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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. 16: INITIAL DETERMINATION GRANTING JOINT MOTION TO
TERMINATE INVESTIGATION AS TO THE AMERICAN TIRE
RESPONDENTS BASED ON CONSENT ORDER**

(November 15, 2016)

Complainant Daimler AG (“Daimler”) and respondents American Tire Distributors, Inc. (“ATDI”) and American Tire Distributors Holdings, Inc. (“ATDH”) (together, the “Settling Parties”) filed a joint motion seeking termination of this investigation in part as to ATDI and ATDH based on a consent order stipulation.¹ Motion Docket No. 1006-015. The Commission Investigative Staff filed a response supporting the motion. Respondent O.E. Wheel Distributors, LLC does not oppose the motion. *See* Mot. at 1. No other party responded to the motion.

Commission Rule 210.21(c) provides that “[a] motion for termination by consent order shall contain copies of any licensing or other settlement agreement, any supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.” 19 C.F.R. § 210.21(c). The pending motion includes the following exhibits: a consent order stipulation signed by Daimler, ATDI, and ATDH (Exhibit JX-1), a proposed consent order (Exhibit JX-2), a redacted copy of a settlement

¹ Daimler, ATDI, and ATDH also request that service of the unredacted version of this initial determination, including the unredacted settlement agreement attached as Exhibit JX-3C to the pending motion, be limited to the Commission and the Settling Parties.

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agreement signed by Daimler, ATDI, and ATDH (Exhibit JX-3), and an unredacted copy of the settlement agreement (Exhibit JX-3C). Further, the Settling Parties state: "There are no other agreements, written or oral, express or implied between the Parties concerning the subject matter of the investigation." Mot. at 2. I therefore find that the pending motion satisfies the requirements of Commission Rule 210.21(c).²

Commission Rule 210.21(c)(3) sets forth the requirements for a consent order stipulation. 19 C.F.R. § 210.21(c)(3). I have reviewed the consent order stipulation (Exhibit JX-1) and find that it conforms with Commission Rule 210.21(c)(3).

Commission Rule 210.21(c)(4) sets forth the requirements for a consent order. 19 C.F.R. § 210.21(c)(4). I have also reviewed the proposed consent order and find it is consistent with Commission Rule 210.21(c)(4).

Commission Rule 210.50(b)(2) provides that, in the case of a proposed termination by settlement agreement, consent order, or arbitration agreement, 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). 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 U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers." *See id.*

² I also find that the pending motion satisfies the requirements of Commission Rule 210.21(b), which governs motions to terminate an investigation on the basis of a licensing or other settlement agreement. *See* 19 C.F.R. § 210.21(b).

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The Settling Parties, as well as the Commission Investigative Staff, argue that termination is in the public interest. *See* Mot. at 3; Staff Resp. at 7-8. I do not find any public interest concerns militating against termination of the investigation as to ATDI and ATDH based on the proposed consent order. I also find nothing to suggest that the agreement between the Settling Parties would impose an undue burden on the public health and welfare, competitive conditions in the U.S. economy, the production of 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 ATDI and ATDH 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 No. 1006-015 be GRANTED. American Tire Distributors, Inc. and American Tire Distributors Holdings, Inc. are hereby terminated from this investigation. This initial determination, along with supporting documentation, is hereby certified to the Commission. It is my further determination to GRANT the Settling Parties' request to limit service of the unredacted version of this initial determination to the Commission and Settling Parties.

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.

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SO ORDERED.

A handwritten signature in cursive script, reading "Thomas B. Pender", followed by a long horizontal flourish.

Thomas B. Pender
Administrative Law Judge

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.
Before the Honorable Thomas B. Pender
Administrative Law Judge**

In the Matter of
CERTAIN PASSENGER VEHICLE
AUTOMOTIVE WHEELS

Inv. No. 337-TA-1006

**JOINT MOTION OF COMPLAINANT AND RESPONDENTS AMERICAN TIRE
DISTRIBUTORS, INC. AND AMERICAN TIRE DISTRIBUTORS HOLDINGS, INC. TO
TERMINATE INVESTIGATION BASED ON CONSENT ORDER STIPULATION
AND PROPOSED CONSENT ORDER AND
REQUEST FOR LIMITED SERVICE OF SETTLEMENT AGREEMENT**

This investigation was instituted on June 13, 2016, and the Notice of Institution published in the *Federal Register* on June 17, 2016. See 81 Fed. Reg. 39711-12 (2016). Pursuant to Commission Rules 210.21(a)(2) & (c)(1)(ii), 19 C.F.R. § 210.21 (a)(2) & (c)(1)(ii), Complainant Daimler AG (“Daimler”) and Respondents American Tire Distributors, Inc. (“ATDI”) and American Tire Distributors Holdings, Inc. (“ATDH”) (collectively, the “Settling Parties”) hereby jointly move to terminate this investigation as to ATDI and ATDH based on the attached Consent Order Stipulation (“Stipulation”) (JX-1), Proposed Consent Order (JX-2), and Settlement Agreement effective October 18, 2016 (Public Version JX-3).

GROUND RULE 5.1.2 CERTIFICATION

At least two business days prior to filing the instant motion, counsel for Daimler communicated with all Respondents of Daimler, ATDI, and ATDH’s intent to file the instant motion and requests made herein. Counsel for Respondent O.E. Wheel Distributors, LLC has stated he does not oppose the instant Joint Motion. The Investigative Staff Attorney has stated that Staff reserves its position until after the Joint Motion is filed. Counsel for Respondents A-Z

Wheels, LLC, Galaxy Wheels & Tires, LLC, and Infobahn International, Inc., Amazon.com, Inc., Onyx Enterprises Int'l Corp. d/b/a CARiD.com, and Trade Union International Inc. d/b/a Topline did not take a position on the Joint Motion.

Termination

ATDI and ATDH stipulate to the terms set forth in the Stipulation, and jointly request that the Proposed Consent Order be entered for the purpose of resolving the participation of ATDI and ATDH in the investigation. "Termination by consent order need not constitute a determination as to violation of section 337," 19 C.F.R. §§ 210.21(c)(2)(ii) & 210.21(c)(3)(i)(F), and ATDI and ATDH have each entered into the Stipulation without conceding that an unfair act has been committed.

The Parties have entered into the attached Settlement Agreement, a true and correct copy of which is attached to this submission. (Public Version, JX-3). There are no other agreements, written or oral, express or implied between the Parties concerning the subject matter of the investigation.

The Administrative Law Judge should grant the instant joint motion to terminate the investigation as to ATDI and ATDH. Commission Rule 210.21 (c)(1)(ii) provides that, at any time prior to the commencement of the hearing in an investigation, one or more of the respondents may move to terminate some or all of the investigation by consent order. *See* 19 C.F.R. § 210.21(a)(2) ("Any party may move at any time to terminate an investigation in whole or in part as to any or all respondents on the basis of . . . a consent order"); Comm'n Comments on Rule 210.21(c), 57 Fed. Reg. 52830, 52838 (Nov. 5, 1992). This motion is timely filed well in advance of the commencement of the hearing. The Parties jointly seek to conclude this investigation as to ATDI and ATDH without additional expense, risk, or disruption, and the

Stipulation contains the admissions, waivers, statements, and other requirements under Commission Rule 210.21(c)(3).

