

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN ACTIVE COMFORT
FOOTWEAR**

Inv. No. 337-TA-660

**ORDER NO. 12: INITIAL DETERMINATION GRANTING MOTIONS TO
TERMINATE THE INVESTIGATION BASED UPON A
SETTLEMENT AGREEMENT AND WITHDRAWAL OF THE
COMPLAINT**

(July 13, 2009)

On June 17, 2009, Complainants Masai Marketing & Trading AG and Masai USA Corp. ("Masai") filed a motion to terminate the Investigation in its entirety by reason of a confidential Settlement Agreement with Respondent RYN Korea Co. Ltd. ("RYN"). (Motion Docket No. 660-011 ("Termination Motion").) Masai submitted a non-confidential version of the Settlement Agreement pursuant to Commission Rules. (Motion Docket No. 660-012.) Masai states that other than the Settlement Agreement, there are no other agreements, written or oral, express or implied between Masai and RYN concerning the subject matter of this Investigation.

In support of its Termination Motion, Masai argues that termination is "in the interest of the public and administrative economy in avoiding needless litigation and conserving public and private resources." (Mot. at 2.) While the settlement was only with RYN and not the other named respondents, The Tannery and A Better Way to Health, Masai requests that the Investigation be terminated with respect to all respondents because RYN is the only producer of the accused products in this Investigation. (*Id.*) Masai certifies that Respondent RYN Korea Co. Ltd. does not oppose this motion. (*Id.* at 3.) However, Masai states that Commission Investigative Staff ("Staff") has reserved her position on the Termination Motion. (*Id.* at 3.)

2009 JUL 13 PM 2:30

OFFICE OF THE SECRETARY

PUBLIC VERSION

On June 24, 2009, Masai filed an additional motion specifically withdrawing its Complaint against Respondents The Tannery (“Tannery”) and A Better Way to Health (“Better Way”) pursuant to Commission Rule 210.21(a)(1). (Motion Docket No. 660-013 (“Withdrawal Motion”).) In this motion, Masai affirms that there are no agreements, written or oral, express or implied between Masai, Tannery and Better Way. Masai also notes that Staff and RYN do not oppose its Withdrawal Motion, and that termination would conserve public, private and administrative resources. (Withdr. Mot. at 2; Withdr. Mot. Mem. at 8.)

On June 25, 2009, Staff responded to the Termination Motion. Staff supports the motion because it complies with Commission Rule 210.21(b) and because the Settlement Agreement’s provisions do not appear to be contrary to the public interest. (Staff Resp. at 1.) In addition, Staff supports the Withdrawal Motion and termination of the Investigation in its entirety. (*Id.* at 2, 5.)

The Commission’s Rules permit termination of the Investigation in whole or in part with respect to one or more respondents on the basis of a settlement. 19 C.F.R. § 210.21(b)(1). The settlement appears to resolve the dispute between Masai and RYN. In satisfaction of 19 C.F.R. § 210.21(b)(1), Masai has attached both public and confidential versions of the Settlement Agreement with RYN, and has made a statement that there are no other agreements with RYN. (*Id.*)

In the case of a proposed termination by settlement agreement,

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. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

PUBLIC VERSION

19 C.F.R. § 210.50(b)(2). Masai argues that it is in the interest of the public and administrative economy to grant the motion. (Mot. at 2.) Staff believes that granting the joint motion would not be contrary to the public interest. (Staff Resp. at 1.) Furthermore, termination of litigation under these circumstances as an alternative method of dispute resolution is generally in the public interest.

The Commission's Rules also permit termination of the Investigation in whole or in part with respect to one or more respondents on the basis of withdrawal of the complaint. 19 C.F.R. § 210.21(a)(1). In satisfaction of 19 C.F.R. § 210.21(a)(1), Masai has made a statement that there are no agreements with Tannery and Better Way concerning the subject matter of the Investigation. (*Id.*) Furthermore the Withdrawal Motion is unopposed, and would result in the termination of this Investigation in its entirety. Termination under these circumstances would conserve the resources of all involved, and would not be contrary to the public interest.

For good cause shown, it is the Initial Determination of the Administrative Law Judge that Complainants' Termination and Withdrawal Motions (Motion Docket Nos. 660-011, 660-012, and 660-013) should be GRANTED and the Investigation terminated in its entirety.

This Initial Determination, along with a public copy of the Settlement Agreement,¹ 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,

¹ The Commission's Rules require both confidential and public versions of settlement agreements. See 19 C.F.R. § 210.21(b)(1). A copy of the confidential version or public version of the Settlement Agreement between Masai and RYN is attached to the respective confidential and public versions of this Initial Determination.

PUBLIC VERSION

pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues herein.

SO ORDERED.

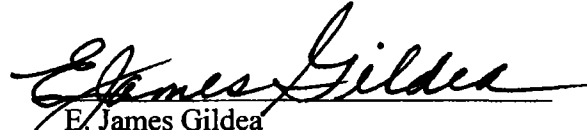

E. James Gildea
Administrative Law Judge

EXHIBIT 1

PUBLIC VERSION

Subject to FRCP 408 For Settlement Only

Agreement

THIS AGREEMENT (this "Agreement") is made the 16 day of June, 2009.

