively, the “Unserved Respondents”); Kinghood of La Mirada, California; Manybo Ecommerce Ltd. (“Manybo”) of

Hong Kong, China; Shenzhen Infein Technology Co., Ltd. (“Shenzhen Infein”) of Guangdong, China; Hong Kong Yongxu Capital Management Co., Ltd. (“Hong Kong Yongxu”) of Hong Kong, China; Kula eCommerce Co., Ltd. (“Kula”) of Guangdong, China; Performance Health Systems, LLC (“Performance Health”) of Northbrook, Illinois; Rechar, Inc. (“Rechar”) of Strasburg, Colorado; Ning Chen of Yancheng, Jiangsu China; Opove, Ltd. (“Opove”) of Azusa, California; Shenzhen Shufang E-Commerce Co., Ltd. (“Shufang E-Commerce”) of Shenzhen, China; Fu Si (“Shenzhen Fusi Technology”) of Guangdong, China;¹ WODFitters of Lorton, Virginia; Massimo Motor Sports, LLC (“Massimo”) of Garland, Texas; and Addaday LLC (“Addaday”) of Santa Monica, California. The notice of investigation also named the Office of Unfair Import Investigations (“OUII”) as a party.

On October 16, 2020, the Commission determined not to review Order No. 11 granting motions to intervene by third parties Shenzhen Xinde Technology Co., Ltd. (“Xinde”) and Yongkang Aijiu Industrial & Trade Co., Ltd. (“Aijiu”) in the investigation. *See* Order No. 11 (Sept. 25, 2020), *unreviewed by* Comm’n Notice (Oct. 16, 2020).

Respondents Addaday, WODFitters, Massimo, Performance Health, Rechar, Ning Chen, Opove, Shufang E-Commerce, Xinde, Aijiu, and Shenzhen Fusi Technology were terminated from the investigation based upon settlement agreements. *See* Order No. 10 (Sept. 16, 2020), *unreviewed by* Comm’n Notice (Oct. 15, 2020); Order No. 12 (Nov. 4, 2020), *unreviewed by* Comm’n Notice (Nov. 20, 2020); Order No. 30 (Apr. 8, 2021), *unreviewed by* Comm’n Notice (Apr. 22, 2021).

The Unserved Respondents were terminated from the investigation based upon withdrawal of the Complaint. *See* Order No. 36 at 2 (Aug. 3, 2021), *unreviewed by* Comm’n Notice (Aug. 19, 2021).

Respondents Kinghood, Manybo, Shenzhen Infein, Hong Kong Yongxu, and Kula (collectively, “the Defaulting Respondents”) were found in default. *See* Order No. 17 (Dec. 17, 2020), *unreviewed by* Comm’n Notice (Jan. 5, 2021).

On May 6, 2021, OUII filed a motion to terminate the Asserted Design Patents from this investigation on the ground that Hyperice did not have sufficient rights to the design patents at the time the investigation was instituted. On May 17, 2021, Hyperice filed its response in opposition to OUII’s motion to terminate, which included a cross-motion to amend the Complaint to reflect proper inventorship.

¹ Respondent Fu Si’s full name is Shenzhen Fusi Technology Co., Ltd. *See* Response of Opove Ltd., Shenzhen Shufang E-Commerce Co., Ltd., and Fu Si to the Complaint and Notice of Investigation at ¶ 40, EDIS Doc ID 716966 (Aug. 11, 2020). The principal place of business of Shenzhen Fusi Technology Co., Ltd. was changed to 14E, Building A, Guanghao International Center, No. 441 Meilong Road, Minzhi Street, Longhua District, Shenzhen, China, 518131 effective September 15, 2020. *Id.*

On May 7, 2021, Hyperice filed a motion for summary determination that the Defaulting Respondents have violated section 337 for infringing its three asserted patents. On May 14, 2021, Hyperice supplemented its motion with additional declarations. On May 20, 2021, Hyperice again supplemented its motion with claim charts and exhibits. OUII filed a response in support of the motion with respect to the '574 patent but not with respect to the Asserted Design Patents.

On August 17, 2021, the ALJ issued Order No. 38 denying Hyperice's motion to amend the complaint and the notice of investigation to reflect proper inventorship. That same day, the ALJ issued Order No. 39 granting OUII's motion to terminate the Asserted Design Patents for lack of standing. Hyperice filed a timely petition for review of Order No. 39 and OUII filed a response to the petition.