Further, it is in the interest of the public and administrative economy to grant this motion. Commission policy and the public interest generally favor termination by consent, which preserves resources for both the Commission and the private parties, and termination based on a consent order is routinely granted. *See, e.g., Certain Safety Eyewear & Components Thereof*, Inv. No. 337-TA-433, Order No. 37 at 2 (Nov. 3, 2000); *Certain Synchronous Dynamic Random Access Memory Devices, Microprocessors & Prods. Containing Same*, Inv. No. 337-TA-431, Order No. 11 at 2 (July 13, 2000); *Certain Integrated Circuit Chipsets & Prods. Containing Same*, Inv. No. 337-TA-428, Order No. 16 at 5 (Aug. 22, 2000); *Certain Telephonic Digital Added Mainline Sys., Components Thereof & Prods. Containing Same*, No. 337-TA-400, Notice to the Parties at 3 (Feb. 12, 1998); *Certain Screen Printing Machines, Vision Alignment Devices Used Therein, & Component Parts Thereof*, Inv. No. 337-TA-394, Order No. 13 at 4 (Oct. 6, 1997).

Limited Service

Daimler, ATDI, and ATDH further request that the service of an unredacted version of this Agreement be limited to the Commission and the settling parties, Daimler, ATDH, and ATDI. The Agreement resolved not only the issues involved in the above-referenced investigation proceeding (the “ITC Action”), but also the issues involved in the case filed by Daimler against ATDI and ATDH in the U.S. District Court for the Western District of North Carolina, styled and captioned, *Daimler AG v. American Tire Distributors Holdings, Inc. et al.*, Case No. 3:16-cv-00167-FDW-DCK (the “District Court Action”). The Agreement contains terms that resolve the District Court Action. Pursuant to Section 6.5 of the Agreement, monetary

and other terms are to be kept confidential and remain in strict confidence unless disclosure of same is (i) required by an order of a court of competent jurisdiction, (ii) to attorneys, accountants or insurers of either Party, or (iii) as otherwise required by law. The terms designated confidential have no bearing on the ITC Action or the other respondents named in the ITC Action. Similarly, the terms in the Agreement as to the number of units sold address ATDH and ATDI only, and the facts and circumstances are unique to ATDH and ATDI's activities and not those of any other respondent to the proceeding.

For the foregoing reasons, Daimler, ATDH, and ATDI respectfully request that that the Administrative Law Judge issue an Initial Determination granting the motion to terminate the investigation as to Respondents ATDI and ATDH and entering the attached Proposed Consent Order.

Dated: October 25, 2016

THE MARBURY LAW GROUP, PLLC

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*Attorney for Respondents American Tire
Distributors, Inc., and American Tire
Distributors Holdings, Inc.*

CERTIFICATE OF CONSENT

I hereby certify on this 25th day of October, 2016, that I have obtained the consent of Aaron P. Bradford, counsel for Respondents American Tire Distributors, Inc., and American Tire Distributors Holdings, Inc. in the above-captioned Investigation, to the filing of this Joint Motion to Terminate Investigation, together with the Consent Order Stipulation and Proposed Consent Order.

/s/ Shauna M. Wertheim
Shauna M. Wertheim

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **JOINT MOTION OF COMPLAINANT AND RESPONDENT TO TERMINATE INVESTIGATION BASED ON CONSENT ORDER STIPULATION AND PROPOSED CONSENT ORDER AND REQUEST FOR LIMITED SERVICE OF SETTLEMENT AGREEMENT** was served to the parties, in the manner indicated below, this **25th** day of **October, 2016**:

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

- ☐ VIA FIRST CLASS MAIL
- ☒ VIA HAND DELIVERY
(2 Copies)
- ☐ VIA OVERNIGHT COURIER
- ☒ VIA ELECTRONIC FILING

The Honorable Thomas B. Pender
Administrative Law Judge
U.S. International Trade Commission
500 E Street, SW, Room 317
Washington, DC 20436

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/s/ Shauna M. Wertheim
Shauna M. Wertheim

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.
Before the Honorable Thomas B. Pender
Administrative Law Judge**

In the Matter of
**CERTAIN PASSENGER VEHICLE
AUTOMOTIVE WHEELS**

Inv. No. 337-TA-1006

**CONSENT ORDER STIPULATION OF
AMERICAN TIRE DISTRIBUTORS, INC. AND AMERICAN TIRE DISTRIBUTORS
HOLDINGS, INC.**

Concurrent with the joint motion to terminate, Respondents American Tire Distributors, Inc. ("ATDI") and American Tire Distributors Holdings, Inc. ("ATDH") hereby respectfully submit 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 ("Commission") against respondents, including ATDI and ATDH.

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 ATDI and/or ATDH, of certain passenger vehicle automotive wheels that allegedly infringe the claims of U.S. Design Patent Nos. D569,776 and D544,823 (collectively, the "Asserted Design Patents").

The Commission instituted this Investigation on June 13, 2016, and the Notice of Institution published in the *Federal Register* on June 17, 2016. *See* 81 Fed. Reg. 39711-12 (2016).

Exhibit D2

Pursuant to 19 C.F.R. § 210.21(c)(1) and 210.21 (c)(3), ADTI and ATDH hereby stipulate that:

1. ADTI and ATDH are Delaware corporations that are organized and existing under the laws of the State of New Jersey, and that each have a principal place of business at 12200 Herbert Wayne Court, Suite 150, Huntersville, North Carolina.

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

3. ADTI and ATDH admit and acknowledge that the Commission has *in rem* jurisdiction over the articles that are the subject of the Complaint. ADTI and ATDH admit and acknowledge that the Commission has *in personam* jurisdiction over them for the purposes of this Stipulation and the Proposed Consent Order, attached hereto. ADTI and ATDH admit and acknowledge that the Commission has subject matter jurisdiction in the matter under investigation.

4. Upon entry of the Consent Order, ADTI and ATDH 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 Design Patents (collectively, "ATD Subject Articles").

5. ADTI and ATDH expressly waive all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order.

6. ADTI and ATDH 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.

Exhibit D2

7. 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.


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

9. 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.


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

11. Neither ADTI nor ATDH will seek to challenge the validity of any of the Asserted Design Patents in any administrative or judicial proceeding to enforce the Consent Order.

Dated: October 21, 2016

By: 
Name: J. Michael Gaither
Position: Executive Vice President
American Tire Distributors, Inc.
12200 Herbert Wayne Court, Suite 150
Huntersville, NC 28078
(704) 992-2000

Dated: October 21, 2016

By: 
Name: J. Michael Gaither
Position: Executive Vice President
American Tire Distributors Holdings, Inc.
12200 Herbert Wayne Court, Suite 150
Huntersville, NC 28078
(704) 992-2000

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.
Before the Honorable Thomas B. Pender
Administrative Law Judge**

In the Matter of
CERTAIN PASSENGER VEHICLE
AUTOMOTIVE WHEELS

Inv. No. 337-TA-1006

ORDER NO. _____:[PROPOSED] CONSENT ORDER

(_____, 2016)

The United States International Trade Commission has instituted an investigation at the request of Daimler AG ("Daimler") against respondents including American Tire Distributors, Inc. ("ATDI") and American Tire Distributors Holdings, Inc. ("ATDH"). 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 ATDI and/or ATDH, of certain passenger vehicle automotive wheels that allegedly infringe the claims of U.S. Design Patent Nos. D569,776 and D544,823 (collectively, the "Asserted Design Patents").

