

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**IN THE MATTER OF CERTAIN PASSENGER
VEHICLE AUTOMOTIVE WHEELS**

Inv. No. 337-TA-1006

**ORDER NO. 11: INITIAL DETERMINATION GRANTING JOINT MOTION TO
TERMINATE INVESTIGATION AS TO RESPONDENT ASPEC
BASED ON CONSENT ORDER**

(August 2, 2016)

On July 19, 2016, Complainant Daimler AG (“Daimler”) and Respondent A Spec Wheels & Tires, LLC (“ASPEC”) (collectively, the “Parties”) jointly moved to terminate this investigation as to ASPEC based on Consent Order Stipulation (“Stipulation”). (Motion Docket No. 1006-008).

No responses were filed.

Commission Rule 210.21(a)(2) states in relevant part that “[a]ny party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement ... or consent order, as provided in paragraphs (b), (c) and (d) of this section.” 19 C.F.R. § 210.21(a)(2). Commission Rule 210.21(c)(1)(ii) provides in relevant part that “[i]n investigations under Section 337 of the Tariff Act of 1930, a proposal to terminate by consent order shall be submitted as a motion to the administrative law judge with a stipulation that incorporates a proposed consent order.” 19 C.F.R. § 210.21(c)(1)(ii). Commission Rule 210.21(c)(3) sets forth the information that must be included in the consent order stipulation. 19 C.F.R. § 210.21(c)(3). Commission Rule 210.21(c)(4) sets forth the information that must be included in the proposed consent order. 19 C.F.R. § 210.21(c)(4). A consent order may not include terms beyond or inconsistent with those set forth by Commission Rule 210.21(c)(4). *Id.*

The Parties seek termination of this Investigation as to ASPEC based on a consent order and consent order stipulation pursuant to Commission Rules 210.21(a)(2) and (c)(1)(ii). The joint motion includes a Consent Order Stipulation (Attachment A) and Proposed Consent Order (Attachment B).¹ The motion states that there are no other agreements, written or oral, express or implied between the Parties concerning the subject matter of the Investigation. The Consent Order Stipulation was signed by a representative for ASPEC on July 19, 2016. I have reviewed the Consent Order Stipulation and find that it conforms with Commission Rule 210.21(c)(3). I have also reviewed the Proposed Consent Order and find it is consistent with Commission Rule 210.21(c)(4). *See* 19 U.S.C. § 210.21(c)(3) and (4).

Commission Rule 210.50(b)(2) provides that in the case of a proposed termination by settlement agreement or consent order, 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. 19 C.F.R. § 210.50(b)(2). In any initial determination terminating an investigation by settlement agreement or consent order, the administrative law judge is directed to consider and make appropriate findings regarding the effect of the proposed settlement on 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. *Id.*

The Parties argue that termination is in the public interest. I do not find any public interest concerns militating against termination of the Investigation based on the Proposed Consent Order. I also find nothing to suggest that the agreement between the Parties would impose an undue burden on the public health and welfare, competitive conditions in the U.S. economy, the production of

¹ The consent order stipulation and proposed consent order were filed as public documents. No confidential versions were filed.

similar or directly competitive articles in the United States, or U.S. consumers. *See* 19 U.S.C. § 1337(d). I therefore find that termination of the Investigation as to ASPEC is in the public interest, which favors settlement to avoid needless litigation and to conserve public resources. *See Certain Data Storage Systems and Components Thereof*, Inv. No. 337-TA-471, Order No. 51 at 4 (March 11, 2003).

Accordingly, it is my Initial Determination that Motion Docket No. 1006-008 be GRANTED. ASPEC is hereby terminated from this investigation. This Initial Determination, along with supporting documentation, 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, 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.



Thomas B. Pender
Administrative Law Judge

Attachment A

EXHIBIT 1

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC

In the Matter of)
)
CERTAIN PASSENGER VEHICLE) Inv. No. 337-TA-1006
AUTOMOTIVE WHEELS)
_____)

A SPEC WHEELS & TIRES, LLC'S CONSENT ORDER STIPULATION

Concurrent with the joint motion to terminate, Respondent A Spec Wheels & Tires, LLC ("ASPEC") hereby respectfully submits this Consent Order Stipulation.

