

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

**CERTAIN HAND DRYERS AND HOUSINGS FOR  
HAND DRYERS**

**INV. NO. 337-TA-1015**

**ORDER NO. 15: INITIAL DETERMINATION GRANTING MOTION TO  
TERMINATE THE INVESTIGATION AS TO RESPONDENT ACL  
GROUP BASED ON CONSENT ORDER STIPULATION AND  
PROPOSED CONSENT ORDER**

(September 28, 2016)

On September 12, 2016, respondent ACL Group (Intl.) Ltd. (“ACL”) moved for termination of this investigation based on entry of a consent order. (Motion No. 1015-012.) ACL indicated in its motion that Complainant Excel Dryer, Inc. (“Excel”) does not oppose the motion. (Mot. at 1.) On September 22, 2016, the Commission Investigative Staff (“Staff”) filed a response in support of the motion. (Staff Resp. at 1.) As of the date of this order, no other responses have been received.

In accordance with Commission Rule 210.21(c), ACL has entered into a “Consent Order Stipulation” and provided a proposed “Consent Order,” both of which are attached hereto as Attachment A. Commission Rule 210.21(c)(3) sets forth certain requirements for the contents of a consent order stipulation. The Consent Order Stipulation submitted by ACL complies with the requirements of Commission Rule 210.21(c)(3).

Specifically, ACL agrees that upon entry of the consent order, ACL will “cease the importation, distribution, marketing, advertising, sale, or other transfers (other than exportation) in the United States of any hand dryers or housings for hand dryers, as illustrated by example in

¶ 43 of the Complaint, that Excel has alleged infringe the trade dress asserted in the Complaint filed on June 24, 2016 (“Subject Articles”), except under consent or license from Excel, its successors, or assignees.” (See Consent Order Stipulation (Ex. A) ¶ 4.) Pursuant to Commission Rule 210.21(c)(3)(i), ACL’s Consent Order Stipulation includes:

- (1) an admission of the Commission’s “*in rem* jurisdiction over the articles that are the subject of the Complaint and Notice of Investigation,” *in personam* jurisdiction over ACL for purposes of the Consent Order Stipulation and the proposed Consent Order, and “subject matter jurisdiction in this Investigation” (see Consent Order Stipulation ¶ 3);
- (2) a statement identifying the trade dress at issue, (see Consent Order Stipulation ¶ 4)<sup>1</sup>, and indicating that “ACL and its related companies will cease the importation, distribution, marketing, advertising, sale, or other transfers (other than exportation) in the United States of any hand dryers or housings for hand dryers,” identified by Complainant as infringing in the Complaint (see *id.*);
- (3) an express waiver by ACL of all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order entered pursuant to the Consent Order Stipulation (see Consent Order Stipulation ¶ 6);
- (4) ACL’s representation that it will cooperate with and will not seek to impede by litigation or other means the Commission’s efforts to gather information under Subpart I of the Commission’s Rules of Practice and Procedure, 19 C.F.R., Chapter II, Subchapter C, Part 210 (see Consent Order Stipulation ¶ 7);
- (5) A statement that the enforcement, modification, and revocation of the consent order will be carried out pursuant to Subpart I of Part 210 of Title 19 of the Code of Federal Regulations, incorporating by reference the Commission’s Rules of Practice and Procedure (see Consent Order Stipulation ¶ 8);

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<sup>1</sup> ACL’s Consent Order Stipulation identifies the intellectual property right at issue—the trade dress of Excel’s hand dryers in this instance—by reference to the Complaint. (see Consent Order Stipulation at ¶ 4.) Because unregistered trade dress cannot be succinctly identified by reference to a registration number, such as is the case for an issued patent or registered copyright, and because the Complaint sufficiently describes the features of the asserted trade dress, (see Compl. at ¶¶ 29–35,) the ALJ finds that the Consent Order Stipulation satisfies 19 C.F.R. § 210.21(c)(3)(B).

