

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SOFT PROJECTILE
LAUNCHING DEVICES,
COMPONENTS THEREOF,
AMMUNITION, AND PRODUCTS
CONTAINING SAME**

Investigation No. 337-TA-1325

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART
A FINAL INITIAL DETERMINATION OF VIOLATION OF SECTION
337; SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON REMEDY, THE
PUBLIC INTEREST, AND BONDING; EXTENSION OF THE TARGET DATE**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (“Final ID”) issued by the presiding administrative law judge (“ALJ”) finding a violation of section 337 of the Tariff Act of 1930. The Commission requests briefing from the parties on the issues under review and from the parties, interested government agencies, and interested persons on remedy, the public interest, and bonding based on the schedule set forth below. The target date is extended to April 15, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 708-5468. 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 August 26, 2022, based on a complaint filed by complainants Hasbro, Inc. of Pawtucket, Rhode Island (“Hasbro”), and Spin Master, Inc. of Los Angeles, California (“Spin Master”) (together, “Complainants”). 87 Fed. Reg. 52595-96 (Aug. 26, 2022). The complaint, as supplemented, alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain soft projectile launching devices, components thereof, ammunition, and products containing same by reason of the infringement of

one or more of claims 1-15 and 17-21 of U.S. Patent No. 8,371,282 (“the ’282 patent”) and claims 1-6 and 10-15 of U.S. Patent No. 8,640,683 (“the ’683 patent”). *Id.* at 52595. The complaint further alleges that an industry in the United States exists or is in the process of being established. *Id.* The notice of investigation names as respondents Shenzhen Yi Jin Electronics Science of Shenzhen City, China, Guangdong Yu Lee Technology Corp. of Dongguan City, China, Yu Lee Company Ltd. of Tsuen Wan, Hong Kong, and Gel Blaster Inc. f/k/a Gel Blaster, LLC of Austin, Texas (together, “the Gel Blaster Respondents”); S-Beam Precision Products Ltd. of Zhongshan City, China, Splat-R-Ball, LLC of Rogers, Arkansas, and Daisy Manufacturing Company of Rogers, Arkansas (together, “the Splat-R-Ball Respondents”); and Prime Time Toys Ltd. of Kwun Tong, Hong Kong, Prime Time Toys LLC of Pompton Lakes, New Jersey, and Easebon Services Ltd. of Kwun Tong, Hong Kong (together, “PTT”) (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) is a party to the investigation. *Id.* at 52595-96.

Complainants originally asserted that Respondents violated section 337 based on infringement of claims 1-15 and 17-21 of the ’282 patent and claims 1-6 and 10-15 of the ’683 patent. *Id.* at 52595. The Commission previously terminated the investigation with respect to claims 1-7, 9-15, 17, 18, and 21 of the ’282 patent and claims 1-4, 6, 10-12, 13 and 15 of the ’683 patent based on Complainants’ partial withdrawal of the complaint. Order No. 10 (Oct. 25, 2022), *unreviewed by* Comm’n Notice (Nov. 16, 2022); Order No. 21 (Jan. 18, 2023), *unreviewed by* Comm’n Notice (Feb. 14, 2023); Order No. 44 (May 17, 2023), *unreviewed by* Comm’n Notice (May 30, 2023). Accordingly, at the time of the evidentiary hearing, claims 8, 19, and 20 of the ’282 patent and claims 5 and 14 of the ’683 patent remained at issue.

On November 10, 2022, Complainants and Respondents stipulated that the ’282 and ’683 patents share a common specification and describe projectile launchers, soft projectiles made with “super absorbent polymers,” and systems comprised of projectile launchers and soft projectiles. Technology Stipulation (Nov. 10, 2022).

On November 21, 2022, Respondents stipulated that the importation requirement is satisfied. On May 16, 2023, Complainants and Respondents stipulated that the technical prong of the domestic industry requirement is satisfied under the ALJ’s construction of “super absorbent polymer.” On May 18, 2023, the parties stipulated regarding the disclosure of prior art.

On March 27, 2023, the ALJ issued a claim construction order. Order No. 28 (Mar. 27, 2023). The ALJ held an evidentiary hearing on May 19, and 22-23, 2023.