The Commission instituted this Investigation on June 13, 2016, and the Notice of Institution published in the *Federal Register* on June 17, 2016. See 81 Fed. Reg. 39711-12 (2016).

ATDI and ATDH have executed a Consent Order Stipulation ("Stipulation") and moved jointly with Daimler for an Initial Determination terminating this investigation as to ATDI and ATDH by entry of a consent order. The Parties have entered into a Settlement Agreement effective October 18, 2016, a copy of which is provided as an attachment to the Parties' Joint

Motion to Terminate. ATDI and ATDH have executed a Consent Order Stipulation consistent with Commission Rules.

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. ATDI and ATDH have admitted and acknowledged that the Commission has *in rem* jurisdiction over the articles that are the subject of the Complaint. ATDI and ATDH have each admitted and acknowledged that the Commission has *in personam* jurisdiction over them for the purposes of the Stipulation and this Consent Order. ATDI and ATDH have admitted and acknowledged that the Commission has subject matter jurisdiction in this Investigation.

2. Effective immediately upon the entry of this Consent Order, ATDI and ATDH shall cease and desist from importing into the United States and distributing passenger vehicle automotive wheels that are accused of infringing any of the Asserted Design Patents (collectively, the “ATD Subject Articles”), and with respect to the ATD Subject Articles, 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. ATDI and ATDH shall be precluded from seeking judicial review or otherwise challenging the validity of this Consent Order.

4. ATDI and ATDH 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.

5. ATDI and ATDH, and their respective 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 the Asserted Design Patents in any administrative or judicial proceeding to enforce this Consent Order.

6. Upon expiration of any term of any Asserted Design Patents, this Consent Order shall become null and void as to such Asserted Design Patent.

7. If any Asserted Design Patent 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 Design Patent in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such invalid or unenforceable Asserted Design Patent.

8. The matter under investigation is hereby terminated with respect to ATDI and ATDH, 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.

SO ORDERED.

Thomas B. Pender
Administrative Law Judge

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") dated as of October 18, 2016 (the "Effective Date"), is made and entered into by and between (1) Daimler AG, a German corporation ("Daimler"), and (2) American Tire Distributors, Inc., a Delaware corporation ("ATDI") and American Tire Distributors Holdings, Inc., a Delaware corporation ("ATDH") and PR, Inc., a California corporation ("PRI") (all of the foregoing referred to collectively herein as the "Parties").

WHEREAS, Daimler has filed an action in the United States District Court for the Western District of North Carolina styled *Daimler AG v. American Tire Distributors Holdings, Inc. et al.*, 3:16-cv-00167-FDW-DCK (the "North Carolina District Court Case"), asserting, *inter alia*, that ATDI and ATDH (collectively, "ATD") have offered for sale and sold certain passenger vehicle automotive wheels in violation of Daimler's design patent and trademark rights as more particularly described herein;

WHEREAS, the passenger vehicle automotive vehicle wheels that are the subject of the North Carolina District Court Case are also the subject of a Complaint filed by Daimler in the United States International Trade Commission ("USITC") captioned *Certain Passenger Vehicle Automotive Wheels*, Inv. No. 337-TA-1006 ("ITC Action"), in which ATD was named among multiple Respondents;

WHEREAS, in the ITC Action, and in the North Carolina District Court Case, Daimler has asserted against ATD claims of infringement of certain design patents and trademarks, and other related claims;

WHEREAS, PRI is the manufacturer of the wheels sold by ATD which are the subject of the ITC Action and the North Carolina District Court case;

WHEREAS, all of the Parties share the mutually beneficial goal of reducing the number of counterfeit wheels sold and offered for sale in the U.S. marketplace, including wheels that infringe the design patents and trademarks of others;

WHEREAS, [REDACTED]

; and

WHEREAS, the Parties wish to fully resolve any and all disputes between them that have been placed at issue in ITC Action and the North Carolina District Court Case as of the Effective Date.

NOW, THEREFORE, in consideration for the mutual promises set forth in this Agreement, the Parties agree as follows:

DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

“Asserted Design Patents” means the United States design patents that Daimler has alleged in the North Carolina District Court Case and the ITC Action, are infringed by ATD, specifically: U.S. Design Patent No. D569,776; and U.S. Design Patent No. D544,823.

“Asserted Trademarks” means the United States trademarks that Daimler has alleged, in the North Carolina District Court Case are infringed by ATD, specifically: U.S. Registration No. 3,305,055; U.S. Registration No. 1,807,353; and U.S. Registration No. 1,660,727.

“Business Documentation” means the sales analysis documentation provided to Daimler by ATD on July 5, 2016 and July 29, 2016 that: (i) evidences the quantity and gross profits of ATD from sales of certain Subject Articles in the United States; (ii) shows the quantity of ATD’s purchases of the Subject Articles from any source, whether domestic or international; (iii) identifies domestic and international Third Party suppliers of the Subject Articles; and (iv) identifies Third Party retailers to whom ATD has supplied the Subject Articles within the United States.

“Mercedes-Benz Replica” means any wheel manufactured, offered for sale or sold which references Mercedes-Benz and/or AMG in any way, or where PRI and/or ATD is aware or has reasonable indication that the wheel represents an original Daimler wheel.

“Person” means an individual, trust, corporation, partnership, joint venture, limited liability company, association, unincorporated organization or other legal or governmental entity.

“Subject Articles” means certain passenger vehicle automotive wheels as illustrated, by example, by the wheels which Daimler has alleged, in the North Carolina District Court Case, and/or the ITC Action, infringe the Asserted Design Patents and/or the Asserted Trademarks, including the items listed in **Exhibit A** hereto.

“Third Party” means a Person other than a party to this Agreement.

ARTICLE I **SETTLEMENT**

1.1. **Future Sales.** From and after the Effective Date, PRI and ATD each covenant and warrant that they shall not sell, offer for sale, or manufacture in the United States, or import into the United States, any of the Subject Articles. PRI and ATD also agree that they shall not aid, abet, encourage, participate in, or induce the sale, offer for sale, or manufacture in the United States, or importation into the United States, of any of the Subject Articles.

1.2. **Non-Admission.** Nothing in this Agreement shall be construed as an admission of wrongdoing or liability by ATD or PRI. This Agreement is a compromise of disputed claims. The Parties have entered into this Agreement to avoid the expense, delay, uncertainty, and burden of litigations, and to create a cooperative relationship in which all Parties work together

to reduce the number of counterfeit wheels in the U.S. marketplace, and further, to reduce sales and offers for sales of wheels that infringe the intellectual property rights of others.

1.3. Validity. ATD and PRI, each, hereby acknowledges and agrees that the Asserted Design Patents and Asserted Trademarks are each valid and enforceable. Unless sued for infringement of any of the Asserted Design Patents or Asserted Trademarks after the Effective Date, ATD and PRI, each, covenants that it shall not contest, or assist in the contest of, the validity and enforceability of the Asserted Design Patents and the Asserted Trademarks, in any forum, including in the Federal Courts, United States Patent and Trademark Office, and/or the International Trade Commission.

