

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN EARPIECE DEVICES HAVING
POSITIONING AND RETAINING STRUCTURE
AND COMPONENTS THEREOF**

Inv. No. 337-TA-912

**ORDER NO. 6: DENYING RESPONDENT'S MOTION FOR SUMMARY
DETERMINATION AND FOR TERMINATION OF
INVESTIGATION**

(June 2, 2014)

On May 8, 2014, Respondent Monster Technology International, Ltd. ("MTIL") filed a motion for summary determination of no violation of Section 337 for lack of importation and for termination of the investigation as to MTIL. (Motion Docket No. 912-001). Attached to the motion was a Statement of Undisputed Material Facts ("SMF"), a Memorandum of Law (hereinafter, "Respondent's Brief"), and a supporting declaration by David Tognotti (hereinafter, "Tognotti Decl. I"). On May 19, 2014, Complainant Bose Corporation ("Bose") filed both a response to the motion for summary determination and termination of the investigation (hereinafter, "Bose's Brief") and a response to Respondent's SMF ("RSMF"). On May 28, 2014, MTIL filed a reply ("MTIL Reply") to Bose's opposition to the motion for summary determination on lack of importation and attached a supplemental affidavit with corroborating exhibits (hereinafter, "Tognotti Decl. II").

I. BACKGROUND

On April 2, 2014, the Commission instituted this investigation based on a complaint filed by Bose on February 26, 2014, alleging that MTIL had violated Section 337 by importing, selling for importation, or selling after importation into the United States certain earpiece devices

having positioning and retaining structure and components thereof that infringe U.S. Patent No. 8,311,253 (“the ‘253 Patent”) held by Bose. (Respondent’s Brief at 4). One of the allegedly infringing products is the Monster iSport Intensity headphones sold in the United States. (*Id.*). In support of its opposition to the present motion for summary determination, Bose provides a photograph of the Monster iSport Intensity headphone’s packaging. On the packaging, the names and addresses of both Monster, LLC (based in Las Vegas, NV) and MTIL appear in plain view. (*Id.*). MTIL is a corporation based in County Clare, Ireland with no offices in the United States. (Respondent’s Brief at 3).

II. LEGAL STANDARD

A. Summary Determination

Commission Rule 210.18 governs summary determination, and states, *inter alia*, that:

The determination sought by the moving party shall be rendered if the pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

19 CFR § 210.18(b).

The evidence “must be viewed in the light most favorable to the party opposing the motion...with doubt resolved in favor of the nonmovant.” *Crown Operations Int’l, Ltd. v. Solutia, Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002); *see also Xerox Corp. v. 3Com Corp.*, 267 F.3d 1361, 1364 (Fed. Cir. 2001) (“When ruling on a motion for summary judgment, all of the nonmovant’s evidence is to be credited, and all justifiable inferences are to be drawn in the nonmovant’s favor.”). “Issues of fact are genuine only if the evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party.” *Id.* at 1375 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The trier of fact should “assure itself that there

is no reasonable version of the facts, on the summary judgment record, whereby the nonmovant could prevail, recognizing that the purpose of summary judgment is not to deprive a litigant of a fair hearing, but to avoid an unnecessary trial.” *EMI Group North America, Inc. v. Intel Corp.*, 157 F.3d 887, 891 (Fed. Cir. 1998).

“Where an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary judgment is not appropriate.” *Sandt Technology, Ltd. v. Resco Metal and Plastics Corp.*, 264 F.3d 1344, 1357 (Fed. Cir. 2001) (Dyk, C.J., concurring). “In other words, ‘[s]ummary judgment is authorized when it is quite clear what the truth is,’ [citations omitted], and the law requires judgment in favor of the movant based upon facts not in genuine dispute.” *Paragon Podiatry Laboratory, Inc. v. KLM Laboratories, Inc.*, 984 F.2d 1182, 1185 (Fed. Cir. 1993).

III. DISCUSSION

MTIL moves for summary determination that it does not import, sell for importation, or sell after importation any accused infringing earpiece devices. MTIL also moves for termination of the investigation as to MTIL based on lack of importation.

A. Tognotti’s Corporate Involvement

MTIL contends that it lacks any United States offices, any direction or control over their United States affiliates, or any product sales or distribution outside of Europe. (SMF ¶ 5-6). Bose contends that Mr. Tognotti’s contradictory LinkedIn profile listing his current position as “General Manager, Vice President of Operations and General Counsel at Monster Cable Products, Inc.” and his current residence as the “San Francisco Bay Area” (*i.e.* near San Francisco, CA) demonstrates MTIL’s involvement and influence in the United States market. (RSMF ¶ 5-6). Bose further contends Mr. Tognotti’s LinkedIn position renders his declaration

no more than conclusory, self-serving statements of an in-house attorney. (Bose's Brief at 7). Bose also contends Mr. Tognotti's first declaration raises genuine disputes as to his position in MTIL as he is referred to by multiple titles without clarification. (*Id.* (citing Tognotti Decl. I ¶ 1,3)). MTIL asserts with Mr. Tognotti's second declaration that he is both a "Director" and the "Corporate Secretary" and one of MTIL's "Key People." (Tognotti Decl. II ¶ 1-4).

