

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

**In the Matter of
CERTAIN APPARATUS AND METHODS
OF OPENING CONTAINERS**

Investigation No. 337-TA-1255

COMMISSION OPINION

This investigation is before the Commission for final determinations on remedy, the public interest, and bonding during the period of Presidential review. On February 3, 2022, the Commission determined not to review an initial determination (“ID”) (Order No. 11), issued by the then-presiding former chief administrative law judge (“CALJ”), granting complainant’s motion for summary determination of violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”), based on infringement of claim 12 of U.S. Patent No. 10,519,016 (“the ’016 patent”) by the seven remaining respondents, each of which has defaulted. 87 Fed. Reg. 7499-501 (Feb. 9, 2022). Accordingly, the Commission adopted the former CALJ’s finding of violations of section 337 and requested written submissions from the parties in the investigation, interested government agencies, and other interested parties on the issues of remedy, the public interest, and bonding. *Id.* at 7500-01.

Upon consideration of the submissions received, the Commission has determined that the appropriate form of relief is a general exclusion order (“GEO”) prohibiting the unlicensed importation of container opening apparatuses that practice claim 12 of the ’016 patent. The container opening apparatuses that are subject to the GEO are as follows: apparatus(es) and products which are used for opening canned beverage containers by removing the top of the can. The Commission has also determined that the public interest factors enumerated in section

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337(d)(1), 19 U.S.C. § 1337(d)(1), do not preclude issuance of the exclusion order. Finally, the Commission has determined to set the bond during the period of Presidential review at 100 percent of the entered value of the imported articles subject to the GEO, pursuant to 19 U.S.C. § 1337(j).

I. BACKGROUND

A. Procedural History

On March 18, 2021, the Commission instituted this investigation based on a complaint filed by Draft Top, LLC (“Draft Top”) of Long Beach, New Jersey. 86 Fed. Reg. 14765 (Mar. 18, 2021). The complaint, as supplemented, alleges violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain apparatuses and methods of opening containers by reason of infringement of claim 12 of the ’016 patent. *Id.* The complaint further alleges that a domestic industry (“DI”) exists. *Id.* The notice of institution (“NOI”) named nine respondents: (1) KKS Enterprises Co., Ltd. (“KKS”) of Hangzhou, China; (2) Kingskong Enterprises Co., Ltd. (“Kingskong”) of Hangzhou, China; (3) Du Zuojun of Shenzhen, China; (4) WN Shipping USA, Inc. (“WN Shipping”) of Inwood, New York; (5) Shuje Wei of Pomona, California; (6) Express Cargo Forwarded, Ltd. (“Express Cargo”) of Los Angeles, California; and (7) Hou Wenzheng of Hebron, Kentucky (collectively, the “Defaulting Respondents”); (8) Mintiml of Yangzhou, Jiangsu, China; and (9) Tofba International, Inc. (“Tofba”) of Hawthorne, California. *Id.* The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.*

The Commission subsequently terminated respondents Tofba and Mintiml from the investigation based on Draft Top’s withdrawal of the complaint as to those respondents. *See* Order No. 6 (May 12, 2021), *unreviewed by* Comm’n Notice (May 27, 2021) (terminating

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Tofba); Order No. 9 (Aug. 11, 2021), *unreviewed by* Comm’n Notice (Aug. 24, 2021) (terminating Mintiml due to complainant’s inability to serve the complaint and NOI).

On July 29, 2021, the Commission found the seven remaining respondents in default for failing to respond to the complaint and NOI and failing to show cause why they should not be found in default. Order No. 8 (July 12, 2021), *unreviewed by* Comm’n Notice (July 30, 2021). These Defaulting Respondents are the only respondents remaining in this investigation.

On August 20, 2021, Draft Top filed a motion seeking summary determination that the Defaulting Respondents have violated section 337 and requesting that the Commission issue a GEO and set a 300 percent bond for any importations of infringing goods during the period of Presidential review.¹ On September 17, 2021, Draft Top filed a supplement to its motion concerning certain “inadvertently omitted” evidence of its domestic expenditures in 2020.² That same day, OUII filed a response supporting Draft Top’s motion and request for remedial relief except on the issue of bonding, submitting instead that a bond of 100 percent, not 300 percent, is appropriate.³ No Defaulting Respondent filed a response to Draft Top’s motion, nor has any Defaulting Respondent ever “contested Draft Top’s allegations that they have violated and continue to violate section 337.” ID at 2.