- (6) a statement that the Consent Order Stipulation “is for settlement purposes only and does not constitute admission by ACL that an unfair act or infringement has been committed,” (*see* Consent Order Stipulation ¶ 9); and
- (7) a statement that the Consent Order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and 19 C.F.R. Part 210 for other Commission actions, and that the Commission may require periodic compliance reports pursuant to Subpart 1 of 19 C.F.R. Part 210 to be submitted by the person entering into the consent order stipulation. (*See* Consent Order Stipulation ¶ 10.)

Because this is an intellectual property-based investigation, the Consent Order Stipulation also contains a statement, pursuant to Commission Rule 210.21(c)(3)(ii), that:

- (1) the Consent Order shall not apply with respect to any claim of a trade dress right that has been adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable. (*see* Consent Order Stipulation ¶ 11), and
- (2) a representation by ACL that it will not seek to challenge the validity or enforceability of the trade dress rights that form the basis for the complaint in any administrative or judicial proceeding to enforce the Consent Order (*see* Consent Order Stipulation ¶ 12).

In accordance with Rule 210.21(c), the Motion to Terminate Based on Consent Order Stipulation further states that “[t]here are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.” (*See* Mot. at 2.)

Commission Rule 210.50(b)(2) provides that in the case of a proposed termination by settlement agreement or consent order, the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument, although no discovery may be compelled, with respect to issues relating solely to the public interest. In any initial determination terminating an investigation by settlement agreement or consent order, the administrative law judge is directed to consider and make appropriate findings regarding the effect of the proposed settlement on the public health and welfare,

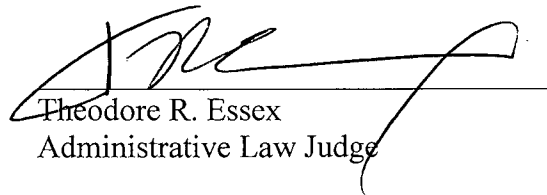
competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers. In its motion, ACL asserts that termination of this investigation is in the public interest. (*See* Mot. at 2.) “The Staff is likewise of the view that the public interest favors termination of ACL to conserve public resources.” (Staff Resp. at 6.)

Based on the pleadings filed in connection with the motion to terminate the investigation, the ALJ finds that there is no indication that termination of this investigation as to ACL based on the Consent Order Stipulation would have an adverse impact on the public interest. In addition, the termination of the investigation as to ACL, such as that proposed by the motion, is generally in the public interest.

Accordingly, Motion No. 1015-012 is **GRANTED**. This initial determination, along with supporting documentation, is hereby certified to the Commission.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders, on its own motion, a review of the Initial Determination or certain issues here.

**SO ORDERED.**

  
Theodore R. Essex  
Administrative Law Judge

**EXHIBIT A**

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, DC**

**Before The Honorable Theodore R. Essex  
Administrative Law Judge**

**IN THE MATTER OF**

**CERTAIN HAND DRYERS AND  
HOUSINGS FOR HAND DRYERS**

**Investigation No. 337-TA-1015**

**RESPONDENT ACL GROUP (INTL.) LTD.'S CONSENT ORDER STIPULATION**

Concurrent with the motion to terminate, Respondent ACL Group (Intl.) Ltd. ("ACL") hereby respectfully submits this Consent Order Stipulation.

On June 24, 2016, Complainant Excel Dryer, Inc. ("Excel") filed a Complaint with the United States International Trade Commission against ACL and other respondents. The Complaint alleges violations of section 337 based upon the importation into the United States, or in the sale of certain hand dryers and housings for hand dryers by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States. The Commission instituted this Investigation on July 26, 2016, and the Notice of Institution published in the *Federal Register* on August 1, 2016. See 81 Fed. Reg. 50549 (2016).

Pursuant to 19 C.F.R. § 210.21(c)(1) and 210.21(c)(3), ACL hereby stipulates that:

1. ACL is a corporation organized and existing under the laws of the United Kingdom and is located at Hill Farm, Sleep Hill Lane, Skelbrooke, Doncaster DN6 8LZ.
2. ACL stipulates to the entry of a Consent Order as outlined below and as expressed in the accompanying Proposed Consent Order.
3. ACL admits and acknowledges that the Commission has *in rem* jurisdiction over

the articles that are the subject of the Complaint and Notice of Investigation. ACL admits and acknowledges that the Commission has *in personam* jurisdiction over it for the purposes of this Stipulation and the Consent Order. ACL admits and acknowledges that the Commission has subject matter jurisdiction in this Investigation.