On April 11, 2016, Complainant Daimler AG ("Daimler") filed, and later supplemented, a Complaint with the United States International Trade Commission against respondents including ASPEC.

The Complaint alleges violations of Section 337 based upon the importation into the United States, the sale for importation, or the sale within the United States after importation by ASPEC, of certain passenger vehicle automotive wheels that allegedly infringe the claims of certain of Daimler's design patents and certain of Daimler's trademarks. The Commission instituted this Investigation on June 13, 2016, and the Notice of Institution published in the *Federal Register* on June 17, 2016 as to U.S. Design Patent No. D532,733, U.S. Design Patent No. D542,211, U.S. Design Patent No. D570,760, U.S. Design Patent No. D569,776, and U.S. Design Patent No. D582,330 (collectively, the "Asserted Daimler Design Patents"), as well as U.S. Trademark Reg. No. 657,386, U.S. Trademark Reg. No. 285,557, U.S. Trademark Reg. No. 3,614,891, U.S. Trademark Reg. No. 4,423,458, U.S. Trademark Reg. No. 1,660,727, U.S.

EXHIBIT 1

Trademark Reg. No. 3,305,055, and U.S. Trademark Reg. No. 1,807,353 (collectively, the “Asserted Daimler Trademarks”). *See* 81 Fed. Reg. 39711-12 (2016).

Pursuant to 19 C.F.R. § 210.21(c)(1) and 210.21(c)(3), ASPEC hereby stipulates that:

1. ASPEC is a limited liability company organized and existing under the laws of the State of California, and having a principal place of business located at 2035 American Avenue, Hayward, CA 94545.

2. ASPEC stipulates to the entry of a Consent Order containing terms as set forth below and as expressed in the accompanying Proposed Consent Order.

3. ASPEC admits and acknowledges that the Commission has *in rem* jurisdiction over the articles that are the subject of the Complaint. ASPEC admits and acknowledges that the Commission has *in personam* jurisdiction over it for the purposes of this Stipulation and the Consent Order as outlined below and expressed in the accompanying Proposed Consent Order. ASPEC admits and acknowledges that the Commission has subject matter jurisdiction in the matter under investigation.

4. Upon entry of the Consent Order, ASPEC will cease the importation, distribution, marketing, advertising, sale, or other transfers in the United States of any passenger vehicle automotive wheels that Daimler has alleged infringe the Asserted Daimler Design Patents and the Asserted Daimler Trademarks (collectively, the “Subject Articles”).

5. Although ASPEC currently has no inventory of the Subject Articles, upon entry of the Consent Order, ASPEC shall destroy any inventory of the Subject Articles remaining in its possession, and provide written certification to Daimler of such destruction, if any, within 14

EXHIBIT 1

calendar days of the entry of the Consent Order. The notice requirement under this paragraph shall be provided to:

Shauna M. Wertheim, Esq.
The Marbury Law Group, PLLC
11800 Sunrise Valley Drive
15th Floor
Reston, VA 20191

6. ASPEC expressly waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order or otherwise challenge or contest the validity of the Consent Order.

7. ASPEC will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under Subpart I of Part 210, Title 19 of the Code of Federal Regulations.

8. Enforcement, modification, and revocation of the Consent Order will be carried out pursuant to Subpart I of Part 210, Title 19 Code of federal Regulations, incorporating by reference the Commission's Rules of Practice and Procedure.

9. ASPEC's signing of this Stipulation is for settlement purposes only and does not constitute admission by ASPEC that an unfair act has been committed.

10. The Consent Order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and Part 210, Title 19 of the Code of Federal Regulations, and the Commission may require periodic compliance reports pursuant to subpart I of Part 210, Title 19 Code of Federal Regulations.

11. The Consent Order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the

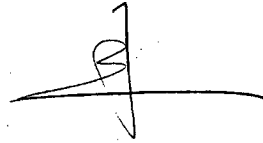
EXHIBIT 1

Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and non-reviewable.