On December 20, 2021, the former CALJ issued the subject ID granting Draft Top’s motion and finding violations of section 337 by the Defaulting Respondents. Specifically, the ID finds that: (i) Draft Top has satisfied the importation requirement as to the Defaulting

¹ Complainant’s Motion for Summary Determination Under Section 337 of the Tariff Act of 1930, as Amended, and Memorandum of Law in Support (“CMemo.”) (Aug. 20, 2021).

² Supplement to Complainant’s Motion for Summary Determination (Sept. 17, 2021).

³ Commission Investigative Staff’s Response to Complainant’s Motion for Summary Determination Under Section 337 of the Tariff Act of 1930, as Amended (Sept. 17, 2021) (“OResp.”).

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Respondents, ID at 8-10; (ii) the Commission has subject matter, personal, and in rem jurisdiction in this investigation, *id.* at 10-11; (iii) the Defaulting Respondents' accused products practice claim 12 of the '016 patent, *id.* at 14-24; (iv) claim 12 of the '016 patent has not been shown invalid, *id.* at 31; and (v) Draft Top has satisfied the technical and economic prongs of the domestic industry requirement as to the '016 patent, *id.* at 24-35. No party petitioned for review of the ID.

The CALJ's recommended determination ("RD") on remedy and bonding recommends that the Commission issue a GEO and set a 100 percent bond for any importations of infringing products during the period of Presidential review. *Id.* at 35-42.

The Commission did not receive any submissions on the public interest from the parties pursuant to Commission Rule 210.50(a)(4) (19 C.F.R. § 210.50(a)(4)). The Commission also did not receive any submissions on the public interest from members of the public in response to the Commission's *Federal Register* notice. 87 Fed. Reg. 238-39 (Jan. 4, 2022).

As stated above, on February 3, 2022, the Commission determined not to review the ID's grant of summary determination of violations of section 337. 87 Fed. Reg. 7499-501. The Commission's notice also requested written submissions on remedy, the public interest, and bonding. *Id.* at 7500-01.

On February 17, 2022, Draft Top and OUII filed initial written submissions in response to the Commission's notice.⁴ On February 24, 2022, Draft Top and OUII filed reply written

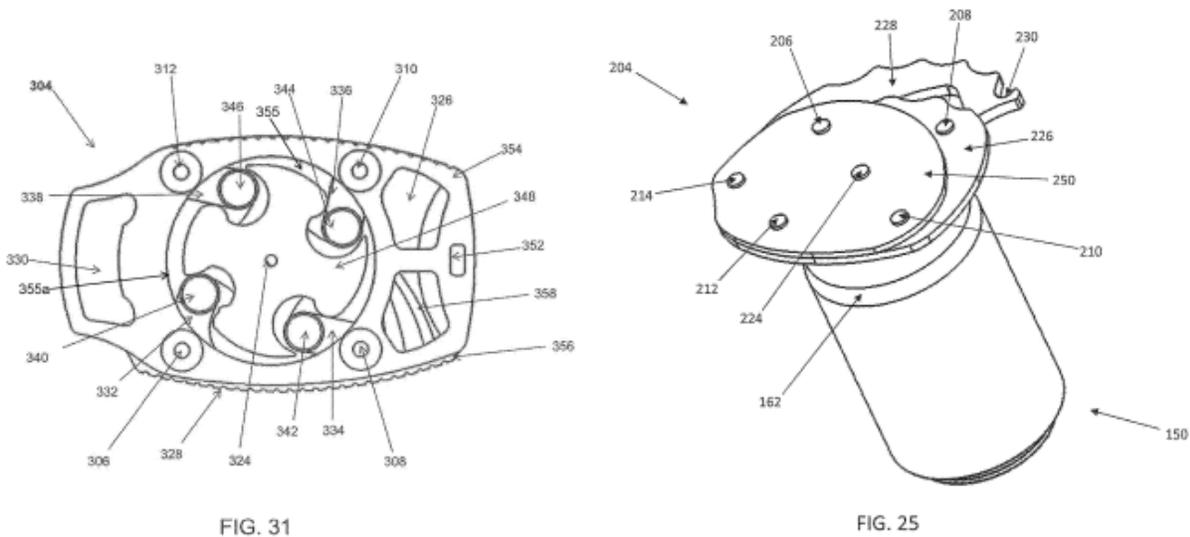
⁴ Complainant's Submission on Remedy, Public Interest, and Bonding (Feb. 17, 2022) ("CRemBr."); Written Submission of the Office of Unfair Import Investigations on Remedy, the Public Interest, and Bonding (Feb. 17, 2022) ("ORemBr.").

submissions.⁵ No other submissions were received.

