

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN PERSONAL TRANSPORTERS,
COMPONENTS THEREOF, AND
PACKAGING AND MANUALS THEREFOR**

And

**CERTAIN PERSONAL TRANSPORTERS
AND COMPONENTS THEREOF**

Inv. No. 337-TA-1007
Inv. No. 337-TA-1021
(Consolidated)

Order No. 34: Initial Determination

On March 28, 2017, complainants Segway Inc., DEKA Products Limited Partnership and Ninebot (Tianjin) Technology Co., Ltd. filed a motion to “terminate this Investigation without prejudice as to Respondent Hovershop for good cause.” Motion Docket No. 1007/1021-49.

The motion states:

Pursuant to Ground Rule 5(e), counsel for Complainants hereby certifies that they have made reasonable, good-faith efforts to resolve the matter at issue with all parties who have appeared in this Investigation. On March 22, 2017, counsel for Complainants contacted ITC Staff Attorney Brian Koo and Respondents Swagway LLC, Jetson Electric Bikes LLC, Powerboard LLC, Changzhou Airwheel Technology Co., Ltd., and Hangzhou Chic Intelligent Technology Co., Ltd. to inform them of Complainants’ intention to file a motion to partially terminate the investigation with respect to Hovershop. On March 23, Complainants discussed this motion with Staff and Respondents during a meet-and-confer call, and inquired as to their position with respect to this motion. Staff indicated that it would take a position after viewing the motion. The above-identified Respondents indicated that they do not take a position on the motion.

Mot. at 2. On March 30, 2017, the Commission Investigative Staff (“Staff”) filed a response supporting the pending motion. The Staff, however, notes that “it is counter to Commission

policy to designate a termination as either ‘with’ or ‘without’ prejudice.” *See* Staff at 1 n.1 citing *Certain Switches and Products Containing Same*, Inv. No. 337-TA-589, Order No. 35 (Aug. 21, 2007). No other response was filed.

Complainants argue:

Complainants named Hovershop as a proposed respondent in their Complaint after procuring a dynamically balancing personal transporter from Hovershop that infringes U.S. Patent Nos. 6,302,230 and 7,275,607, which are asserted in this Investigation. When filing the complaint, Complainants provided contact information for Hovershop that was on the packaging of the purchased product, and which complainants confirmed by reviewing Hovershop’s website. However, neither the U.S. International Trade Commission nor Complainants have been able to confirm service of the Complaint, or any other documents in this Investigation, on Hovershop at that address. Complainants additionally researched other potential addresses for Hovershop, and attempted service at those as described below. However, Complainants have not been able to confirm service at any of these alternative addresses either.

Because this Investigation cannot conclude with the uncertain status of Hovershop (Hovershop is not participating in this Investigation, but has also not formally refused service), Complainants request that the ALJ issue an initial determination terminating the Investigation as to Hovershop without prejudice for good cause pursuant to Rule 210.21(a)(1). Complainants certify that there are no agreements, written or oral, express or implied, between Complainants and Hovershop concerning the subject matter of this investigation.

Mot. at 1-2.

Complainants argue:

As no confirmation of service of the complaint has been obtained, Complainants cannot seek a default judgment against Hovershop. Complainants also cannot withdraw the Complaint as to Hovershop while maintaining their allegations that Hovershop has violated section 337, 19 U.S.C. § 1337, by importing and/or selling dynamically balancing personal transporters accused in this Investigation.

Because Hovershop has effectively evaded service, termination under Commission Rule 210.21(a)(1) for good cause is proper. Therefore, Complainants respectfully request that the ALJ grant their Motion and issue an initial determination terminating the Investigation without prejudice as to Respondent Hovershop for good cause.

Mem. at 2.

Commission Rule 210.21(a)(1) provides:

(a) *Motions for termination.* (1) Any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein, or for good cause other than the grounds listed in paragraph (a)(2) of this section. A motion for termination of an investigation based on withdrawal of the complaint, or for good cause, shall contain a statement that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation, or if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission along with the motion. . . . The presiding administrative law judge may grant the motion in an initial determination upon such terms and conditions as he deems proper.

