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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. 17: INITIAL DETERMINATION GRANTING JOINT MOTION TO
TERMINATE INVESTIGATION AS TO RESPONDENT TRADE
UNION INTERNATIONAL INC. D/B/A TOPLINE BASED ON
CONSENT ORDER**

(December 1, 2016)

Complainant Daimler AG (“Daimler”) and respondent Trade Union International Inc. d/b/a Topline (“Trade Union”) (together, the “Settling Parties”) filed a joint motion seeking termination of this investigation in part as to Trade Union based on a consent order stipulation.¹ Motion Docket No. 1006-019. The Commission Investigative Staff filed a response supporting the motion. The remaining respondents do not oppose the motion. *See* Mot. at 1-2.

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 and Trade Union (Exhibit JX-1), a proposed consent order (Exhibit JX-2), a redacted copy of a settlement agreement signed by Daimler and Trade Union (Exhibit JX-3), and an unredacted copy of the

¹ Daimler and Trade Union 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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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.*

The Settling Parties argue that termination is in the public interest. *See* Mot. at 3. The

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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Commission Investigative Staff takes the position that “[it] is not aware of any information indicating that termination of the investigation as to Trade Union based on the Proposed Consent Order would be contrary to the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers.” *See* Staff Resp. at 7-8. I do not find any public interest concerns militating against termination of the investigation as to Trade Union 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 Trade Union 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).

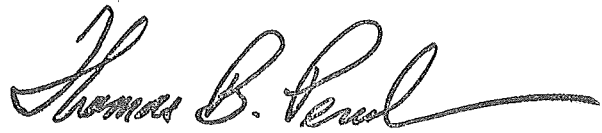
Accordingly, it is my initial determination that Motion No. 1006-019 be GRANTED. Respondent Trade Union International Inc. d/b/a Topline is hereby terminated from this investigation. This initial determination, along with supporting documentation, is hereby certified to the Commission. It is my further 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

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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.

A handwritten signature in black ink, reading "Thomas B. Pender". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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 RESPONDENT TRADE UNION
INTERNATIONAL INC. D/B/A TOPLINE 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 Respondent Trade Union International Inc. d/b/a Topline (“Trade Union”) (collectively, the “Parties”) hereby jointly move to terminate this investigation as to Trade Union based on the attached Consent Order Stipulation (“Stipulation”) (JX-1), Proposed Consent Order (JX-2), and Settlement Agreement, effective November 10, 2016 (Public Version JX-3).

The motion is not opposed. On November 10, 2016, counsel for Daimler communicated with counsel for all Respondents¹ and Commission Investigative Staff of Daimler and Trade Union’s intent to file the instant motion and requests made herein. Counsel for OE Wheel Distributors, LLC, Amazon.com, Inc., and A-Z Wheels LLC d/b/a

¹ The other Respondents remaining in the Investigation are American Tire Distributors, Inc. and American Tire Distributors Holdings, Inc. (collectively, “ATD”) and Onyx Enterprises Int’l Corp. d/b/a CARiD.com. Although Motions to Terminate the Investigation as to the foregoing parties were officially filed with the Commission on October 25, 2016 and November 14, respectively, counsel for Daimler notified counsel for both parties, and counsel for those parties did not oppose.

UsaRim/USArim.com/Eurotech Wheels, and Infobahn International, Inc. d/b/a Infobahn/Eurotech/Eurotech Luxury Wheels/Eurotech Wheels/UsaRim have stated that they do not oppose the motion. Commission Investigative Staff reserved its position until after the filing of the instant motion and related documents.

Termination

Trade Union stipulates to the entry of the Proposed Consent Order and the parties jointly request that the Proposed Consent Order be entered for the purpose of resolving Trade Union's participation 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 Trade Union has entered into the Stipulation without conceding that an unfair act has been committed.

Daimler and Trade Union have entered into the attached settlement agreement effective November 10, 2016, 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 Trade Union. 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; indeed, the Commission instituted this

investigation only last month. The parties jointly seek to conclude this investigation as to Trade Union 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 and Trade Union further request that the service of an unredacted version of this Agreement be limited to the Commission and the settling parties, Daimler, and Trade Union. 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 Trade Union in the U.S. District Court for the Central District of California, styled and captioned, *Daimler AG v. Trade Union International Inc. DBA Topline*, 5:16-cv-00667-CAS-DTB (the "District Court Action"). The Agreement contains terms that resolve the District Court

Action. Pursuant to Section 6.3 of the Agreement, monetary and related 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.