B. The Asserted '016 Patent

The '016 patent, titled “Apparatus and Methods of Opening Containers,” issued on December 31, 2019, and names Sean P. Kelly and Armand Joseph Ferranti, Jr. as inventors. '016 patent at cover page. The '016 patent is exclusively assigned to Draft Top. ID at 12 (citing Compl. ¶ 22; Compl. Ex. 1).

The '016 patent is directed to “an apparatus and method for removing the entire planar top portion of a sealed container such as a sealed can.” '016 patent, 1:17-20. Figures 25 and 31 of the '016 patent depict one embodiment of the claimed container-opening device:



Id., Figs. 25, 31.

Draft Top asserts only claim 12 of the '016 patent in this investigation, which is reproduced below.

⁵ Complainant’s Reply Submission on Remedy, Public Interest, and Bonding (Feb. 24, 2022); Reply Submission of the Office of Unfair Import Investigations on Remedy, the Public Interest, and Bonding (Feb. 24, 2022) (“OReplyRemBr.”).

Claim 12	
12.0	A device, comprising:
12.1	a base having a first surface opposing a second surface and having an opening extending between the first and second surfaces, the opening having an inner face;
12.2	a plurality of arms, each of said plurality of arms rotatably coupled to the first surface of the base at a respective first end of each arm
12.3	and comprising a respective blade disposed at a respective second end of each arm, each respective blade disposed within the opening of the base,
12.4	wherein each of said plurality of arms is configured to rotate with respect to the base about a respective arm axis orthogonal to the first surface of the base, and
12.5	each of the respective blades is configured to rotate about a respective blade axis orthogonal to the first surface of the base and parallel to the arm axes;
12.6	and a lever operatively coupled to the base such that, when the lever is in a first position, each respective second end is a first distance from the inner face of the opening and,
12.7	when the lever is operated toward a second position, each respective second end is rotated outward toward the inner face of the opening
12.8	such that each respective blade is configured to engage an object disposed between the inner face of the opening and each respective blade.

ID at 12; '016 patent, cl. 12.

C. The Products at Issue

1. The Domestic Industry Product

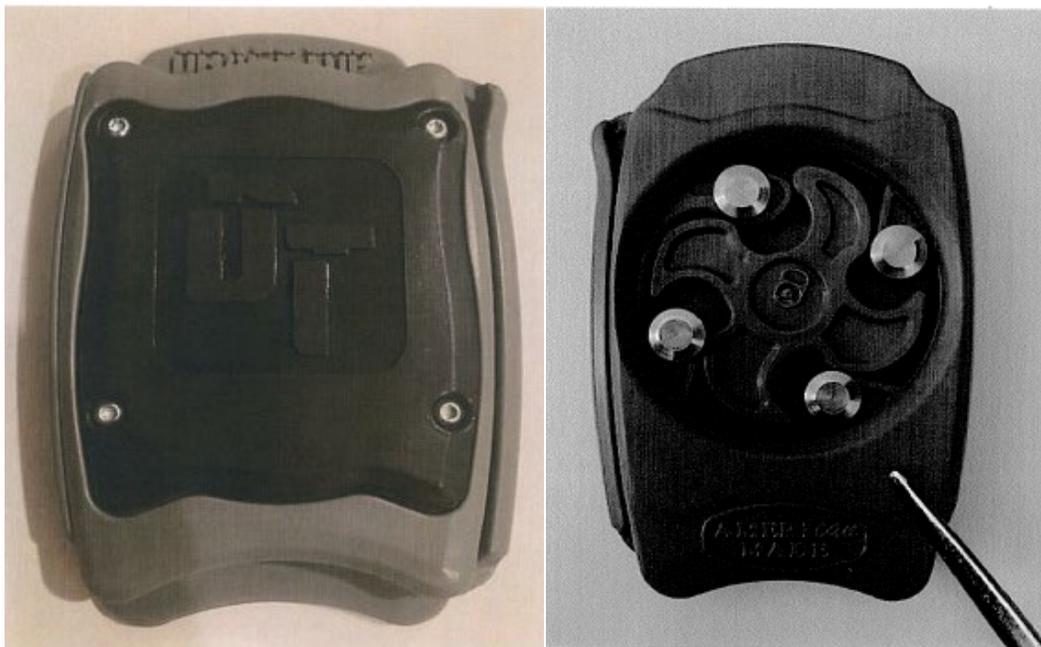
Draft Top's domestic industry product is known by the product name "Draft Top" (the "DI Product"). ID at 5 (citing Compl. ¶ 5; *see also id.* at n.1). Draft Top describes its device as "a can opener used to remove the top of a beverage can in a way that provides a smooth drinking