BETWEEN:

Masai Marketing & Trading AG, having a place of business at Badstrasse 14, CH-8590 Romanshorn, Switzerland, and Masai USA Corp., having a place of business at 515 North River, Hailey, Idaho 83333 and all world wide affiliates (collectively "Masai"); and

RYN Korea Co., Ltd., having a place of business at Poong-Chun Building 1st Floor, Yuk-Sam Dong, Kang-Nam, Seoul, Korea, and all world wide affiliates ("RYN").

RECITALS:

- A. Masai is a manufacturer of certain active footwear and the owner of various intellectual property rights related thereto;**
- B. RYN is a manufacturer of certain active footwear and the owner of various intellectual property rights related thereto;**
- C. Masai and RYN have been engaged in various litigation and legal proceedings involving various intellectual property rights related to certain active footwear;**
and

D. Masai and RYN now wish to enter into a settlement agreement that will terminate legal proceedings between Masai and RYN in accordance with the terms set forth in this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES SET OUT HEREIN, the parties agree as follows:

1. [

]

2. Pursuant to this Agreement, Masai shall immediately move to terminate the action pending before the U.S. International Trade Commission and New York Federal Court and [

]

3. [

]

4. [

]

5. The settlement terms of this Agreement contained within brackets (“[. . .]”) are confidential and should not be disclosed to the public, except as agreed by the parties in the form of a joint press release or if the disclosure is required by law, regulations or court or government agency order. [

]

6. RYN and Masai will issue a joint press release stating that Masai and RYN have reached a world wide settlement for disputes on patents and trademarks, and both parties agree to respect the other party's patents and trademarks.

7. RYN and Masai should first attempt to resolve a dispute arising out of or relating to the settlement terms of this Agreement through consultation and/or negotiation. In the event there is no resolution of such dispute within sixty (60) days after either party has provided written notice of the dispute, the dispute shall be finally settled through the International Chamber of Commerce Arbitration process. The place of the arbitration is Singapore. This Agreement is governed by the laws of the Republic of Singapore.

8. [


]

9. This Agreement contains the entire agreement and understanding between the parties with respect to the subject matter hereof, and shall not be modified by any offer, proposal, statement or representation, oral or written, made by or for any party. This Agreement may be amended only in writing and executed by Masai and RYN. This Agreement may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute but one and the same Agreement.

In witness whereof, the parties have caused their duly authorized representatives to execute this Agreement as of the date set out at the head of this Agreement.

Masai Marketing & Trading AG

RYN Korea Co. Ltd.

By: 
Title: HEAD OF FINANCE LEGAL COUNSEL

By: _____
Title: _____

Masai USA Corp.

By: Michael C. C.
Title: Managing Director

In witness whereof, the parties have caused their duly authorized representatives to execute this Agreement as of the date set out at the head of this Agreement.

Masai Marketing & Trading AG
Masai USA Corp.

RYN Korea Co. Ltd.

By: _____

By:  _____

Title: _____

Title: C.F.O.

Masai USA Corp.

By: _____

Title: _____

Attachment A

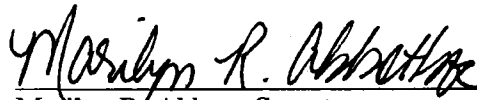
**CONTAINS CONFIDENTIAL BUSINESS INFORMATION
SUBJECT TO ADMINISTRATIVE PROTECTIVE ORDER**

Attachment B

**CONTAINS CONFIDENTIAL BUSINESS INFORMATION
SUBJECT TO ADMINISTRATIVE PROTECTIVE ORDER**

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER 12** has been served by hand upon the Commission Investigative Attorney, **Aarti J. Shah, Esq.**, and the following parties as indicated, on July 13, _____ **2009**.



Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

COMPLAINANTS:

Masai Marketing & Trading AG
Masai USA Corporation
Kevin M. O'Brien, Esq.
BAKER & MCKENZIE LLP
815 Connecticut Avenue, NW
Washington, DC 20006-4078
P-202-452-7000
F-202-452-7074

() Via Hand Delivery
 Via Overnight Mail
() Via First Class Mail
() Other: _____

RESPONDENTS:

RYN Korea Co., Ltd.
Lyle B. Vander Schaaf
Jay H. Reiziss
BRYAN CAVE LLP
1155 F Street, NW
Washington, DC 20004
P-202-508-6000
F-202-508-6200

() Via Hand Delivery
 Via Overnight Mail
() Via First Class Mail
() Other: _____

**IN THE MANNER OF CERTAIN ACTIVE
COMFORT FOOTWEAR**

337-TA-660

The Tannery
39 Brattle Street
Cambridge, MA 02138

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

A Better Way to Health
1954 Dairy Road
West Melbourne, FL 32904

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

**IN THE MANNER OF CERTAIN ACTIVE
COMFORT FOOTWEAR**

337-TA-660

PUBLIC MAILING LIST

Sherry Robinson
LEXIS - NEXIS
9443 Springboro Pike
Miamisburg, OH 45342

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

Kenneth Clair
Thomson West
1100 Thirteen Street, NW, Suite 200
Washington, DC 20005

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

(PARTIES NEED NOT SERVE COPIES ON LEXIS OR WEST PUBLISHING)