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

Dated: November 15, 2016

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International Inc. d/b/a Topline*

CERTIFICATE OF CONSENT

I hereby certify on this 15th day of November, 2016, that I have obtained the consent of James C. Bastian, Jr., counsel for Respondents Trade Union International Inc. d/b/a Topline 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 **15th** day of **November, 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
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/s/ Shauna M. Wertheim

Shauna M. Wertheim

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC**

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

**CONSENT ORDER STIPULATION OF
TRADE UNION INTERNATIONAL INC. D/B/A TOPLINE**

Concurrent with the joint motion to terminate, Respondent Trade Union International Inc. d/b/a Topline ("Trade Union") 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 Trade Union.

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 Trade Union, of certain passenger vehicle automotive wheels that allegedly infringe the claims of U.S. Design Patent No. D542,211 and U.S. Design Patent No. D570,760 (collectively, the "Asserted Design Patents") and/or allegedly infringe U.S. Trademark Reg. No. 3,305,055, U.S. Trademark Reg. No. 1,807,353, U.S. Trademark Reg. No. 1,660,727, U.S. Trademark Reg. No. 2,909,827, and U.S. Trademark Reg. No. 2,876,643 (collectively, the "Asserted Trademarks"). 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 C2

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

1. Trade Union is a corporation organized and existing under the laws of the State of California, and has a principal place of business located at 4651 State Street, Montclair, CA 91763.

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

3. Trade Union admits and acknowledges that the Commission has *in rem* jurisdiction over the articles that are the subject of the Complaint. Trade Union 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, attached hereto. Trade Union admits and acknowledges that the Commission has subject matter jurisdiction in the matter under investigation.

4. Upon entry of the Consent Order, Trade Union 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 and the Asserted Trademarks (collectively, "Subject Articles").

5. Trade Union 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.

6. Trade Union 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.

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. Trade Union's signing of this Stipulation is for settlement purposes only and does not constitute admission by Trade Union 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. Trade Union will not seek to challenge the validity of any of the Asserted Design Patents or Asserted Trademarks in any administrative or judicial proceeding to enforce the Consent Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 11/16/2016

By:


[Name]

Vice President

[Position]

Trade Union International Inc.
4651 State Street
Montclair, CA 91763

**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 Trade Union International Inc. d/b/a Topline (“Trade Union”). 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 Trade Union, of certain passenger vehicle automotive wheels that allegedly infringe the claims of U.S. Design Patent No. D542,211 and U.S. Design Patent No. D570,760 (collectively, the “Asserted Design Patents”) and/or allegedly infringe U.S. Trademark Reg. No. 3,305,055, U.S. Trademark Reg. No. 1,807,353, U.S. Trademark Reg. No. 1,660,727, U.S. Trademark Reg. No. 2,909,827, and U.S. Trademark Reg. No. 2,876,643 (collectively, the “Asserted Trademarks”). 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).

Trade Union has executed a Consent Order Stipulation (“Stipulation”) and moved jointly with Daimler for an Initial Determination terminating this investigation as to Trade Union by entry of a consent order. The Parties have entered into a Settlement Agreement effective November 10, 2016, a copy of which is provided as an attachment to the Parties’ Joint Motion to

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

2. Effective immediately upon the entry of this Consent Order, Trade Union 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 Design Patents or the Asserted Trademarks (collectively, the "Trade Union Subject Articles"), and with respect to the Trade Union 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. Trade Union shall be precluded from seeking judicial review or otherwise challenging the validity of this Consent Order.

4. Trade Union 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. Trade Union 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.

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

7. If any Asserted Design Patent or Asserted 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 Design Patent or Asserted 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 Design Patent or Asserted Trademark.

8. The matter under investigation is hereby terminated with respect to Trade Union, 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

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made effective as of the Effective Date articulated in Paragraph 6.11 herein below, and entered into by and between Daimler AG, a German corporation ("Daimler"), and Trade Union International, Inc., d/b/a Topline, a California corporation ("Trade Union") (collectively, the "Parties").