1.4. No Trademark or Design Patent Rights. In the offer and/or sale of wheels, each of ATD and PRI agrees not to use or register trademarks in the U.S. or other foreign countries that consist of the Asserted Trademarks or marks that reasonably may be deemed to be confusingly similar to the Asserted Trademarks. ATD and PRI further agree that neither has any rights in the Asserted Design Patents.

1.5. No Other Rights / No Exhaustion. The Parties agree that no rights or covenants are granted by this Agreement under any patents, whether by implication, estoppel or otherwise. No licenses are granted under any patents or trademarks (including without limitation the Asserted Design Patents and the Asserted Trademarks) under this Agreement and, no right to grant covenants, rights, or sublicenses, or to become a foundry for Third Parties is granted under any of the rights set forth in this Agreement.

1.6. Within thirty (30) days of the Effective Date of this Agreement, Daimler will provide ATD and PRI with a list of its currently published U.S. and European design patent portfolio for wheels. Thereafter, Daimler refers ATD and PRI to the following URL for an updated list of Daimler's design patent portfolio in Europe for wheels: <https://euipo.europa.eu/eSearch/#advanced/designs/1/50/n1=ApplicantName&v1=Daimler%20AG&o1=AND&c1=CONTAINS&n2=ProductDescription&v2=wheels&o2=AND&sf=DesignIdentifier&so=asc>, and to the following URL for an updated list of Daimler's design patent portfolio for wheels: <http://www.uspto.gov/patents-application-process/search-patents>.

1.7.



1.8.

1.9.

ARTICLE II
DISMISSAL OF LITIGATION

2.1. Dismissal of North Carolina District Court Case. ATD and Daimler hereby agree that within five (5) business days of the Effective Date of this Agreement, ATD and Daimler shall cause their respective counsel to execute and file a Stipulation of Dismissal of All Claims and proposed Consent Order ("North Carolina District Court Consent Order") in the forms set forth in **Exhibits C1 and C2** in the North Carolina District Court Case. Daimler and ATD shall promptly proceed with any and all additional procedures needed to dismiss the North Carolina District Court Case.

2.2. Dismissal of ITC Action as to ATD. ATD and Daimler hereby agree that within five (5) business days of the Effective Date of this Agreement, each shall cause their respective counsel to execute and file a Joint Motion to Terminate based on a Consent Order Stipulation ("ITC Joint Motion"), a Consent Order Stipulation ("ITC Consent Order Stipulation"), and a

Proposed Consent Order ("ITC Consent Order"), copies of which are respectively attached as **Exhibits D1 through D3**. Pursuant to 19 C.F.R. § 210.21, a copy of this Agreement will be filed as an attachment to the ITC Joint Motion. ATD and Daimler shall each promptly proceed with any and all additional procedures needed to terminate the pending ITC Action with respect to ATD.

2.3. The Parties agree that the settlement of the North Carolina District Court Case and the ITC Action is intended solely as a compromise of disputed claims, counterclaims and defenses.

2.4. The Parties acknowledge and agree that this Agreement is enforceable according to its terms with respect to final dismissal of all claims and defenses in the North Carolina District Court Case, and termination of the ITC Action with respect to ATD.

2.5. The Parties agree that they shall bear their own costs and attorneys' fees relating to the North Carolina District Court Case, and the ITC Action, and to the negotiation of this Agreement.

ARTICLE III **INVENTORY**

3.1. ATD and PRI agree to destroy all inventory of the Subject Articles, which are listed in **Exhibit A**, remaining in any of their possession, in accordance with the timing required by the North Carolina District Court Consent Order and the ITC Consent Order Stipulation. ATD and PRI shall each provide a written certification of such destruction within two (2) calendar days thereof, including photographs and information as to the place and manner of destruction. The foregoing written certification shall be provided to counsel at the address shown in Section 6.5 of this Agreement.

ARTICLE IV **REPRESENTATIONS AND WARRANTIES**

4.1. Daimler represents and warrant that (i) Daimler exclusively owns all right, title, and interest in the Asserted Design Patents and the Asserted Trademarks, (ii) the release set forth in Section 1.3 shall fully release ATD and PRI with respect to the Subject Articles, (iii) no third party has any right to assert claims against ATD and/or PRI relating to the alleged infringement of the Asserted Design Patents and/or the Asserted Trademarks, and (iv) as of the Effective Date, other than the North Carolina District Court Case and the ITC Action, Daimler has not filed any legal complaint or taken any legal action against ATD and/or PRI relating to the Subject Articles.

4.2. ATD and PRI represent that the Business Documentation provided to Daimler contains true and accurate records, and that the information therein is complete as of the date provided to Daimler.

4.3. ATD represents that (i) it has sold [REDACTED] units of the Subject Articles; and (ii) as of April 30, 2016, a date no later than the Effective Date, it has ceased sales of the Subject Articles to third party customers and retailers.

4.4. ATD and PRI, each, warrants that it is not using, and shall not use, any of the Asserted Trademarks or confusingly similar marks or phrases, on goods, or in advertisements or offers for sale of such goods by either of them.

4.5. ATD and PRI represent that the inventory listed in **Exhibit E** is a complete list of the Subject Articles remaining in the possession of either of ATD and PRI as of the Effective Date.

ARTICLE V **TERM**

5.1. **Term.** The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the last-to-expire Patent in Suit or Trademark in Suit, whichever is later, unless earlier terminated as set forth below.

5.2. **Termination.** If and only if ATD, or PRI, or an assignee thereof, breaches this Agreement, and does not cure such breach within ten (10) days after written notice thereof from Daimler (such notice being required only if Daimler reasonably believes such breach is capable of being cured), the covenants granted under of this Agreement may be terminated upon written notice to that effect from Daimler at any time after such ten (10) day period so long as the breach remains uncured (or at any time if Daimler reasonably determines such breach is not capable of being cured).

5.3. **Notice of Breach.** If Daimler believes that ATD, or PRI, or an assignee thereof, is in breach of this Agreement, it will provide written notice thereof to the breaching party specifically describing the breach, and the breaching party shall have ten (10) days after receipt of any such written notice to cure the breach.

ARTICLE VI **MISCELLANEOUS PROVISIONS**

6.1. In consideration of the agreements herein, and effective upon the complete execution of this Agreement, and except for the duties imposed upon ATD and PRI by this Agreement, Daimler and its affiliates, subsidiaries, officers, directors, shareholders, agents, partners, employees, successors and permitted assigns, release and forever discharges each of ATD and PRI, and their respective affiliates, subsidiaries, officers, directors, shareholders, employees, successors and permitted assigns from any and all actions, causes of action, claims, or demands for damages of any kind related to the items listed in **Exhibit A**.

6.2. In consideration of the agreements herein, and effective upon the complete execution of this Agreement, and except for the duties imposed upon Daimler by this Agreement, ATD, and PRI, and their respective affiliates, subsidiaries, officers, directors, shareholders, agents, partners, employees, successors and permitted assigns, release and forever discharges

Daimler and its affiliates, subsidiaries, officers, directors, shareholders, agents, partners, employees, successors and permitted assigns from any and all actions, causes of action, claims, or demands for damages of any kind related to the North Carolina District Court Case, and the ITC Action.