12. ASPEC will not seek to challenge the validity of any of the Asserted Daimler Design Patents or Asserted Daimler Trademarks in any administrative or judicial proceeding to enforce the Consent Order.

Dated: 07/19/2016

By: _____



Jun Huang
Owner
A Spec Wheels & Tires, LLC
2035 American Avenue
Hayward, CA 94545.

Attachment B

EXHIBIT 2

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC

In the Matter of)
)
CERTAIN PASSENGER VEHICLE) Inv. No. 337-TA-1006
AUTOMOTIVE WHEELS)
_____)

[PROPOSED] CONSENT ORDER

The United States International Trade Commission has instituted an investigation at the request of Daimler AG (“Daimler”) against respondents including A Spec Wheels & Tires, LLC (“ASPEC”). The Complaint filed by Daimler on April 11, 2016, and as later supplemented, alleges violations of Section 337 based upon the importation into the United States, the sale for importation, or the sale within the United States after importation by ASPEC, of certain passenger vehicle automotive wheels that allegedly infringe the claims of certain of Daimler’s design patents and certain of Daimler’s trademarks. The Commission instituted this Investigation on June 13, 2016, and the Notice of Institution published in the *Federal Register* on June 17, 2016 as to U.S. Design Patent No. D532,733, U.S. Design Patent No. D542,211, U.S. Design Patent No. D570,760, U.S. Design Patent No. D569,776, and U.S. Design Patent No. D582,330 (collectively, the “Asserted Daimler Design Patents”), as well as U.S. Trademark Reg. No. 657,386, U.S. Trademark Reg. No. 285,557, U.S. Trademark Reg. No. 3,614,891, U.S. Trademark Reg. No. 4,423,458, U.S. Trademark Reg. No. 1,660,727, U.S. Trademark Reg. No. 3,305,055, and U.S. Trademark Reg. No. 1,807,353 (collectively, the “Asserted Daimler Trademarks”). See 81 Fed. Reg. 39711–12 (2016).

ASPEC has executed a Consent Order Stipulation (“Stipulation”) and moved jointly with Daimler for an Initial Determination terminating this investigation as to ASPEC by entry of a consent order. ASPEC has executed a Consent Order Stipulation consistent with Commission Rules. There are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.

EXHIBIT 2

Pursuant to 19 C.F.R. § 210.21(c)(1)(i) and (c)(3), the motion is hereby GRANTED and the following is SO ORDERED:

1. ASPEC has admitted and acknowledged that the Commission has *in rem* jurisdiction over the articles that are the subject of the Complaint. ASPEC has admitted and acknowledged that the Commission has *in personam* jurisdiction over it for the purposes of the Stipulation and this Consent Order. ASPEC has admitted and acknowledged that the Commission has subject matter jurisdiction in this Investigation.

2. Effective immediately upon the entry of this Consent Order, ASPEC shall not sell for importation, import, or sell after importation in the United States passenger vehicle automotive wheels that are accused of infringing any of the Asserted Daimler Design Patents or the Asserted Daimler Trademarks (collectively, "Subject Articles"), and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation in the United States.

3. Upon entry of this Consent Order, ASPEC shall destroy any inventory of the Subject Articles in the United States, and provide written certification to Daimler of such destruction, if any, within 14 calendar days of the entry of this Consent Order. The notice requirement under this paragraph shall be provided to:

Shauna M. Wertheim, Esq.
The Marbury Law Group, PLLC
11800 Sunrise Valley Drive
15th Floor
Reston, VA 20191

4. Effective immediately upon the entry of this Consent Order, ASPEC shall cease and desist from importing into the United States and distributing Subject Articles alleged to be covered by the Asserted Daimler Design Patents and the Asserted Daimler Trademarks.

5. ASPEC shall be precluded from seeking judicial review or otherwise challenging the validity of this Consent Order.

EXHIBIT 2

6. ASPEC shall cooperate with and shall not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's rules of Practice and Procedure, 19 C.F.R. Part 210.