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surface around the top lid of the can, which would allow the consumer to drink from the can as if it were a glass or a cup.” CMemo. at 1.



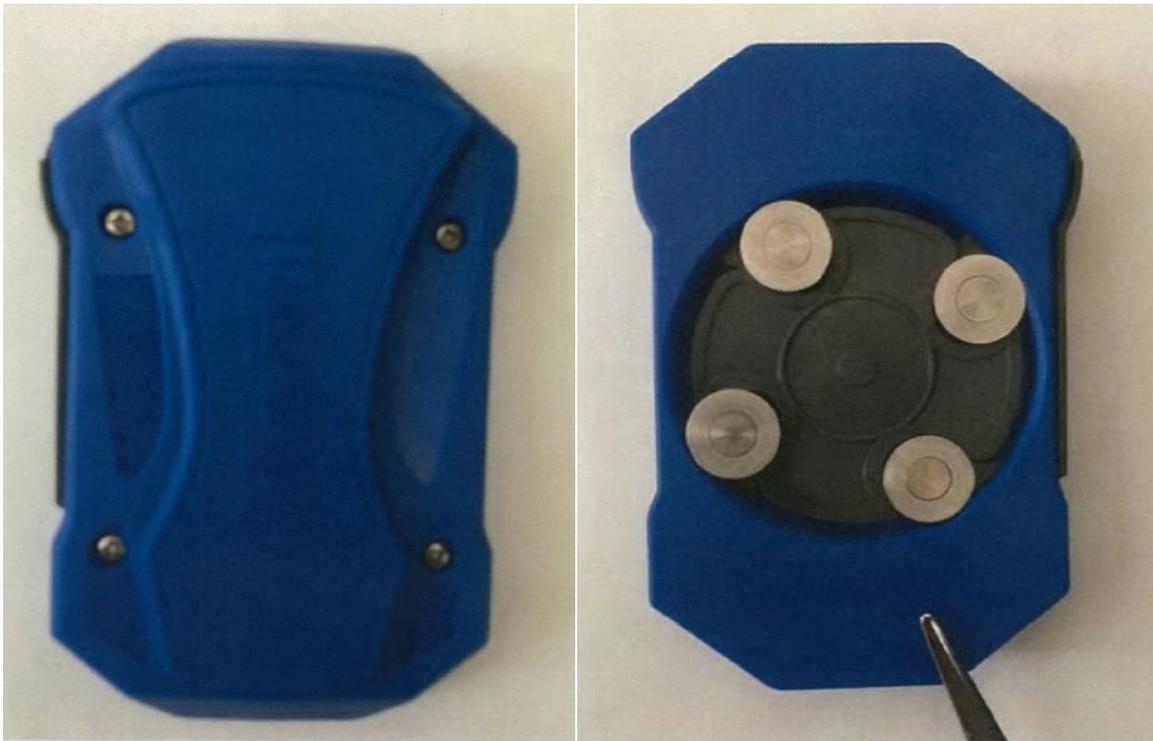
ID at 25 (images of the DI Product in its product packaging (top and bottom views)).



Id. (images of the DI Product (top and bottom views)).