6.3. Notwithstanding the foregoing, the Releases in the sections above do not include any claims arising after the date on which the releasing Party executes this Agreement, or any claims for breaches or violations of this Agreement.

6.4. Notwithstanding the general nature of the foregoing release, it is specifically understood that this release does not apply to claims based on information that was not made available.

6.5. Confidentiality. The monetary terms, and terms of the 6th Whereas clause, and Sections 1.7-1.9 of this Agreement shall remain confidential, and the Parties shall maintain such terms in strict confidence, except to the extent that the disclosure is (i) required by an order of a court of competent jurisdiction, (ii) to attorneys, accountants or insurers of either Party, or (iii) as otherwise required by law.

6.6. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be delivered by hand, or if dispatched by prepaid air courier with package tracing capabilities or by registered or certified airmail, postage prepaid, addressed as follows:

If to Daimler:

c/o Shauna M. Wertheim
The Marbury Law Group, PLLC
11800 Sunrise Valley Drive.
15th Floor
Reston, VA 20191
Telephone: 703.291.2900
Facsimile: 703.391.2901
swertheim@marburylaw.com

If to ATD:

c/o Aaron P. Bradford
BRADFORD, LTD.
2701 Lawrence Street, Suite 201
Denver, Colorado 80205
Telephone: 303.325-5467
Facsimile: 844.406.5294
aaron@apb-law.com

If to PRI:

c/o Aaron P. Bradford
BRADFORD, LTD.
2701 Lawrence Street, Suite 201
Denver, Colorado 80205
Telephone: 303.325-5467
Facsimile: 844.406.5294
aaron@apb-law.com

Such notices shall be deemed to have been served when received by addressee. Any of the Parties may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such party as above provided at such changed address.

6.7. Governing Law. This Agreement and matters connected with the performance thereof shall be construed, interpreted, applied and governed in all respects in accordance with the laws of the United States of America and the State of North Carolina.

6.8. No Assignment. The Parties may not assign their respective rights under this Agreement without the prior written consent of the other party and any attempt to assign without such permission will be void. However, such consent shall not be necessary in the context of an acquisition of either of the Parties, by asset sale, merger, change of control, or operation of law.

6.9. Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and assigns, including principals, officers, directors, agents, employees, shareholders, insurers, and/or attorneys of the Parties.

6.10. Severability. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect and be enforceable. The parties agree to negotiate in good faith an enforceable substitute provision for any invalid or unenforceable provision that most nearly achieves the intent of such provision.

6.11. Entire Agreement. The Parties acknowledge, accept, warrant and represent that (i) this is an enforceable agreement; (ii) this Agreement embodies the entire and only understanding of each of them with respect to the subject matter of the Agreement, and merges, supersedes and cancels all previous representations, warranties, assurances, conditions, definitions, understandings or any other statement, express, implied, or arising by operation of law, whether oral or written, whether by omission or commission between and among them with respect to the subject matter of the Agreement; (iii) no oral explanation or oral information by either party hereto shall alter the meaning or interpretation of this Agreement; (iv) the terms and conditions of this Agreement may be altered, modified, changed or amended only by a written agreement executed by duly authorized representatives of each of Daimler, ATD, and PRI; (v) each of the Parties has had an opportunity to consult legal counsel as to its rights and the consequences of signing this Agreement, and further that the language of this Agreement has been approved by counsel for each of them, and shall be construed as a whole according to its

fair meaning, (vi) none of the Parties (or their respective counsel) shall be deemed to be the draftsman of this Agreement in any action which may hereafter arise with respect to the Agreement, and (vii) resort shall not be made to any of the Warranties with respect to any missing terms touching the subject matter of this Agreement in any way.

6.12. Counterparts. This Agreement may be executed in counterparts or duplicate originals, both of which shall be regarded as one and the same instrument, and which shall be the official and governing version in the interpretation of this Agreement. This Agreement may be executed by facsimile signatures and such signatures shall be deemed to bind each party as if they were original signatures.

6.13. IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed below by their respective duly authorized officers.

DAIMLER AG

By: i.v. Wiesel

Name: Dr. Peter Siegel

Title: Head of Global Brand Protection

AMERICAN TIRE DISTRIBUTORS, INC.

By: J. Michael Baith

Name: J. Michael Baith

Title: Executive Vice President General Counsel Secretary

DAIMLER AG

By: V. Widmayer

Name: Eric Widmayer

Title: Brand Protection Counsel

AMERICAN TIRE DISTRIBUTORS
HOLDING, INC.

By: J. Michael Baith

Name: J. Michael Baith

Title: Executive Vice President General Counsel Secretary

PRI, INC.

By: David G. Berry

Name: DAVID G. BERRY

Title: PRESIDENT

EXHIBIT A

ATD wheels (by Item No.) as listed in ATD documentation provided July 5, 2016 and July 29, 2016:

Item No.	Description
128C-774445	17X7.5 5X112 ET 45MM CB 66.56MM CHROME
128C-884450	18X8 5X112 ET 50MM CB 66.56MM CHROME
128H-774445	17X7.5 5X112 ET 45MM CB 66.56MM HYPER SILVER
128H-884450	18X8 5X112 ET 50MM CB 66.56MM HYPER SILVER
136B-674435	16X7.5 5X112 ET 35 CB 66.56MM GLOSS BLACK/MACHINED SPOKES/LIP
136B-784435	17X8 5X112 ET 35 CB 66.56MM GLOSS BLACK/MACHINED SPOKES/LIP
136B-884442	18X8 5X112 ET 42 CB 66.56MM GLOSS BLACK/MACHINED SPOKES/LIP
136C-674435	16X7.5 5X112 ET 35 CB 66.56MM CHROME
136C-784435	17X8 5X112 ET 35 CB 66.56MM CHROME
136C-884442	18X8 5X112 ET 42 CB 66.56MM CHROME
136C-984435	19X8.5 5X112 ET 35 CB 66.56MM CHROME
136C-994440	19X9.5 5X112 ET 40 CB 66.56MM CHROME
136H-674435	16X7.5 5X112 ET 35 CB 66.56MM HYPER SILVER/MACHINED SPOKES/LIP
136H-784435	17X8 5X112 ET 35 CB 66.56MM HYPER SILVER/MACHINED SPOKES/LIP
136H-884442	18X8 5X112 ET 42 CB 66.56MM HYPER SILVER/MACHINED SPOKES/LIP
136H-984435	19X8.5 5X112 ET 35 CB 66.56MM HYPER SILVER/MACHINED SPOKES/LIP
136H-994440	19X9.5 5X112 ET 40 CB 66.56MM HYPER SILVER/MACHINED SPOKES/LIP

EXHIBIT B

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit C1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

DAIMLER AG

Plaintiff,

v.

AMERICAN TIRE DISTRIBUTORS, INC., *et al.*

Defendants.

Civil Action No.: 3:16-cv-167-FDW-DCK

STIPULATED MOTION FOR DISMISSAL

Plaintiff Daimler AG and Defendants American Tire Distributors, Inc. ("ATDI") and American Tire Distributors Holdings, Inc. ("ATDH"), pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, hereby move for an Order dismissing all claims in this action, with each party to bear its own costs and expenses.

