

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN ELECTRONIC CANDLE
PRODUCTS AND COMPONENTS
THEREOF**

Investigation No. 337-TA-1195

ORDER REMANDING THE INVESTIGATION

The Commission instituted this investigation on April 6, 2020, based on a complaint filed by Complainants. 85 Fed. Reg. 19158-59 (Apr. 6, 2020). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic candle products and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,550,660 (“the ’660 patent”); 9,366,402 (“the ’402 patent”); 9,512,971 (“the ’971 patent”); 9,523,471 (“the ’471 patent”); and 10,533,718 (“the ’718 patent”). *Id.* The plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “artificial candles that simulate a flame effect using electronic components.” *Id.* at 19158. The notice of investigation named as respondents: The Gerson Company of Olathe, Kansas; Gerson International (H.K.) Ltd. of Hong Kong; Sterno Home Inc. of Coquitlam, Canada; Ningbo Huamao International Trading Co., Ltd. of Ningbo City, China; Ningbo Yinzhou Langsheng Artware Co., Ltd of Ningbo City, China; Lifetime Brands, Inc. of Garden City, New York; Scott Brothers Entertainment, Inc. of Las Vegas, Nevada; Nantong Ya Tai Candle Arts & Crafts Co., Ltd. of San Gabriel, California; NapaStyle, Inc. of Napa, California; Veraflame International,

Inc. of Vancouver, Canada (“Veraflame”); MerchSource, LLC of Irvine, California; Ningbo Mascube Import Export Company of Ningbo City, China (“Ningbo Mascube”); Decorware International Inc. dba Decorware Inc. of Rancho Cucamonga, California; Shenzhen Goldenwell Smart Technology Co., Ltd. of Shenzhen City, China; Shenzhen Ksperway Technology Co., Ltd. of Shenzhen City, China; Ningbo Shanhuang Electric Appliance Co. of Ningbo City, China (“Ningbo Shanhuang”); Yiwu Shengda Art Co., Ltd. of Yiwu City, China (“Yiwu Shengda”); Shenzhen Tongfang Optoelectronic Technology Co., Ltd. of Shenzhen City, China; TFL Candles of Shenzhen City, China; Guangdong Tongfang Lighting Co., Ltd. of Hong Kong; Tongfang Optoelectronic Company of Hong Kong; and Virtual Candles Limited of Kent, United Kingdom (“Virtual Candles”). *Id.* at 19159. The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *Id.*

The Commission found Veraflame, Ningbo Mascube, Virtual Candles, Yiwu Shengda, and Ningbo Shanhuang (collectively, “the Defaulting Respondents”) in default for failing to respond to the complaint and notice of investigation and for failing to show cause why they had not done so, or for failing to participate in discovery. The Commission terminated the investigation with respect to all other respondents based on consent orders, settlement, partial withdrawal of the complaint, and for a failure to establish the importation requirement.

On November 13, 2020, Complainants moved for a summary determination of violation. On December 4, 2020, OUII filed a response that questioned whether Complainants had satisfied the economic prong of the domestic industry requirement, but otherwise supported a finding of violation of section 337 and issuing a general exclusion order. On December 9, 2020, Complainants filed a reply in support of their motion.

On April 2, 2021, the ALJ issued the subject ID and granted Complainants' motion for summary determination of violation by each of the five Defaulting Respondents. Order No. 41 (Apr. 2, 2021). On May 19, 2021, the Commission determined on its own motion to review the ID's finding that Complainants satisfied the economic prong of the domestic industry requirement. 86 Fed. Reg. 28143-46 (May 25, 2021). The Commission sought briefing on four issues under review and on remedy, the public interest, and bonding. *Id.* On June 8, 2021, Complainants and OUII provided submissions in response to the notice. On June 21, 2021, Complainants and OUII provided reply submissions. No submissions from the public were received.

As explained in the accompanying Commission opinion, the Commission vacates the ID's finding that Complainants are entitled to summary determination with respect to the economic prong of the domestic industry requirement and thus vacates the grant of summary determination of violation.

Upon consideration of this matter, the Commission hereby ORDERS that:

1. Order No. 41 is vacated with respect to the ALJ's findings on the economic prong of the domestic industry requirement, and the issue of whether the economic prong of the domestic industry requirement is satisfied with respect to the four remaining asserted patents is remanded to the Chief ALJ to assign a presiding ALJ to issue a remand initial determination ("RID") on this issue, including such proceedings as the presiding ALJ deems necessary to render the RID;
2. The presiding ALJ shall issue an RID expeditiously and shall further extend the target date for completion of the investigation by ID, pursuant to 19 C.F.R. § 210.51(a)(1);
3. The target date for completion of the investigation is extended by one month to September 13, 2021, to allow for time for the presiding ALJ to determine an appropriate further extension of the target date;
4. The RID shall become final 60 days after issuance absent Commission review;
5. Complainants and OUII may petition for review of the RID within 10 days after service of the RID. Any party may file a response to the petition(s) within five business days after service of the petition(s).
6. Notice of this Order shall be served on the parties to this investigation.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: August 13, 2021