WHEREAS, Daimler has filed an action in the United States District Court for the Central District of California (the "Court") styled *Daimler AG v. Trade Union International Inc. DBA Topline*, 5:16-cv-00667-CAS-DTB (the "District Court Case"), asserting, *inter alia*, that Trade Union has 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, some of the passenger vehicle automotive vehicle wheels that are the subject of the 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 Trade Union was named as one of multiple Respondents;

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

WHEREAS, Trade Union has denied these claims; and

WHEREAS, the Parties wish to fully resolve any and all disputes between them that have been placed at issue in the District Court Case and the ITC Action 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 Daimler has alleged that Trade Union infringes in the District Court Case and/or the ITC Action, specifically U.S. Design Patent No. D542,211 and U.S. Design Patent No. D570,760.

"Asserted Trademarks" means the United States trademarks that Daimler has alleged that Trade Union infringes in the District Court Case and/or the ITC Action, specifically U.S. Registration No. 3,305,055, U.S. Registration No. 1,807,353, U.S. Registration No. 1,660,727, U.S. Registration No. 2,876,643, and U.S. Registration No. 2,909,827.

“Business Documentation” means the sales analysis documentation provided by Trade Union to Daimler on June 5, 2016 and Trade Union Support Bates Nos. 1-1208, provided June 10, 2016, that: (i) evidences the quantity and gross profits from Trade Union’s sales of the Subject Articles in the United States; (ii) shows the quantity of Trade Union’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 Trade Union has supplied the Subject Articles within the United States.

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

“Subject Articles” means the passenger vehicle automotive wheels which Daimler has alleged, in the District Court Case and/or the ITC Action, that Trade Union sold or offered for sale that infringe the Asserted Design Patents and/or the Asserted Trademarks, and specifically the items listed in **Exhibit A** hereto.

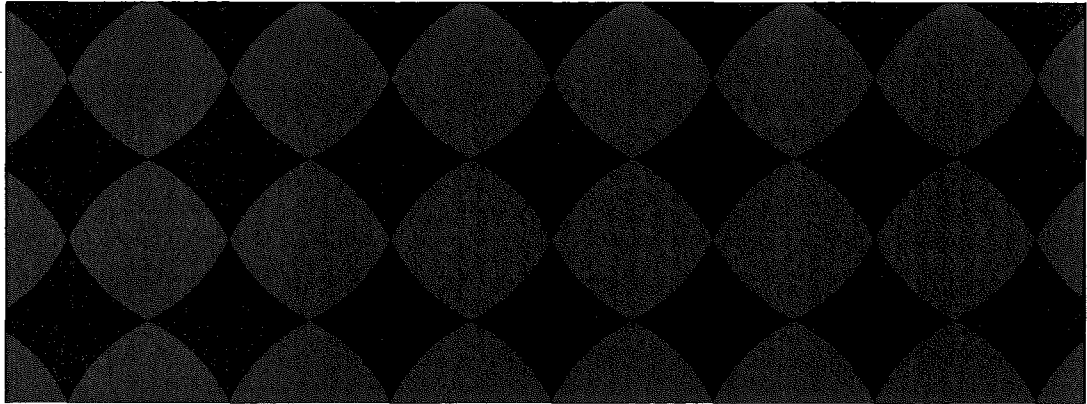
“Third Party” means a Person other than a party to this Agreement.

ARTICLE I SETTLEMENT

1.1. Future Sales. From and after the Effective Date, Trade Union covenants and warrants that it shall not sell, offer for sale, or manufacture in the United States, or import into the United States, any of the Subject Articles. Trade Union also agrees that it 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, any of the Subject Articles.

1.2.





1.3. Validity. Trade Union hereby acknowledges and agrees that U.S. Design Patent No. D542,211 and U.S. Design Patent No. D570,760 are each valid and enforceable. Trade Union further acknowledges Daimler's rights in and to the trademarks alleged in the Complaint, including its rights in each of U.S. Trademark Reg. No. 3,305,055, U.S. Trademark Reg. No. 1,807,353, U.S. Trademark Reg. No. 1,660,727, U.S. Trademark Reg. No. 2,909,827, and U.S. Trademark Reg. No. 2,876,643 are valid and enforceable. Trade Union 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 Other Rights / No Exhaustion. The Parties agree that no rights or covenants are granted by this Agreement under any patents or trademarks, 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, sublicenses or to become a foundry for Third Parties is granted under any of the rights set forth in this Agreement.