Respectfully Submitted,

ROSSABI REARDON KLEIN SPIVEY, PLLC

Date: _____

Amiel J. Rossabi
N.C. State Bar No. 16984
Gavin J. Reardon
North Carolina State Bar No. 21258
3623 North Elm Street, Suite 210
Greensboro, NC 27455
Tel: (336) 253-5953
Fax: (336) 663-1105
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greardon@r2kslaw.com

Exhibit C1

THE MARBURY LAW GROUP, PLLC
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Pro Hac Vice
Timothy W. Johnson
Pro Hac Vice
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tjohnson@marburylaw.com
jcohn@marburylaw.com

Attorneys for Plaintiff Daimler AG

TROUTMAN SANDERS LLP

Date: _____

Kiran Mehta
N.C. State Bar # 11011
Email: kiran.mehta@troutmansanders.com
Anup M. Shah
N.C. State Bar # 37042
Tel: 704-998-4050
Fax: 704-998-4051
Email: anup.shah@troutmansanders.com
TROUTMAN SANDERS LLP
One Wells Fargo Center
301 S. College Street, Suite 3400
Charlotte, North Carolina 28202

*Attorneys for Defendants American Tire
Distributors Holdings, Inc. and American Tire
Distributors, Inc.*

Exhibit C2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

DAIMLER AG

Plaintiff,

v.

AMERICAN TIRE DISTRIBUTORS, INC., *et al.*

Defendants.

Civil Action No.: 3:16-cv-167-FDW-DCK

[PROPOSED] ORDER

THIS MATTER IS BEFORE THE COURT on a Stipulated Motion for Dismissal pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, filed on April 11, 2016 by Plaintiff Daimler AG (“Onyx”) against Defendants American Tire Distributors, Inc. (“ATDI”), American Tire Distributors Holdings, Inc. (“ADTH”), and DOES 1–10 (collectively, “Defendants”). Pursuant to the Stipulated Motion For Dismissal of All Claims filed on behalf of Daimler, ATDI, and ADTH, who have agreed to the terms of a Settlement Agreement, dated _____, 2016 (the “Settlement Agreement”), and to entry of this order of dismissal, and the Court being of the opinion that said motion should be GRANTED.

IT IS, THEREFORE, ORDERED that judgment be entered as follows:

1. This Court has jurisdiction over the subject matter of this action, and has *in personam* jurisdiction over Daimler and the Defendants.
2. ATDI and ADTH hereby acknowledge and agree that U.S. Design Patent No. D569,776 and U.S. Design Patent No. D544,823 (collectively, the “DAIMLER Patents”) are each valid and enforceable.

Exhibit C2

3. ATDI and ATDH hereby acknowledge Daimler's rights in and to the trademarks alleged in the Complaint, including its rights in U.S. Trademark Reg. No. 3,305,055, U.S. Trademark Reg. No. 1,807,353, and U.S. Trademark Reg. No. 1,660,727 (collectively, the "DAIMLER Marks"), and that the DAIMLER Marks are each valid and enforceable. ATDI and ATDH agree that they will not contest, or assist in the contest of, the validity or enforceability of the DAIMLER Patents and the DAIMLER Marks, in any forum, including Federal Courts, United States Patent and Trademark Office, and/or the United States International Trade Commission.

4. ATDI and ATDH are hereby enjoined from purchasing, selling, distributing, and marketing in the United States, and importing into the United States, automotive wheels that Daimler has alleged are infringing the DAIMLER Patents.

5. ATDI and ATDH shall not use in commerce in the U.S. any of the DAIMLER Marks or marks that reasonably may be deemed to be confusingly similar to the DAIMLER Marks in connection with automotive wheels or any goods and services related to automotive wheels.

6. Daimler, ATDI and ATDH shall each bear their own costs and expenses, including attorneys' fees, arising out of this case. This judgment shall be effective and enforceable to the fullest extent possible under the laws of the United States.

7. This Court shall retain jurisdiction of this action to enforce this judgment and the Settlement Agreement.

8. This judgment shall be effective and enforceable to the fullest extent possible under the laws of the United States.

Exhibit C2

SO ORDERED.

Dated: _____

By: _____
David C. Keesler
United States Magistrate Judge

Exhibit D1

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.
Before the Honorable Thomas B. Pender
Administrative Law Judge

In the Matter of
CERTAIN PASSENGER VEHICLE
AUTOMOTIVE WHEELS

Inv. No. 337-TA-1006

**JOINT MOTION OF COMPLAINANT AND RESPONDENTS AMERICAN TIRE
DISTRIBUTORS, INC. AND AMERICAN TIRE DISTRIBUTORS HOLDINGS, INC. TO
TERMINATE INVESTIGATION BASED ON CONSENT ORDER STIPULATION
AND PROPOSED CONSENT ORDER**

This investigation was instituted on June 13, 2016, and the Notice of Institution published in the *Federal Register* on June 17, 2016. *See* 81 Fed. Reg. 39711–12 (2016). Pursuant to Commission Rules 210.21(a)(2) & (c)(1)(ii), 19 C.F.R. § 210.21 (a)(2) & (c)(1)(ii), Complainant Daimler AG (“Daimler”) and Respondents American Tire Distributors, Inc. (“ATDI”) and American Tire Distributors Holdings, Inc. (“ATDH”) (collectively, the “Settling Parties”) hereby jointly move to terminate this investigation as to ATDI and ATDH based on the attached Consent Order Stipulation (“Stipulation”) (JX-1), Proposed Consent Order (JX-2), and Settlement Agreement effective October 18, 2016 (Public Version JX-3).

GROUND RULE 5.1.2 CERTIFICATION

At least two business days prior to filing the instant motion, counsel for Daimler communicated with all Respondents of Daimler, ATDI, and ATDH’s intent to file the instant motion and requests made herein.

Exhibit D1

Termination

ATDI and ATDH stipulate to the terms set forth in the Stipulation, and jointly request that the Proposed Consent Order be entered for the purpose of resolving the participation of ATDI and ATDH in the investigation. "Termination by consent order need not constitute a determination as to violation of section 337," 19 C.F.R. §§ 210.21(c)(2)(ii) & 210.21(c)(3)(i)(F), and ATDI and ATDH have each entered into the Stipulation without conceding that an unfair act has been committed.

The Parties have entered into the attached Settlement Agreement, a true and correct copy of which is attached to this submission. (Public Version, JX-3). There are no other agreements, written or oral, express or implied between the Parties concerning the subject matter of the investigation.

The Administrative Law Judge should grant the instant joint motion to terminate the investigation as to ATDI and ATDH. Commission Rule 210.21 (c)(1)(ii) provides that, at any time prior to the commencement of the hearing in an investigation, one or more of the respondents may move to terminate some or all of the investigation by consent order. *See* 19 C.F.R. § 210.21(a)(2) ("Any party may move at any time to terminate an investigation in whole or in part as to any or all respondents on the basis of . . . a consent order"); Comm'n Comments on Rule 210.21(c), 57 Fed. Reg. 52830, 52838 (Nov. 5, 1992). This motion is timely filed well in advance of the commencement of the hearing. The Parties jointly seek to conclude this investigation as to ATDI and ATDH without additional expense, risk, or disruption, and the Stipulation contains the admissions, waivers, statements, and other requirements under Commission Rule 210.21(c)(3).