7. ASPEC and its officers, directors, employees, agents, and any entity or individual acting on its behalf and with its authority shall not seek to challenge the validity or enforceability of Asserted Design Patent(s) or Asserted Trademark(s) in any administrative or judicial proceeding to enforce this Consent Order.

8. Upon expiration of any Asserted Daimler Trademark(s), or the term of any Asserted Daimler Design Patent(s), this Consent Order shall become null and void as to such Asserted Daimler Trademark(s) or Asserted Daimler Design Patent(s).

9. If any Asserted Daimler Design Patent or Asserted Daimler Trademark is held invalid or unenforceable by a court or agency of competent jurisdiction or as to any article that has been found or adjudicated not to infringe an Asserted Daimler Design Patent or Asserted Daimler Trademark in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such invalid or unenforceable Asserted Daimler Design Patent or Asserted Daimler Trademark.

10. The matter under investigation is hereby terminated with respect to ASPEC, provided, however, that enforcement, modification, or revocation of this Consent Order shall be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.

BY ORDER OF THE COMMISSION:

Date:

Lisa Barton, Secretary
U.S. International Trade Commission

**IN THE MATTER OF CERTAIN PASSENGER VEHICLE
AUTOMOTIVE WHEELS**

337-TA-1006

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC INITIAL DETERMINATION ORDER NO. 11** has been served upon the **Commission Investigative Attorney, Vu Bui, Esq.**, and the following parties as indicated on **AUG 02 2016**.



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

FOR COMPLAINANT DAIMLER AG

Shauna M. Wertheim, Esq.
THE MARBURY LAW GROUP, PLLC
11800 Sunrise Valley Drive, 15th Floor
Reston, VA 20191

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

FOR RESPONDENT O.E. WHEEL DISTRIBUTORS, LLC

V. James Adduci, II
ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.
1133 Connecticut Avenue, NW, 12th Floor
Washington, DC 20036

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

**RESPONDENT A-Z WHEELS LLC d/b/a UsaRIM/UsaRim.com/Eurotech Wheels,
GALAXY WHEELS & TIRES, LLC, INFOBAHN INTERNATIONAL, INC. D/b/a
INFOBAHN/EUROTECH/EUROTECH LUXURY, WHEELS/EUROTECH
WHEEL/USARIM, A SPEC WHEELS & TIRES LLC d/b/a A SPEC WHEELS & TIRES**

Stephen M. Lobbin, Esq.
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4000 MacArthur Boulevard
East Tower, Suite 500
NewPort Beach, CA 92660

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() Via First Class Mail
() Other: _____

**IN THE MATTER OF CERTAIN PASSENGER VEHICLE
AUTOMOTIVE WHEELS
FOR RESPONDENT AMAZON.COM, INC.**

337-TA-1006

James B. Coughlan, Esq.
PERKINS COIE LLP
700 Thirteenth Street NW, Suite 600
Washington, DC 20005

Via Hand Delivery
 Via Express Delivery
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 Other: _____

RESPONDENT

**RESPONDENT AMERICAN TIRE DISTRIBUTORS HOLDINGS, INC. & AMERICAN
TIRE DISTRIBUTORS, INC.**

Aaron P. Bradford, Esq.
BRADFORD, LTD
2701 Lawrence Street, Suite 201
Denver, CO 80205

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FOR RESPONDENT ONYX ENTERPRISES INT'L. CORP. D/b/a CARID.COM

John F. Ward, Esq.
KELLEY DRYE & WARREN LLP
101 Park Avenue
New York, NY 10178

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 Other: _____

FOR RESPONDENT POWERWHEELS PRO, LLC

Steven T. Kiouisis, Esq.
KIOUSIS LAW, P.C.
1985 W. Big Beaver Rd., Suite 300
Troy, MI. 48084

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

RESPONDENT TRADE UNION INTERNATIONAL IN. D/b/a TOPLINE

4651 State Street
Montclair, CA 91763

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 Via First Class Mail
 Other: _____