

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN LIP BALM PRODUCTS,
CONTAINERS FOR LIP BALM, AND
COMPONENTS THEREOF**

Inv. No. 337-TA-961

**ORDER NO. 3: REGARDING TARGET DATE, CASE MANAGEMENT
CONFERENCE, AND PROCEDURAL SCHEDULE**

(July 27, 2015)

By publication of a notice in the Federal Register on July 15, 2015, the U.S. International Trade Commission ordered that:

Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain lip balm products, containers for lip balm, and components thereof by reason of infringement of one or more of claims 1-3, 5-7, 10-18, 20-22, and 25-30 of the '391 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

80 F.R. 41513 (July 15, 2015).

The Complainants in this Investigation are eos Products, LLC and The Kind Group LLC, and the Respondents are OraLabs, Inc., CVS Health Corporation, CVS Pharmacy, Inc., Walgreens Boots Alliance, Inc., Walgreen Co., Dollar Tree, Inc., Dollar Tree Stores, Inc., Five Below Inc., Wuxi Sunmart Science and Technology Co., Ltd., a/k/a Wuxi Sunmart Group Co., Ltd., a/k/a Wuxi Shengma Science & Technology Co., Ltd., and Wuxi Sunmart Plastic Co., Ltd. The Office of Unfair Import Investigations is also a party in this Investigation.

The target date for this Investigation shall be November 11, 2016, which is sixteen months from the date that the Notice of Investigation was published in the Federal Register. *See* 19 C.F.R. § 210.51(a). Consequently, any final initial determination would be due by Friday, July 8, 2016. *See* 19 C.F.R. § 210.42(a)(1)(i).

Initial Case Management Conference

Pursuant to Ground Rule 6, I will hold the initial case management conference in this Investigation on **Monday, August 10, 2015 at 10:00 AM ET**. The conference will be held telephonically. Complainants shall be responsible for setting up the teleconference number, ensuring a court reporter is present to transcribe the call, and filing the transcript of the teleconference on EDIS. As set forth in Ground Rule 6.3, each party shall submit a case management statement two (2) business days prior to the scheduled initial case management conference on **Wednesday, August 5, 2015** by the close of business.

Procedural Schedule

I hereby order that the Procedural Schedule attached hereto as Appendix A is now in effect. A technology tutorial will commence at 8:45 AM ET on Monday, November 9, 2015. The tutorial shall be immediately followed by a *Markman* hearing, which shall conclude no later than 4:45 PM ET on Tuesday, November 10, 2015. The pre-hearing conference in this Investigation shall commence at 8:45 AM ET on Friday, March 18, 2016, and shall conclude no later than 11:45 AM that day. The Hearing in this Investigation shall commence at 8:45 AM ET on Monday, March 21, 2016, and shall conclude no later than 11:45 AM ET on Friday, March 25, 2016.

The parties shall meet and confer to jointly propose deadlines for those events in the Procedural Schedule where no deadline is indicated, including deadlines for the Commission Investigative Staff. The parties may also propose modifications to the listed deadlines. Further, the parties may jointly propose including additional deadlines, including deadlines for the Commission Investigative Staff. The parties shall submit a joint procedural schedule at the same time the parties submit their initial case management statements.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Thomas B. Pender", written over a horizontal line.

Thomas B. Pender
Administrative Law Judge

APPENDIX A

PROCEDURAL SCHEDULE, CASE NO. 337-TA-961	
Event	Date
Initial Case Management Conference	Monday, August 10, 2015
Deadline for Propounding Ground Rule 6.2 Interrogatories	Friday, August 14, 2015
File identification of expert witnesses, including their expertise and curriculum vitae	
Deadline for Ground Rule 7.1 Disclosure of Priority Dates and Dates of Conception/Reduction to Practice	Friday, September 4, 2015
Exchange list of claim terms for construction	Friday, September 11, 2015
Exchange proposed claim constructions	Friday, September 18, 2015
File joint claim construction chart	Friday, September 25, 2015
First settlement conference	
Submit first settlement conference joint report	
Deadline for Ground Rule 7.2 Disclosure of Products	Friday, October 2, 2015
Deadline for Ground Rule 7.3 Disclosure of Domestic Industry Contentions	Friday, October 9, 2015
File initial claim construction briefs	Friday, October 16, 2015
File reply claim construction briefs	Friday, October 30, 2015
Technology Tutorial	Monday, November 9, 2015
Markman Hearing	Monday, November 9, 2015 through Tuesday, November 10, 2015
Deadline for Ground Rule 7.4 Disclosure of Infringement Contentions	Friday, December 4, 2015
Deadline for Ground Rule 7.5 Disclosure of Invalidity Contentions	Friday, December 4, 2015
Issue Order Construing Terms (*tentative date*)	Friday, December 11, 2015
Fact discovery cutoff and completion	Friday, December 18, 2015