Exhibit D1

Further, it is in the interest of the public and administrative economy to grant this motion. Commission policy and the public interest generally favor termination by consent, which preserves resources for both the Commission and the private parties, and termination based on a consent order is routinely granted. *See, e.g., Certain Safety Eyewear & Components Thereof*, Inv. No. 337-TA-433, Order No. 37 at 2 (Nov. 3, 2000); *Certain Synchronous Dynamic Random Access Memory Devices, Microprocessors & Prods. Containing Same*, Inv. No. 337-TA-431, Order No. 11 at 2 (July 13, 2000); *Certain Integrated Circuit Chipsets & Prods. Containing Same*, Inv. No. 337-TA-428, Order No. 16 at 5 (Aug. 22, 2000); *Certain Telephonic Digital Added Mainline Sys., Components Thereof & Prods. Containing Same*, No. 337-TA-400, Notice to the Parties at 3 (Feb. 12, 1998); *Certain Screen Printing Machines, Vision Alignment Devices Used Therein, & Component Parts Thereof*, Inv. No. 337-TA-394, Order No. 13 at 4 (Oct. 6, 1997).

Limited Service

Daimler, ATDI, and ATDH further request that the service of an unredacted version of this Agreement be limited to the Commission and the settling parties, Daimler, ATDH, and ATDI. The Agreement resolved not only the issues involved in the above-referenced investigation proceeding (the “ITC Action”), but also the issues involved in the case filed by Daimler against ATDI and ATDH in the U.S. District Court for the Western District of North Carolina, styled and captioned, *Daimler AG v. American Tire Distributors Holdings, Inc. et al.*, Case No. 3:16-cv-00167-FDW-DCK (the “District Court Action”). The Agreement contains terms that resolve the District Court Action. Pursuant to Section 6.5 of the Agreement, monetary and other terms are to be kept confidential and remain in strict confidence unless disclosure of same is (i) required by an order of a court of competent jurisdiction, (ii) to attorneys, accountants

Exhibit D1

or insurers of either Party, or (iii) as otherwise required by law. The terms designated confidential have no bearing on the ITC Action or the other respondents named in the ITC Action. Similarly, the terms in the Agreement as to the number of units sold address ATDH and ATDI only, and the facts and circumstances are unique to ATDH and ATDI's activities and not those of any other respondent to the proceeding.

For the foregoing reasons, Daimler, ATDH, and ATDI respectfully request that that the Administrative Law Judge issue an Initial Determination granting the motion to terminate the investigation as to Respondents ATDI and ATDH and entering the attached Proposed Consent Order.

Dated: _____

THE MARBURY LAW GROUP, PLLC

BRADFORD, LTD.

Shauna M. Wertheim
Timothy W. Johnson
Joanna L. Cohn
11800 Sunrise Valley Dr., 15th Fl.
Reston, VA 20191-5300
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Email: swertheim@marburylaw.com;
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Attorneys for Complainant DAIMLER AG

Aaron P. Bradford
2701 Lawrence Street, Suite 201
Denver, Colorado 80205
Tel: 303.325-5467
Fax: 844.406.5294
aaron@apb-law.com

Attorney for Respondents American Tire Distributors, Inc., and American Tire Distributors Holdings, Inc.

CERTIFICATE OF CONSENT

I hereby certify on this ____ day of October, 2016, that I have obtained the consent of Aaron P. Bradford, counsel for Respondents American Tire Distributors, Inc., and American Tire Distributors Holdings, Inc. in the above-captioned Investigation, to the filing of this Joint Motion to Terminate Investigation, together with the Consent Order Stipulation and Proposed Consent Order.

Shauna M. Wertheim

Exhibit D1

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **JOINT MOTION OF COMPLAINANT AND RESPONDENT TO TERMINATE INVESTIGATION BASED ON CONSENT ORDER STIPULATION AND PROPOSED CONSENT ORDER** was served to the parties, in the manner indicated below, this _____ day of **October, 2016**:

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

- ☐ VIA FIRST CLASS MAIL
☒ VIA HAND DELIVERY
(2 Copies)
☐ VIA OVERNIGHT COURIER
☒ VIA ELECTRONIC FILING

The Honorable Thomas B. Pender
Administrative Law Judge
U.S. International Trade Commission
500 E Street, SW, Room 317
Washington, DC 20436

- ☐ VIA FIRST CLASS MAIL
☒ VIA HAND-DELIVERY
(2 Copies)
☐ VIA OVERNIGHT COURIER
☒ VIA ELECTRONIC MAIL
Gregory.Moldafsky@usitc.gov
Houda.Morad@usitc.gov

Vu Bui, Esq.
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

- ☐ VIA FIRST CLASS MAIL
☐ VIA HAND DELIVERY
☐ VIA OVERNIGHT COURIER
☒ VIA ELECTRONIC MAIL
Vu.Bui@usitc.gov

Counsel for Respondents A-Z Wheels, LLC; Galaxy Wheels & Tires, LLC; and Infobahn International, Inc.

Stephen M. Lobbin
ONE LLP
4000 MacArthur Boulevard
East Tower, Suite 500
Newport Beach, CA 92660

- ☐ VIA FIRST CLASS MAIL
☐ VIA HAND DELIVERY
☐ VIA OVERNIGHT COURIER
☒ VIA ELECTRONIC MAIL
slobbin@onellp.com

Exhibit D1

Counsel for Respondent Amazon.com, Inc.

Grant E. Kinsel
Perkins Coie, LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101

- ☐ VIA FIRST CLASS MAIL
☐ VIA HAND DELIVERY
☐ VIA OVERNIGHT COURIER
☒ VIA ELECTRONIC MAIL
Amazon_ITC 1006@perkinscoie.com

James B. Coughlan
Perkins Coie, LLC
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005

**Counsel for Respondents American Tire Distributors Holdings, Inc. and
American Tire Distributors, Inc.**

Aaron P. Bradford, Esq.
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Exhibit D1

Counsel for Respondent Trade Union International Inc. d/b/a Topline

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/s/ Shauna M. Wertheim
Shauna M. Wertheim

Exhibit D2

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.
Before the Honorable Thomas B. Pender
Administrative Law Judge**

In the Matter of
CERTAIN PASSENGER VEHICLE
AUTOMOTIVE WHEELS

Inv. No. 337-TA-1006

**CONSENT ORDER STIPULATION OF
AMERICAN TIRE DISTRIBUTORS, INC. AND AMERICAN TIRE DISTRIBUTORS
HOLDINGS, INC.**

Concurrent with the joint motion to terminate, Respondents American Tire Distributors, Inc. (“ATDI”) and American Tire Distributors Holdings, Inc. (“ATDH”) hereby respectfully submit 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 (“Commission”) against respondents, including ATDI and ATDH.

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 ATDI and/or ATDH, of certain passenger vehicle automotive wheels that allegedly infringe the claims of U.S. Design Patent Nos. D569,776 and D544,823 (collectively, the “Asserted Design Patents”).