2. The Accused Products

The accused products that were found to infringe claim 12 of the '016 patent are can-opening devices that are designed to be used to create an open drinking container by removing the lid off the can. ID at 4 (citing Compl. ¶ 31); *see also* 86 Fed. Reg. 14765 (describing the accused products as “apparatus(es) and products which are used for opening canned beverages by removing the top of the can.”). An exemplary accused product that was found to infringe claim 12 of the '016 patent—the Mintiml-branded⁶ “Go Swing Topless Can Opener Ez-Drink Opener” product sold by respondent Du Zuojun—is shown below:



ID at 17 (images of Du Zuojun’s accused product (top and bottom views)); *see id.* at 3, 23-24.

⁶ Although Mintiml was terminated from the investigation, Mintiml-branded can-opening products were still accused in the investigation as several Defaulting Respondents import and/or sell after importation Mintiml-branded can-opening products. ID at 2 n.2; *see id.* at 3-4, 23.

II. REMEDY, THE PUBLIC INTEREST, AND BONDING

Having found violations of section 337 in this investigation, the Commission provides its determinations as to the appropriate remedy, whether the public interest considerations preclude issuance of such remedy, and the amount of bond to be imposed on infringing imports during the period of Presidential review.

A. Remedy

The Commission has “broad discretion in selecting the form, scope, and extent of the remedy.” *Viscofan, S.A. v. Int’l Trade Comm’n*, 787 F.2d 544, 548 (Fed. Cir. 1986). Draft Top and OUII both submit that a GEO is appropriate in this investigation. RD at 36; CRemBr. at 1-6; ORemBr. at 4-14; OReplyRemBr. at 1-4.⁷ The RD recommends that the Commission issue a GEO under either section 337(d)(2)(A) or section 337(d)(2)(B). RD at 35-40.

The Commission’s authority to issue a GEO when respondents appear to contest the investigation is found in section 337(d)(2).⁸ Section 337(d)(2) provides that “[t]he authority of the Commission to order an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that—(A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or (B) there is a pattern of violation of this

⁷ Draft Top did not request a limited exclusion order (“LEO”) or cease and desist orders against any of the Defaulting Respondents. RD at 35 n.13.

⁸ Section 337(g)(2) applies to the consideration of whether to issue a GEO in default cases “only when no respondent appears to contest the investigation.” 19 U.S.C. § 1337(g)(2); *Certain Handbags, Luggage, Accessories, & Packaging Thereof*, Inv. No. 337-TA-754, Comm’n Op. at 5 n.3 (June 13, 2012). Here, because Tofba appeared before being terminated from the investigation based on Draft Top’s withdrawal of the complaint’s allegations as to Tofba, section 337(d)(2), not section 337(g)(2), applies. *Id.*; see Order No. 6 (May 12, 2021), *unreviewed by* Comm’n Notice (May 27, 2021) (terminating Tofba).

section and it is difficult to identify the source of infringing products.” 19 U.S.C. § 1337(d)(2); *see also* 19 C.F.R. § 210.50(c).

As explained below, the Commission finds that the statutory requirements for a general exclusion from entry of infringing articles under section 337(d)(2), 19 U.S.C. § 1337(d)(2), are met in this investigation. Based on the evidence in the record, the Commission finds that: (1) a GEO is necessary to prevent circumvention of an exclusion order limited to the products of the Defaulting Respondents; and (2) there is a pattern of violation of section 337 and a difficulty identifying the source of infringing products.

1. Circumvention of a Limited Exclusion Order

OUII (but not Draft Top) argued that a GEO is warranted under section 337(d)(2)(A). RD at 36, 36 n.16; OResp. at 37-41. More specifically, OUII argued that, because “there is ample direct evidence that Defaulting Respondents have operated using multiple identities and are selling what appear to be identical products through different storefronts on multiple different Internet platforms,” a GEO “is necessary to prevent the circumvention of an exclusion order limited to the named Respondents.” OResp. at 37.

The Commission agrees with the RD’s finding that the evidence supports the conclusion of likely circumvention of an LEO directed to the Defaulting Respondents. RD at 37 (citing *Certain Toner Cartridges, Components Thereof, & Systems Containing Same*, Inv. No. 337-TA-1174, Comm’n Op. at 16 (Dec. 17, 2020) (“In determining whether conditions are ripe for circumvention, the Commission has considered whether it is difficult to identify sellers or manufacturers, whether previous attempts to address infringement have been unsuccessful, and whether infringing operations could be easily replicated.”)).