PROCEDURAL SCHEDULE, CASE NO. 337-TA-961

Event	Date
Second settlement conference	
Submit second settlement conference joint report	
Serve initial expert reports	Friday, January 8, 2016
Deadline for filing summary determination motions	Monday, January 18, 2016
Serve rebuttal expert reports	Friday, January 22, 2016
Expert discovery cutoff and completion	Friday, February 5, 2016
Third settlement conference	
Submit third settlement conference joint report	
File requests for receipt of evidence without a witness	
Serve proposed exhibit lists	
Serve proposed direct exhibits (including witness statements), with available proposed physical and demonstrative exhibits	
File objections to proposed direct exhibits (including witness statements)	
File responses to objections to proposed direct exhibits (including witness statements)	
Serve proposed rebuttal exhibits (including witness statements), with available proposed rebuttal physical and demonstrative exhibits	
File pre-hearing statements and briefs (Private Parties)	Friday, February 19, 2016
File pre-hearing statement and brief (Staff)	
Submit on electronic media proposed direct and proposed rebuttal exhibits (including witness statements) with available proposed direct and proposed rebuttal physical and demonstrative exhibits	Friday, February 19, 2016
Deadline for filing motions <i>in limine</i>	
File objections to proposed rebuttal exhibits (including witness statements)	

PROCEDURAL SCHEDULE, CASE NO. 337-TA-961

Event	Date
File responses to objections to proposed rebuttal exhibits (including witness statements)	
File responses to motions <i>in limine</i> (Private Parties)	Friday, March 4, 2016
File responses to motions <i>in limine</i> (Staff)	
Pre-hearing conference	Friday, March 18, 2016
Hearing	Monday, March 21, 2016 through Friday, March 25, 2016
File initial post-hearing briefs and final exhibit lists	Friday, April 8, 2016
Submit final direct and rebuttal exhibits (including witness statements) with direct and rebuttal physical and demonstrative exhibits	Friday, April 8, 2016
File reply post-hearing briefs (Private Parties)	Friday, April 22, 2016
File reply post-hearing brief (Staff)	
Initial Determination Due	Friday, July 8, 2016
Target date for completion of investigation	Friday, November 11, 2016

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PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDERNO. 3** has been served by hand upon the **Commission Investigative Attorney, Peter Sawert, Esq.**, and the following parties as indicated, on 7/28/2015



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

On Behalf of Complainants EOS Products, LLC and The Kind Group LLC:

Louis S. Mastriani, Esq.
ADDUCI, MASTRIANI & SCHAUMBERG, LLP
1133 Connecticut Avenue, N.W., 12 Floor
Washington, DC 20036

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

On Behalf of Respondents Five Below Inc., OraLabs, Inc.; CVS Health Corporation; CVS Pharmacy, Inc., Walgreens Boots Alliance, Inc.; Walgreen Co.; Wuxi Sunmart Science and Technology Co., Ltd.; and Wuxi Sunmart Plastic Co., Ltd.:

Jeremy A. Younkin
FOLEY HOAG LLP
Seaport West
155 Seaport Boulevard
Boston, Massachusetts 02210-2600

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

DOLLAR TREE, INC.
500 Volvo Parkway
Chesapeake, VA 23320

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

**CERTAIN LITHIUM METAL OXIDE CATHODE
MATERIALS, LITHIUM-ION BATTERIES FOR POWER
TOOL PRODUCTS CONTAINING SAME, AND POWER
TOOL PRODUCTS WITH LITHIUM-ION BATTERIES
CONTAINING SAME**

Inv. No. 337-TA-951

Certificate of Service – Page 2

DOLLAR TREE STORES, INC
500 Volvo Parkway
Chesapeake, VA 23320

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