The Commission instituted this Investigation on June 13, 2016, and the Notice of Institution published in the *Federal Register* on June 17, 2016. *See* 81 Fed. Reg. 39711–12 (2016).

Exhibit D2

Pursuant to 19 C.F.R. § 210.21(c)(1) and 210.21 (c)(3), ATDI and ATDH hereby stipulate that:

1. ADTI and ATDH are Delaware corporations that are organized and existing under the laws of the State of New Jersey, and that each have a principal place of business at 12200 Herbert Wayne Court, Suite 150, Huntersville, North Carolina.

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

3. ADTI and ATDH admit and acknowledge that the Commission has *in rem* jurisdiction over the articles that are the subject of the Complaint. ADTI and ATDH admit and acknowledge that the Commission has *in personam* jurisdiction over them for the purposes of this Stipulation and the Proposed Consent Order, attached hereto. ADTI and ATDH admit and acknowledge that the Commission has subject matter jurisdiction in the matter under investigation.

4. Upon entry of the Consent Order, ADTI and ATDH 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 Design Patents (collectively, "ATD Subject Articles").

5. ADTI and ATDH expressly waive all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order.

6. ADTI and ATDH 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.

Exhibit D2

7. 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.

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

9. 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.

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

11. Neither ADTI nor ATDH will seek to challenge the validity of any of the Asserted Design Patents in any administrative or judicial proceeding to enforce the Consent Order.

Dated: _____

By: _____

Name: _____
Position: _____
American Tire Distributors, Inc.
12200 Herbert Wayne Court, Suite 150
Huntersville, NC 28078
(704) 992-2000

Dated: _____

By: _____

Name: _____
Position: _____
American Tire Distributors Holdings, Inc.
12200 Herbert Wayne Court, Suite 150
Huntersville, NC 28078
(704) 992-2000

Exhibit D3

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.
Before the Honorable Thomas B. Pender
Administrative Law Judge

In the Matter of
CERTAIN PASSENGER VEHICLE
AUTOMOTIVE WHEELS

Inv. No. 337-TA-1006

ORDER NO. ____:[PROPOSED] CONSENT ORDER

(_____, 2016)

The United States International Trade Commission has instituted an investigation at the request of Daimler AG (“Daimler”) against respondents including American Tire Distributors, Inc. (“ATDI”) and American Tire Distributors Holdings, Inc. (“ATDH”). 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 ATDI and/or ATDH, of certain passenger vehicle automotive wheels that allegedly infringe the claims of U.S. Design Patent Nos. D569,776 and D544,823 (collectively, the “Asserted Design Patents”).

The Commission instituted this Investigation on June 13, 2016, and the Notice of Institution published in the *Federal Register* on June 17, 2016. See 81 Fed. Reg. 39711–12 (2016).

ATDI and ATDH have executed a Consent Order Stipulation (“Stipulation”) and moved jointly with Daimler for an Initial Determination terminating this investigation as to ATDI and ATDH by entry of a consent order. The Parties have entered into a Settlement Agreement effective October 18, 2016, a copy of which is provided as an attachment to the Parties’ Joint

Exhibit D3

Motion to Terminate. ATDI and ATDH have executed a Consent Order Stipulation consistent with Commission Rules.

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. ATDI and ATDH have admitted and acknowledged that the Commission has *in rem* jurisdiction over the articles that are the subject of the Complaint. ATDI and ATDH have each admitted and acknowledged that the Commission has *in personam* jurisdiction over them for the purposes of the Stipulation and this Consent Order. ATDI and ATDH have admitted and acknowledged that the Commission has subject matter jurisdiction in this Investigation.

2. Effective immediately upon the entry of this Consent Order, ATDI and ATDH shall cease and desist from importing into the United States and distributing passenger vehicle automotive wheels that are accused of infringing any of the Asserted Design Patents (collectively, the “ATD Subject Articles”), and with respect to the ATD Subject Articles, 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. ATDI and ATDH shall be precluded from seeking judicial review or otherwise challenging the validity of this Consent Order.

4. ATDI and ATDH 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.

5. ATDI and ATDH, and their respective officers, directors, employees, agents, and any entity or individual acting on its behalf and with its authority shall not seek to challenge the

Exhibit D3

validity or enforceability of the Asserted Design Patents in any administrative or judicial proceeding to enforce this Consent Order.

6. Upon expiration of any term of any Asserted Design Patents, this Consent Order shall become null and void as to such Asserted Design Patent.

7. If any Asserted Design Patent 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 Design Patent in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such invalid or unenforceable Asserted Design Patent.

8. The matter under investigation is hereby terminated with respect to ATDI and ATDH, 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.

SO ORDERED.

Thomas B. Pender
Administrative Law Judge

Exhibit E

9:40 AM
10/12/16

Performance Replicas, Inc.
Inventory Stock Status by Item
October 1 - 12, 2016

Inventory		On Hand
	Item Description	
128C-774445	17X7.5 5X112 ET 45MM CB 66.56MM CHROME	
128C-884450	18X8 5X112 ET 50MM CB 66.56MM CHROME	
128H-774445	17X7.5 5X112 ET 45MM CB 66.56MM HYPER SILVER	
128H-884450	18X8 5X112 ET 50MM CB 66.56MM HYPER SILVER	
136B-674435	16X7.5 5X112 ET 35 CB 66.56MM GLOSS BLACK/MACHINED SPOKES/LIP	
136B-784435	17X8 5X112 ET 35 CB 66.56MM GLOSS BLACK/MACHINED SPOKES/LIP	
136B-884442	18X8 5X112 ET 42 CB 66.56MM GLOSS BLACK/MACHINED SPOKES/LIP	
136C-674435	16X7.5 5X112 ET 35 CB 66.56MM CHROME	
136C-784435	17X8 5X112 ET 35 CB 66.56MM CHROME	
136C-884442	18X8 5X112 ET 42 CB 66.56MM CHROME	
136C-984435	19X8.5 5X112 ET 35 CB 66.56MM CHROME	
136C-994440	19X9.5 5X112 ET 40 CB 66.56MM CHROME	
136H-674435	16X7.5 5X112 ET 35 CB 66.56MM HYPER SILVER/MACHINED SPOKES/LIP	
136H-784435	17X8 5X112 ET 35 CB 66.56MM HYPER SILVER/MACHINED SPOKES/LIP	
136H-884442	18X8 5X112 ET 42 CB 66.56MM HYPER SILVER/MACHINED SPOKES/LIP	
136H-984435	19X8.5 5X112 ET 35 CB 66.56MM HYPER SILVER/MACHINED SPOKES/LIP	
136H-994440	19X9.5 5X112 ET 40 CB 66.56MM HYPER SILVER/MACHINED SPOKES/LIP	

**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. 16** has been served upon the **Commission Investigative Attorney, Vu Bui, Esq.**, and the following parties as indicated on **NOV 15 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.
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Reston, VA 20191

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☒ Via Express Delivery
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FOR RESPONDENT O.E. WHEEL DISTRIBUTORS, LLC

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Washington, DC 20036

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☐ 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**

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

337-TA-1006

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Washington, DC 20005

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RESPONDENT

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

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

John F. Ward, Esq.
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101 Park Avenue
New York, NY 10178

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

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() Other: _____