The RD finds that “the evidence shows that it is difficult to identify sellers and manufacturers.” *Id.* In particular, per the RD, “the evidence shows that one of the originally

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named Respondents, Mintiml, may not be a legal entity, but is instead ‘a trade name relating to many businesses.’” *Id.* (citing EDIS Doc. ID 746512 at 2). Further, “the evidence suggests that Mintiml ‘operates through shell corporations, uses trade names, provides false or non-existent addresses to U.S. vendors, and takes steps to obscure its actual operational locations, its actual corporate names, its actual corporate officers and directors, and other current contact information.’” *Id.* (citing EDIS Doc. ID 746512 at 2). The RD also notes that Draft Top attempted to serve Mintiml at four separate addresses, including a false address that Mintiml provided to Amazon. *Id.* (citing EDIS Doc. ID 746512 at 2). In addition, per the RD, “the evidence shows that the products of at least three of the other Defaulting Respondents appear identical to the Mintiml accused product and include Mintiml branding.” *Id.* (citing Compl. Exs. 4, 6, 10, 11).

The RD also finds that there is evidence “that other Defaulting Respondents are not the manufacturer or primary source of the Accused Products, but ‘instead are various freight-forwarders and drop-shippers used to deliver the products listed on numerous different storefronts on different Internet platforms.’” *Id.* (citing OResp. at 38). For example, per the RD, the evidence shows that (i) “the Shuje Wei Accused Product was bought on the M-xi Xia Outdoor Store storefront on aliexpress.com, but was shipped from Respondent Shuje Wei” (*id.* at 37-38 (citing Compl. Ex. 6)), and (ii) “three other Defaulting Respondents sold their goods on other storefronts” (*id.* at 38 (citing Compl. Ex. 7 (indicating that Express Cargo’s product was sold on the “Life is Beautiful dropship Store”); Compl. Ex. 11 (indicating that Hou Wenzheng’s product was sold on the “LT Tools Store”); Compl. Ex. 5 (indicating that WN Shipping’s product was sold on eBay and shipped from organeconnex.com))). Accordingly, the RD finds

that “the evidence shows that the Defaulting Respondents would be able to easily replicate their infringing operations by selling at other online stores.” *Id.*

The RD further finds that “the fact that the Defaulting Respondents have ignored proceedings in this Investigation (which resulted in them being found in default) suggests that they would not abide by the terms of any [LEO] the Commission may impose.” *Id.* While the Commission agrees that the Defaulting Respondents’ ignoring of the proceedings below suggests future noncompliance with a LEO directed to them, the Commission notes that such evidence alone is insufficient to establish that a GEO is necessary to prevent circumvention of a LEO directed to respondents found in default.

Based on the evidence in the record, the Commission finds that a GEO is warranted under section 337(d)(2)(A) to prevent the circumvention of an LEO directed solely to the Defaulting Respondents.

2. Pattern of Violation and Difficulty Identifying the Source of Infringing Products

Both Draft Top and OUII argued that a GEO is also warranted under section 337(d)(2)(B). RD at 38-39; CMemo. at 23-27; OResp. at 42-44. Draft Top asserted that “numerous companies from around the world, predominately from China, . . . use false or non-existent addresses in the marketing and sale of the infringing products or use non-existent, non-registered tradenames . . . on the internet which makes finding them difficult and impossible.” CMemo. at 24. OUII agreed, asserting that “the evidence shows that multiple entities are involved in the manufacture, sale, and distribution of the accused products,” and that “the evidence establishes that the Defaulting Respondents engage in a number of practices that mask the source of the accused product and that as a result there is difficulty in identifying the source of the infringing products.” OResp. at 42-43.

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The Commission agrees with the RD’s finding that there is a widespread pattern of unauthorized use. RD at 39. The RD finds that, in addition to the products sold by the Defaulting Respondents, the evidence shows that (i) “other entities [] sell the Accused Products online” and (ii) these entities “appear to sell their products under fictitious names and do not list their addresses.” *Id.* (citing CMemo. at 25; 8/18/21 Ferranti Decl.⁹ ¶¶ 47, 49 (identifying companies with the names BNS Promo Inc., Amax Promo Inc., and ADA Promo Inc. that sell a product named “Bamboo Topless Can Opener”). The RD also finds that, as noted above, “the evidence shows that the Accused Products are sold through online storefronts associated with multiple different companies and that some of the Defaulting Respondents are freight-forwarders or drop-shippers of the Accused Products.” *Id.*