19 C.F.R. § 210.21(a)(1).

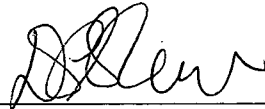
Complainants argue that termination for good cause is appropriate in this investigation because complainants and the Commission have repeatedly been unsuccessful in serving Hovershop with the complaint and notice of investigation; and complainants have been unable to serve discovery, and other materials in this investigation. Furthermore, it is argued that there is no formal evidence that Hovershop is resisting service. *See* Mot. at 2; Mem. at 2-5. The Staff agrees that termination under Commission Rule 210.21(a)(1) for good cause is appropriate under these circumstances. *See* Staff at 3. Complainants argue: “Neither the parties nor the public interest would be prejudiced by termination of Hovershop, and judicial economy would be preserved by termination.” Mem. at 7. The Staff states that it is not aware of any extraordinary circumstances that would preclude granting the pending motion to terminate and that public policy supports termination of Hovershop in order to conserve public and private resources and bring this investigation to a speedy conclusion. *See id.* The administrative law judge does not find any evidence to the contrary.

In compliance with Commission Rules, complainants state that “there are no agreements, written or oral, express or implied, between Complainants and Hovershop concerning the subject

matter of this investigation.” See Mot. at 2; 19 C.F.R. § 210.21(a)(1).

Accordingly, it is the initial determination of the undersigned that Motion No. 1007/1021-49 is granted.¹

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 contained herein.



David P. Shaw
Administrative Law Judge

Issued: April 13, 2017

¹ As noted by the Staff, it is not proper to designate a termination as either “with” or “without” prejudice.

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PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Order No. 34 (Initial Determination)** has been served by hand upon the Commission Investigative Attorney, **Brian Koo, Esq.**, and the following parties as indicated, on APR 13 2017.



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

**FOR COMPLAINANTS SEGWAY INC.; DEKA PRODUCTS LIMITED
PARTNERSHIP; AND NINEBOT (TIANJIN) TECHNOLOGY CO., LTD.:**

Tony V. Pezzano, Esq.
HOGAN LOVELLS US LLP
875 Third Avenue
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- Via Hand Delivery
- Express Delivery
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- Other: _____

FOR RESPONDENT SWAGWAY LLC:

Lei Mei, Esq.
MEI & MARK LLP
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Washington, DC 20006

- Via Hand Delivery
- Express Delivery
- Via First Class Mail
- Other: _____

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FOR RESPONDENTS RAZOR USA LLC AND INVENTIST, INC.:	
Jonathan J. Engler, Esq. ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P. 1133 Connecticut Avenue, NW, 12th Floor Washington, DC 20036	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
FOR RESPONDENT JETSON ELECTRIC BIKES LLC:	
Ezra Sutton, Esq. EZRA SUTTON, P.A. 900 Route 9 North, Suite 201 Woodbridge, NJ 07095	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
FOR RESPONDENT HANGZHOU CHIC INTELLIGENT TECHNOLOGY CO., LTD.:	
Qingyu Yin, Esq. FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP 901 New York Avenue, NW Washington, DC 20001-4413	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
FOR RESPONDENT POWERBOARD LLC:	
L. Peter Farkas, Esq. HALLORAN FARKAS + TOIKKA, LLP 1101 30 th Street, NW, Suite 500 Washington, DC 20007	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

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FOR RESPONDENT CHANGZHOU AIRWHEEL TECHNOLOGY CO., LTD.:	
Harold H. Davis, Jr., Esq. K&L GATES LLP Four Embarcadero Center, Suite 1200 San Francisco, CA 94111	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
RESPONDENT HOVERSHOP:	
Hovershop 330 East Orange Thorpe Avenue, Suite K Placentia, CA 92871	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____