Considering the arguments and evidence presented by MTIL and Bose, it is unclear what involvement Mr. Tognotti has in MTIL. MTIL provided only minimal evidence to demonstrate Mr. Tognotti is a Director and a Secretary of MTIL and thus would have knowledge of those facts about which he avers in his declaration. The supplemental declaration and exhibits provided by MTIL do not clarify what Mr. Tognotti's actual role is in the organization and utterly fail to address the contradictory information provided on his public LinkedIn profile. For example, the Hoover Report relied on MTIL lists Mr. Tognotti as one of three "Key People" to the corporation, but fails to list his corporate title while the other two individuals are identified as "Director." (MTIL Reply at Exhibit 1). Similarly, while the Irish Examiner news article quotes the directors on their intentions to "continue to develop the current activities of the company," the news article fails to identify the directors or any other source by name. (MTIL Reply at Exhibit 2). Thus, I agree with Bose that there are questions regarding the propriety of Mr. Tognotti's declaration. However, I do not agree that the evidence demonstrates MTIL's involvement and influence in the United States market. (*See* RSMF at ¶ 5-6).

B. MTIL's Address on Monster iSport Intensity Headphone's Packaging

MTIL contends that it lacks any involvement in the manufacture, importation, distribution, or sale of the allegedly infringing product in the United States. (SMF ¶ 7). Bose contends the appearance of MTIL's address on the accused Monster iSport Intensity headphone's

packaging raises a dispute regarding MTIL's involvement in the United States market. (RSMF ¶ 7-9). MTIL does not dispute the appearance of its international address on product packaging. (SMF ¶ 14). Rather, MTIL asserts the address appears alongside their domestic affiliate's address on all United States packaging because both corporations use the same "global packaging" to reduce costs. (MTIL Reply at 1). MTIL further contends that its "principal activity" is for the European and Canadian markets, as well as business support activities "worldwide, outside the Americas." (Tognotti Decl. II ¶ 5).

The sum evidence MTIL puts forth supporting its position that it has no involvement in the importation, sale for importation, or sale after importation of any accused device, including the Monster iSport Intensity headphones, is the sworn declarations of Mr. Tognotti and a news article from the Irish Examiner. MTIL asserts that its address appears alongside their domestic affiliate's address on all United States packaging because both corporations use the same "global packaging" to reduce costs, but MTIL fails to provide any evidence to substantiate Mr. Tognotti's claim to that effect. Further, the news article relied on by MTIL states "The **principal activity** of [MTIL] is the supply chain management for all Monster Audio Visual Accessories for the European and Canadian markets." (*See* Tognotti Decl. II at ¶ 5 (emphasis added)). Thus, the news article does not rule out that MTIL also has activities in the United States. Accordingly, I do not find the news article supports Mr. Tognotti's declaration that MTIL is not involved in the importation, sale for importation, or sale of any products, including the accused earpiece devices within the United States." (*Id.* at ¶ 9). Viewing the facts in the light most favorable to Bose, as I must on summary determination, I find that the presence of MTIL's address on the packaging of the accused Monster iSport Intensity headphone calls into question the veracity of Mr. Tognotti's statements and creates a genuine dispute of material fact

as to MTIL's involvement in the sale and/or importation of said product.

IV. CONCLUSION

For the reasons discussed above, MTIL's motion for summary determination is hereby
DENIED.

SO ORDERED.

A handwritten signature in black ink, reading "Thomas B. Pender", with a long horizontal line extending to the right.

Thomas B. Pender
Administrative Law Judge

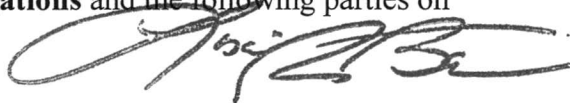
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337-TA912

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER NO. 06** have been served upon, **The Office of Unfair Import Investigations** and the following parties on

June 3, 2014.



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

FOR COMPLAINANTS BOSE CORPORATION:

Andrew R. Kopsidas, Esq.
FISH & RICHARDSON P.C.
1425 K Street, N.W., 11th floor
Washington, DC 20005

() Via Hand Delivery
() Via Express Delivery
(☒) Via First Class Mail
() Other: _____

**FOR RESPONDENTS, MONSTER, INC., MONSTER, LLC & MONSTER
TECHNOLOGY INTERNATIONAL, LTD.**

Edward V. Anderson, Esq.
**SHEPPARD, MULLIN, RICHTER
& HAMPTON LLP**
379 Lytton Avenue
Palo, Alto, CA 94301

() Via Hand Delivery
() Via Express Delivery
(☒) Via First Class Mail
() Other: _____