The Commission also agrees with the RD’s finding that “identifying the seller and importer of the Accused Products has proven to be difficult.” *Id.* The RD notes that, as the Commission recognized in *Loom Kits*, “[a] large number of anonymous infringing sales on the Internet . . . supports a determination that it is difficult to identify the source of infringing products under subparagraph (B).” *Id.* (quoting *Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm’n Op. at 13 (June 26, 2015); citing also *Certain Pumping Bras*, Inv. No. 337-TA-988, Comm’n Op. at 11 (Apr. 7, 2017) (“by conducting transactions through the Internet, on Amazon.com for example, suppliers of infringing products are able to hide their true identities”)).

Here, the RD finds, “[t]he evidence shows that some of the Defaulting Respondents use generic and non-descript packaging that omits their names.” *Id.* For example, “the evidence

⁹ Declaration of Armand Ferranti, attached as Exhibit 3 to Draft Top’s motion (“8/18/21 Ferranti Decl.”). Mr. Ferranti is a co-founder of Draft Top and a named inventor of the ’016 patent. 8/18/21 Ferranti Decl. ¶ 1; ’016 patent at cover page.

shows that Accused Products from Respondents WN Shipping, Express Cargo, KKS, and Kingskong were sold in plain cardboard boxes that do not identify the manufacturer of the product.” *Id.* at 39-40 (citing Compl. Ex. 5 at 4; Compl. Ex. 7 at 3; Compl. Ex. 9 at 3). The RD also finds that “the evidence shows that at least one entity has attempted to obscure its identity by falsely identifying itself as a different entity.” *Id.* at 40. Specifically, “the evidence shows that an unidentified entity used the address of Respondent Tofba when shipping its products,” yet Tofba introduced a declaration stating that it “never imported or forwarded the infringing products.” *Id.* (citing CMemo. at 25-26 (citing EDIS Doc. IDs 740375 and 740378)). Thus, per the RD, “the identity of the seller and importer of these products remains unknown.” *Id.*

Based on the evidence in the record, the Commission finds that a GEO is warranted under section 337(d)(2)(B) because there is a pattern of violation of section 337 and a difficulty identifying the source of infringing products. Accordingly, having found the requirements of section 337(d)(2) met, the Commission determines that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed importation of “apparatus(es) and products which are used for opening canned beverage containers by removing the top of the can” that practice claim 12 of the ’016 patent.

B. Public Interest

Section 337 requires the Commission, upon finding a violation of section 337, to issue an exclusion order “unless, after considering the effect of such exclusion upon 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, it finds that such articles should not be excluded from entry.” 19 U.S.C. § 1337(d)(1).

The statute requires the Commission to consider and make findings on the public interest in every case in which a violation is found regardless of the quality or quantity of public interest

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information supplied by the parties. 19 U.S.C. § 1337(d)(1). Thus, the Commission publishes a notice inviting the parties as well as interested members of the public and interested government agencies to gather and present evidence on the public interest at multiple junctures in the proceeding.¹⁰ 19 U.S.C. § 1337(d)(1); *see, e.g.*, 19 C.F.R. § 210.50(a)(4); 87 Fed. Reg. 7499-501.

In this investigation, the Commission received comments on the public interest from only Draft Top and OUII. *See* CRemBr. 6-8; ORemBr. 15-16; OReplyRemBr. at 4-5. As discussed below, the Commission finds that the evidence of record does not indicate that issuance of the GEO would be contrary to the public interest.

As to the first public interest factor, there is no evidence or argument that excluding the infringing products would adversely affect the public health and welfare, and the Commission agrees with Draft Top and OUII that there would be no such adverse effect. *See* CRemBr. at 7 (“[T]he exclusion of imported infringing can-opening devices will have no adverse effect whatsoever on public health and welfare.”); ORemBr. at 15 (The accused products “are devices for opening canned beverages, and are not necessary to fulfill any health, safety, or welfare needs, such as medical devices, pharmaceuticals, or military hardware important to national security and defense.”).

The Commission also agrees with Draft Top and OUII that no record evidence suggests any adverse effect on the second (competitive conditions in the U.S. economy), third (production of like or directly competitive articles in the U.S.), or fourth (U.S. consumers) public interest factors. *See* ORemBr. at 16 (“OUII is not aware of any information that would indicate that

¹⁰ The Commission did not ask the former CALJ to make findings regarding the public interest when it instituted this investigation, so the RD does not address that issue. *See* 86 Fed. Reg. 14765.