4. Upon entry of the Consent Order, ACL and its related companies will cease the importation, distribution, marketing, advertising, sale, or other transfers (other than exportation) in the United States of any hand dryers or housings for hand dryers, as illustrated by example in ¶ 43 of the Complaint, that Excel has alleged infringe the trade dress asserted in the Complaint filed on June 24, 2016 (“Subject Articles”), except under consent or license from Excel, its successors, or assignees.

5. Upon entry of the Consent Order, to the extent that ACL or its related companies has any inventory of Subject Articles in the United States intended for sale in the United States, ACL or its related companies will re-export or have such commercial inventory re-exported outside of the United States.

6. ACL expressly waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order.

7. ACL will cooperate with and will not seek to impede by litigation or other means the Commission’s efforts to gather information under Subpart I of Part 210, Title 19 of the Code of Federal Regulations.

8. The enforcement, modification, and revocation of the Consent Order will be carried out pursuant to Subpart I of Part 210, Title 19 Code of Federal Regulations, incorporating by reference the Commission’s Rules of Practice and Procedure.

9. ACL’s signing of this Stipulation is for settlement purposes only and does not constitute admission by ACL that an unfair act or infringement has been committed.

10. The Consent Order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and Part 210, Title 19 of the Code of Federal Regulations, and the Commission may require periodic compliance reports pursuant to subpart I of Part 210, Title 19 Code of Federal Regulations.

11. The Consent Order shall not apply with respect to any trade dress that has been adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable.

12. ACL will not seek to challenge the validity of the trade dress rights in any administrative or judicial proceeding to enforce the Consent Order.

Dated: September 12, 2016

By: 

\_\_\_\_\_  
Mrs Kerry Pawson  
Director  
ACL Group (Intl.) Ltd  
Hill Farm  
Sleep Hill Lane  
Skelbrooke, Doncaster DN6 8LZ  
United Kingdom



**EXHIBIT B**

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, DC**

**Before The Honorable Theodore R. Essex  
Administrative Law Judge**

**IN THE MATTER OF**

**CERTAIN HAND DRYERS AND  
HOUSINGS FOR HAND DRYERS**

**Investigation No. 337-TA-1015**

**[PROPOSED] CONSENT ORDER**

The United States International Trade Commission has instituted an investigation at the request of Excel Dryer, Inc. (“Excel”) against Respondent ACL Group (Intl.) Ltd. (“ACL”). The Complaint alleges violations of section 337 based upon the importation into the United States, or in the sale of certain hand dryers and housings for hand dryers by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States. The Commission instituted this Investigation on July 26, 2016, and the Notice of Institution published in the Federal Register on August 1, 2016. *See* 81 Fed. Reg. 50549 (2016).

Without admitting that an unfair act or infringement has been committed or that ACL will not sell for importation, import, distribute, market, advertise, sell, or otherwise transfer any kind of hand dryer product in the United States at all, ACL has executed a consent order stipulation and moved for an Initial Determination terminating this investigation as to ACL by entry of a consent order. ACL has executed a Consent Order Stipulation consistent with Commission Rules.

Pursuant to 19 C.F.R. § 210.21(c), the motion is hereby GRANTED and the following is SO ORDERED:

A. ACL has admitted and acknowledged that the Commission has *in rem* jurisdiction over the articles that are the subject of the Complaint and Notice of Investigation. ACL has admitted and acknowledged that the Commission has *in personam* jurisdiction over it for the purposes of this Stipulation and the Consent Order. ACL has admitted and acknowledged that the Commission has subject matter jurisdiction in this Investigation.

B. Effective immediately upon the entry of this Consent Order, ACL and its related companies shall not sell for importation, import, or sell after importation in the United States any hand dryers or housings for hand dryers, that Excel has alleged infringe the trade dress asserted in the Complaint filed on June 24, 2016 (“Subject Articles”), directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation of the Subject Articles in the United States except under consent or license from Excel.