ARTICLE II DISMISSAL OF LITIGATION

2.1. Dismissal of District Court Case. The Parties hereby agree that within three (3) business days after the Effective Date, the Parties shall cause their respective counsel to execute and file a Stipulated Motion for Dismissal With Prejudice and Entry of Consent Order and a proposed Consent Order ("District Court Consent Order") in the form set forth in **Exhibits B1 and B2** in the U.S. District Court for the Central District of California. The parties shall promptly proceed with any and all additional procedures needed to dismiss with prejudice the District Court Case.

2.2. Dismissal of ITC Action. The Parties hereby agree that within three (3) business days after the Effective Date, the Parties 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 C1 through C3**. Pursuant to 19 C.F.R. § 210.21, a copy of this Agreement will be filed as an attachment to the

ITC Joint Motion. The Parties shall promptly proceed with any and all additional procedures needed to terminate the pending ITC Action with respect to Trade Union.

2.3. The Parties agree that the settlement of the 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 with prejudice of all claims and defenses in the District Court Case, and with respect to the termination of the ITC Action with respect to Trade Union.

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

ARTICLE III **INVENTORY**

3.1. Trade Union agrees to destroy all inventory of the Subject Articles remaining in its possession, which is listed in **Exhibit D**, in accordance with the timing required by the District Court Consent Order and ITC Consent Order Stipulation. Trade Union shall 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 Paragraph 6.4 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 Paragraph 6.1.1 shall fully release Trade Union with respect to the Subject Articles, (iii) no third party has any right to assert claims against Trade Union 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 District Court Case and the ITC Action, Daimler has not filed any legal complaint or taken any legal action against Trade Union relating to the Subject Articles.

4.2. Trade Union represents that the Business Documentation provided to Daimler are true and accurate records, and that the information therein is complete as of the date provided to Daimler.

4.3. 

4.4. Trade Union 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 Trade Union.

4.5. Trade Union represents that the inventory listed in **Exhibit D** is a complete list of the Subject Articles remaining in Trade Union's possession 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 Asserted Design Patent or Asserted Trademark, whichever is later, unless earlier terminated as set forth below.

5.2. Termination. If and only if Trade Union or an assignee of Trade Union breaches this Agreement, and does not cure such breach within ten (10) calendar 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 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 Trade Union is in breach of this Agreement, it will provide written notice thereof to Trade Union specifically describing the breach, and Trade Union shall have thirty (30) calendar days after receipt of any such written notice to cure such breach.

ARTICLE VI

MISCELLANEOUS PROVISIONS

6.1. Releases

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

6.1.2 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, Trade Union and its 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, attorneys, predecessors, successors and each of their respective heirs, successors and assigns from any

and all actions, causes of action, claims, or demands for damages of any kind related to the District Court Case and ITC Action.

6.1.3 Notwithstanding the foregoing, the Releases in the paragraphs 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.

6.1.4 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.

6.2. Waiver of Unknown Claims. Each Party expressly acknowledges it is aware of the existence of California Civil Code Section 1542 and its meaning and effect. Each Party expressly acknowledges that it has read and understands the following provision of that section, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR
SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
EXECUTING THE RELEASE, WHICH IF KNOWN BY
HIM MUST HAVE MATERIALLY AFFECTED HIS
SETTLEMENT WITH THE DEBTOR.**

Each Party expressly waives and releases any right to benefits which it may have under California Civil Code Section 1542 to the fullest extent it may do so lawfully.

6.3. Confidentiality. The monetary and related terms 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.

6.4. Notices. All notices required or permitted to be given herein shall be in writing and shall be delivered by hand, or 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

If to Trade Union:

c/o James C. Bastian, Jr.
Shulman Hodges & Bastian, LLP
100 Spectrum Center Drive, Suite 600
Irvine, California 92618
Telephone: 949.340.3400
Facsimile: 949.340.3000

Such notices shall be deemed to have been served when received by addressee. Either 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 listed above, provided at such changed address.

