

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

**In the Matter of**

**CERTAIN BASKETBALL BACKBOARD  
COMPONENTS AND PRODUCTS  
CONTAINING THE SAME**

**Inv. No. 337-TA-1040**

**ORDER NO. 10: GRANTING COMPLAINANT'S MOTION TO STRIKE  
RESPONDENTS' PUBLIC INTEREST AFFIRMATIVE DEFENSES**

(July 31, 2017)

On May 23, 2017, Complainant Lifetime Products, Inc. ("Lifetime") filed a motion to strike the eighth affirmative defense asserted by Respondents Russell Brands LLC ("Russell") and Reliable Sports Equipment (Wujiang) Co. Ltd. ("Reliable") (Motion Docket No. 1040-004). Respondents filed a response in opposition on June 2, 2017. Complainant filed a reply brief on June 7, 2017.

Lifetime filed its complaint in this investigation on December 30, 2016, and pursuant to Commission Rule 210.8, the Commission issued a notice of receipt of complaint and a solicitation of public interest comments on January 3, 2017. 82 Fed. Reg. 1759-60 (Jan. 6, 2017). Russell submitted public interest comments in response to this notice on January 17, 2017. Lifetime filed a response to these public interest comments on January 23, 2017. The Commission instituted the investigation upon publication of a notice in the *Federal Register* on Tuesday, February 7, 2017. 82 Fed. Reg. 9595-96 (2017). The notice of investigation requested responses in accordance with Commission Rule 210.13. *Id.* Russell filed its response on February 22, 2017; Reliable filed its response on February 27, 2017. In each of their responses,

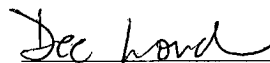
Russell and Reliable asserted affirmative defenses of “public interest,” which referenced Russell’s earlier public interest comments submitted to the Commission. Russell Response to Complaint ¶¶ 71-72; Reliable Response to Complaint ¶¶ 66-67.

I agree with Lifetime that the “public interest” affirmative defenses are improper. The public interest factors are set forth in 19 U.S.C. §§ 1337(d)(1) and (f)(1). In accordance with the statute, the public interest factors are considered only in the issuance of a remedy; they are separate from the determination on violation described in the Notice of Investigation. The Commission did not delegate public interest issues to the Administrative Law Judge in this investigation, and therefore, “[a]ny consideration of whether or not relief is in the public interest is not available.” *Certain Dynamic Random Access Memory Devices & Prods. Containing Same*, Inv. No. 337-TA-595, Order No. 7 at 6 (June 1, 2007). Respondents’ “public interest” affirmative defenses are improper and should therefore be stricken.

Striking these affirmative defenses does not prejudice Respondents in any way. Russell has already made a public interest submission pursuant to Commission Rule 210.8, and if this investigation proceeds to a final initial determination, Respondents will have another opportunity to submit public interest comments pursuant to Commission Rules 210.46 and 210.50. *See* 19 C.F.R. §§ 210.8, 210.46, 210.50. The Commission will then consider these public interest statements, as required, under 19 U.S.C. §§ 1337(d)(1) and (f)(1).

Accordingly, Motion Docket No. 1040-004 is hereby GRANTED.

**SO ORDERED.**



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Dee Lord  
Administrative Law Judge

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the following parties as indicated, on July 31, 2017



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

**On Behalf of Complainant Lifetime Products, Inc.:**

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- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
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**On Behalf of Respondents Russell Brands, LLC d/b/a  
Spaulding and Reliable Sports Equipment (Wujiang) Co.  
Ltd.:**

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