C. Upon entry of the Consent Order, to the extent that ACL or its related companies has any inventory of Subject Articles in the United States intended for sale in the United States, ACL or its related companies will re-export or have such commercial inventory re-exported outside of the United States.

D. Effective immediately upon the entry of this Consent Order, ACL and its related companies shall cease and desist from importing into the United States and distributing Subject Articles alleged by the Complaint filed on June 24, 2016 to infringe the asserted trade dress.

E. ACL shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of this Consent Order.

F. ACL shall cooperate with and shall not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

G. ACL and its officers, directors, employees, agents, and any entity or individual acting on its behalf and with its authority shall not seek to challenge the validity or enforceability of the asserted trade dress in any administrative or judicial proceeding to enforce the Consent Order.

H. If the asserted trade dress is held invalid or unenforceable by a court or agency of competent jurisdiction or as to any article that has been found or adjudicated not to infringe the asserted trade dress in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such invalid or unenforceable trade dress.

I. This Investigation is hereby terminated as to ACL, provided, however, that enforcement, modification, or revocation of the Consent Order shall be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

BY ORDER OF THE COMMISSION:

Date:

\_\_\_\_\_  
Lisa Barton, Secretary  
U.S. International Trade Commission

**CERTAIN HAND DRYERS AND  
HOUSING FOR HAND DRYERS**

Inv. No. 337-TA-1015

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER 15** has been served by hand upon the Commission Investigative Attorney, Monisha Deka, Esq., and the following parties as indicated, on **September 28, 2016**.



Lisa R. Barton, Secretary  
U.S. International Trade Commission  
500 E Street, SW, Room 112  
Washington, DC 20436

**On Behalf of Complainant Excel Dryer, Inc.:**

Andrew F. Pratt, Esq.  
**VENABLE LLP**  
575 Seventh Street, NW  
Washington, DC 20004

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

**On behalf of Respondents Alpine Industries, Inc. and Jinhua Kingwe Electrical Co. Ltd.:**

Jordon L. Coyle, Esq.  
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1152 15<sup>th</sup> Street, NW  
Washington, DC 20005

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

**On Behalf of Respondent ACL Group (Intl.) Ltd.:**

Eric Parnes, Esq.  
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- Via Hand Delivery  
 Via Express Delivery  
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 Other: \_\_\_\_\_

**On Behalf of Respondent Zhejiang Aike Appliance Co., Ltd.:**

Jamie D. Underwood, Esq.  
**ALSTON & BIRD LLP**  
950 F Street, NW  
Washington, DC 20004

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

**CERTAIN HAND DRYERS AND  
HOUSING FOR HAND DRYERS**

**Inv. No. 337-TA-1015**

Certificate of Service – Page 2

**On Behalf of Respondents FactoryDirectSale and Toolsempire.:**

Ronald J. Pabis, Esq.  
**GREENBERG TRAURIG LLP**  
Suite 1000  
2101 L Street, N.W.  
Washington, DC 20037

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

**Respondents:**

US Air Hand Dryer  
c/o Kristen Nguyen  
9221 Rose Parade Way  
Sacramento, CA 95826

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

Fujian Oryth Industrial Co., Ltd.  
(a/k/a Oryth)  
No.863 Xiahe Road, Siming District  
Xiamen, Fujian, 361006, CHINA

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

Penson & Co.  
Room 1011  
N 218 Hengfeng Road  
Zhabei District  
Shanghai, CHINA

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

Taizhou Dihour Electrical Appliances Co. Ltd.  
a/k/a Dihour  
North Dashi Class I Highway  
Daxi Town, Wenling City  
ZheJiang Province 317525  
CHINA

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

TC Bunny Co., Ltd.  
Room 201, Building 418  
Madang Road  
Shanghai, CHINA

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

Sovereign Industrial (Jiaxing) Co. Ltd.  
d/b/a Vinovo  
No. 111 Xiuxin Road, Xiuzhou Industrial Park  
Jiaxing Zhejiang Jiaxing 314000  
CHINA

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 Via Express Delivery  
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