On April 27, 2023, the ALJ granted a motion for a summary determination that Respondents infringed claims 6, 8, 19, and 20 of the ’282 patent and claims 1, 5, and 11 of the ’683 patent. Order No. 37 (Apr. 27, 2023). Shortly thereafter, the Commission terminated the Gel Blaster Respondents and Splat-R-Ball Respondents based on settlement. Order No. 42 (May 17, 2023), *unreviewed by* Comm’n Notice (May 30, 2023); Order No. 45 (May 19, 2023), *unreviewed by* Comm’n Notice (May 30, 2023). Also, as noted above, the Commission subsequently terminated the investigation with respect to claim 6 of the ’282 patent and claims 1, and 11 of the ’683 patent. The Commission affirmed the finding of infringement against PTT

regarding claims 8, 19, and 20 of the '282 patent and claims 5 of the '683 patent but determined to review and vacate as moot the findings with respect to the Gel Blaster Respondents, Splat-R-Ball Respondents, and the withdrawn claims. Comm'n Notice (May 30, 2023).

On October 25, 2023, the ALJ issued the Final ID finding a violation of section 337 with respect to claims 8, 19, and 20 of the '282 patent and claims 5 and 14 of the '683 patent. Final ID at ii-iii. Specifically, the Final ID notes that the Commission already found that “the Accused Blasters (*i.e.*, blaster kits with blasters and ammunition)” directly infringe claims 8, 19, and 20 of the '282 patent and claim 5 of the '683 patent, and that PTT stipulated that the accused products directly infringe claim 14. *Id.* at 21-22, 38-39. The Final ID finds that PTT also induces and contributes to infringement with respect to those claims. *Id.* at 25-30, 39-41. The Final ID further finds that Complainants have satisfied the technical prong of the domestic industry requirement with respect to claims 8, 19, and 20 of the '282 patent and claims 5 and 14 of the '683 patent. *Id.* at 31-36, 41-44. Additionally, the Final ID finds that the asserted claims are not invalid as obvious under 35 U.S.C. 103 due to PTT's failure to provide a motivation to combine the references at issue and Complainants' showing on secondary considerations. *Id.* at 44-91. Finally, the Final ID finds that Complainants failed to show that a domestic industry exists, but that Complainants did show that a domestic industry is in the process of being established. *Id.* at 91-117.

On October 26, 2023, the Commission requested comments from the public and interested government agencies regarding any public interest issues raised by the ALJ's RD. *See* 88 Fed. Reg. 74510-11 (Oct. 31, 2023). The Commission received no comments from the public or government agencies and received no comments from the parties on the public interest pursuant to Commission Rule 210.50(a)(4). 19 CFR 210.50(a)(4).

On November 6, 2023, PTT filed a petition for review challenging the Final ID's findings that: (1) PTT failed to provide motivations to combine prior art to support a finding of obviousness; (2) secondary considerations support a finding of nonobviousness; and (3) Complainants showed an industry in the process of being established. Also on November 6, 2023, Complainants filed a contingent petition for review of the Final ID's finding that Complainants failed to show that a domestic industry exists. On November 14, 2023, the Complainants and PTT filed responses opposing each other's petitions, and OUII filed a response opposing both petitions.

Having examined the record of this investigation, including the Final ID, the petitions for review, and the responses thereto, the Commission has determined to review the Final ID in part. Specifically, the Commission has determined to review the Final ID's findings on obviousness and the economic prong of the domestic industry requirement. The Commission has determined not to review the remainder of the Final ID. The Commission has also determined to extend the target date to April 15, 2024.

In connection with its review, the Commission requests briefing on the following issue. The parties are requested to brief their positions with reference to the applicable law, the existing evidentiary record, and the parties' submissions during the investigation.

Please identify and discuss with citations to the record whether any argument or evidence was presented to the ALJ that a significant and unusual development(s) existed after the complaint was filed in this matter that may justify consideration of post-complaint evidence to support Complainants' domestic industry claim. *See, e.g., Certain Televisions, Remote Controls, and Components Thereof*, Inv. No. 337-TA-1263, Comm'n Op. at 20-21 (Nov. 30, 2022) (Public Vers.).

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue cease and desist order(s) that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no position on the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The Commission requests that the parties to the investigation file written submissions on the issues identified in this notice. The Commission encourages parties to the investigation, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding, which issued on October 25, 2023. The Commission further requests that Complainants and OUII submit proposed remedial orders, state the date when the asserted patents expire, provide the HTSUS subheadings under which the subject articles are imported, and supply a list of known importers of the subject article. The written submissions, exclusive of any exhibits, must not exceed 20 pages, and must be filed no later than close of business on **February 13, 2024**.

Reply submissions must not exceed 10 pages and must be filed no later than the close of business on **February 20, 2024**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1325) 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). 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. A redacted non-confidential version of the document must also be filed simultaneously with 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 January 30, 2024.

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.



Lisa R. Barton
Secretary to the Commission

Issued: January 30, 2024