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issuance of [a GEO] would be contrary to [these factors].”); CRemBr. at 6 (“None of these factors would be implicated by the issuance of a [GEO] on the subject goods . . .”).

For example, Draft Top’s DI Product (its sole product) is manufactured entirely within the U.S. by Draft Top’s contract manufacturer, Daystar Manufacturing LLC, and Draft Top represents that it “has the capacity to meet current and projected demand in the United States and to replace the volume of articles subject to the requested [GEO].” CRemBr. at 7; CPIStat.¹¹ at 2. Draft Top also submits that a GEO “will have no negative effect on competitive conditions in the U.S. economy” and “no effect on U.S. production of like or directly competitive articles” where “[t]here are innumerable can openers on the market that remove the top lid of beverage containers, which could replace the subject articles if they were excluded.” CRemBr. at 7-8 (“There are innumerable types, brands, styles, and models of can-opening devices” in the U.S. and “myriad choices of can openers in the marketplace.”); CPIStat. at 2.

Accordingly, based on the record of this investigation, the Commission determines that the public interest does not preclude issuance of the GEO.

C. Bonding

If the Commission enters an exclusion order, a respondent may continue to import and sell its products during the 60-day period of Presidential review under a bond in an amount determined by the Commission to be “sufficient to protect the complainant from any injury.” 19 U.S.C. § 1337(j)(3); *see also* 19 C.F.R. § 210.50(a)(3).

When reliable price information is available in the record, the Commission has often set the bond in an amount that would eliminate the price differential between the domestic product and the imported, infringing product. *See Certain Microsphere Adhesives, Processes for Making*

¹¹ Complainant Draft Top, LLC’s Public Interest Statement, EDIS Doc ID 732243 (Jan. 28, 2021) (“CPIStat.”).

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Same, & Prods. Containing Same, Including Self-stick Repositionable Notes, Inv. No. 337-TA-366, USITC Pub. No. 2949, Comm'n Op. at 24 (Jan. 16, 1996). The Commission has also used a reasonable royalty rate to set the bond amount where a reasonable royalty rate could be ascertained from the evidence in the record. *See, e.g., Certain Audio Digital-to-Analog Converters & Prods. Containing Same*, Inv. No. 337-TA-499, Comm'n Op. at 25 (Mar. 3, 2005). Where the record establishes that the calculation of a price differential is impractical or there is insufficient evidence in the record to determine a reasonable royalty, the Commission has imposed a 100 percent bond. *See, e.g., Certain Liquid Crystal Display Modules, Prods. Containing Same, & Methods Using the Same*, Inv. No. 337-TA-634, Comm'n Op. at 6-7 (Nov. 24, 2009). The complainant bears the burden of establishing the need for a bond. *Certain Rubber Antidegradants, Components Thereof & Prods. Containing Same*, Inv. No. 337-TA-533, USITC Pub. No. 3975, Comm'n Op. at 40 (July 21, 2006).

The Commission has determined to impose a bond in the amount of 100 percent of the entered value of the subject articles during the period of Presidential review. The RD correctly finds, and the parties do not dispute, that, “[w]ith little information on pricing or royalty rates, it is impossible to calculate a bond rate based on the average price differential between the [DI Product] and the Accused Products.” RD at 41 (citing *Certain Digital Photo Frames & Image Display Devices & Components Thereof*, Inv. No. 337-TA-807, Comm'n Op. at 17, USITC Pub. No. 4549 (July 2015) (“The Commission finds that there is little or no evidence in the record of this investigation as to pricing of the defaulting respondents’ products. . . . The Commission has traditionally set a bond of 100 percent of the entered value of the products under these circumstances.”)).

III. CONCLUSION

For the reasons detailed above, the Commission (1) determines to issue a GEO prohibiting the unlicensed importation of “apparatus(es) and products which are used for opening canned beverage containers by removing the top of the can” that infringe claim 12 of the ’016 patent; (2) finds that the public interest does not preclude issuance of the GEO; and (3) sets the bond during the period of Presidential review at 100 percent of the entered value of the articles subject to the GEO.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: May 6, 2022