On November 22, 2021, the Commission determined to review in part Order No. 39 and, on review, affirm with modifications the ALJ's denial of limited relief under section 337(g)(1) as to the Defaulting Respondents. The Commission adopted Order No. 39's finding that Hyperice lacked standing to assert the Asserted Design Patents in this investigation. Accordingly, the Commission terminated the Asserted Design Patents from the investigation.

On August 20, 2021, the ALJ issued the subject ID (Order No. 40) granting in part Hyperice's motion for summary determination of violation of section 337. Specifically, the ID found: (1) that Hyperice established the importation requirement as to Defaulting Respondents Kinghood, Manybo, Shenzhen Infein, and Hong Kong Yongxu, but not Kula; (2) that Defaulting Respondents Kinghood, Manybo, Shenzhen Infein, and Hong Kong Yongxu infringe one or more of claims 1-7, 9, 14, and 15 of the '574 patent; (3) that Hyperice's domestic industry products practice at least one claim of the '574 patent; and (4) that Hyperice has proven that a domestic industry exists within the United States related to articles protected by that patent. Accordingly, the ALJ found that four of the five Defaulting Respondents have infringed one or more of claims 1-7, 9, 14, and 15 of the '574 patent in violation of section 337. No petitions for review of the ID were filed.

The ALJ concurrently issued a Recommended Determination ("RD") on the issues of remedy and bonding. The RD recommended the issuance of a GEO and a CDO against Kinghood and setting the bond during the period of Presidential review in the amount of one hundred percent (100%) of the entered value.

On October 20, 2021, the Commission determined to review the ID in part and requested briefing on one issue it determined to review, and on remedy, the public interest, and bonding. 86 FR 59187 (Oct. 26, 2021). Specifically, the Commission determined to review the ID's finding that Hyperice satisfied the economic prong of the domestic industry requirement with respect to the '574 patent. The Commission adopted the ID's findings that Hyperice provided undisputed evidence that Kinghood's, Manybo's, and Shenzhen Infein's accused products infringe claims 1-7, 9, 14 and 15 of the '574 patent and that Hong Kong Yongxu's accused products infringe claims 1-7, 14 and 15 of the '574 patent. Although Hyperice provided undisputed evidence that Kula's accused products infringe claims 1-7, 9, 14 and 15 of the '574 patent, the Commission adopted the ID's finding that there is insufficient evidence of

importation of Kula's accused products. On November 3, 2021, Hyperice and OUII filed their initial written submissions regarding the issue on review, and on remedy, the public interest, and bonding. OUII further filed a response brief on November 10, 2021.

Having examined the record of this investigation, including the ID and the submissions received, the Commission has determined to affirm the ID's finding that Hyperice satisfied the economic prong of the domestic industry requirement as to the '574 patent.² Accordingly, the Commission finds a violation of section 337 as to respondents Kinghood, Manybo, Shenzhen Infein, and Hong Kong Yongxu with respect to the '574 patent.

The Commission has determined that the appropriate remedy in this investigation is: (1) a GEO prohibiting the unlicensed importation of therapeutic handheld percussive massage devices for applying percussive massage to a person's body that infringe one or more of claims 1-7, 9, 14, and 15 of the '574 patent; and (2) a CDO prohibiting respondent Kinghood from further importing, selling, and distributing infringing products in the United States. The Commission has also determined that the public interest factors enumerated in paragraphs 337(d)(1) and (f)(1), 19 U.S.C. 1337(d)(1) and (f)(1), do not preclude issuance of these remedial orders. Finally, the Commission has determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of one hundred percent (100%) of the entered value of the imported articles. The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance. The investigation is hereby terminated.

Commissioners Karpel and Schmidlein would issue CDOs directed to respondents Kinghood, Manybo, Shenzhen Infein, Kula, and Hong Kong Yongxu pursuant to 19 U.S.C. 1337(g)(1).

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant complete service for any party without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The Commission vote for this determination took place on December 16, 2021.

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.

² Chair Kearns does not join his colleagues in finding the economic prong requirement met under section 337(a)(3)(B), and therefore does not find a violation of section 337.

By order of the Commission.

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

Lisa R. Barton
Secretary to the Commission

Issued: December 16, 2021