6.5. 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 California.

6.6. 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.

6.7. 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.

6.8. 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.

6.9. 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 Daimler and Trade Union, (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) neither of the Parties (nor 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.

6.10. 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.

6.11. Effective Date. This Agreement shall become effective as of the date of the last party to sign the Agreement.

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

DAIMLER AG

By: [Signature]
Name: Dr. Peter Stefel
Title: Head of Global Protection
Date: 11/09/16

DAIMLER AG

By: [Signature]
Name: Sven-Eric Widmayer
Title: Brand Protection Counsel
Date: 11/09/16

TRADE UNION INTERNATIONAL, INC.s
d/b/a TOPLINE

By: [Signature]
Name: Gary Chang
Title: Vice President
Date: 11/10/16

EXHIBIT A

Trade Union Wheels (by Trade Union Item No.) as Documented in Trade Union Support Bates
Nos. 1-1208:

V1174-784435G

V1174-884435G

V1174-984435G

V1175-784435G

V1175-884435G

V1175-994435G

V1174C

EXHIBIT B1

MICHAEL ST. DENIS
PROFESSIONAL CORPORATION
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SHULMAN HODGES & BASTIAN
LLP

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Tel: 571-267-7002
Fax: 703-391-2901

Attorneys for Defendant
TRADE UNION INTERNATIONAL,
INC.

Attorneys for Plaintiff
DAIMLER AG

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAIMLER AG,

Plaintiff,

vs.

TRADE UNION INTERNATIONAL,
INC. D/B/A TOPLINE, et al.,

Defendants.

Case No.: 5:16-cv-00667-CAS-DTB

**STIPULATED MOTION FOR
DISMISSAL WITH PREJUDICE**

EXHIBIT B1

Pursuant to Fed. R. Civ. P. 41(a)(2) and the Parties' Settlement Agreement effective October __, 2016, Plaintiff Daimler AG ("Daimler") and Defendant Trade Union International, Inc. d/b/a Topline ("Trade Union") hereby move for, and stipulate to the entry of, an order dismissing all of Daimler's claims in this action WITH PREJUDICE, with each party to bear its own costs, expenses and attorneys' fees. All unresolved pending motions in this Action between Daimler and any Defendant shall be denied as moot.

Date: ____, 2016

By: _____
Shauna M. Wertheim (*pro hac vice*)
swertheim@marburylaw.com
Timothy W. Johnson (*pro hac vice*)
tjohnson@marburylaw.com
Joanna L. Cohn (*pro hac vice*)
jcohn@marburylaw.com
THE MARBURY LAW GROUP,
PLLC
11800 Sunrise Valley Dr., 15th Fl.
Reston, VA 20191-5300
Tel: 571-267-7002
Fax: 703-391-2901

and

MICHAEL ST. DENIS
PROFESSIONAL CORPORATION

By: _____
James C. Bastian, Jr.
JBastian@shbllp.com
SHULMAN HODGES & BASTIAN
LLP
JBastian@shbllp.com
100 Spectrum Center Drive, Suite 600
Irvine, CA 92618
Tel: 949-340-3400
Fax: 949-340-3000

Attorneys for Defendant
TRADE UNION
INTERNATIONAL, INC.

EXHIBIT B1

1 Michael St. Denis, CA Bar No. 147952
2 500 Silver Spur Rd., Suite 204
3 Rancho Palos Verdes, CA 90275
4 Tel: (310) 378-4700
5 Fax: (310) 378-8722
6 Email: mike@mikestdenislaw.com

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Attorneys for Plaintiff DAIMLER AG

EXHIBIT B2

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PROFESSIONAL CORPORATION
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SHULMAN HODGES & BASTIAN
LLP

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Timothy W. Johnson (*pro hac vice*)
tjohnson@marburylaw.com
Joanna L. Cohn (*pro hac vice*)
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Fax: 703-391-2901

Attorneys for Defendant
TRADE UNION INTERNATIONAL,
INC.

Attorneys for Plaintiff
DAIMLER AG

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAIMLER AG, a German Corporation,

Plaintiff,

vs.

TRADE UNION INTERNATIONAL,
INC. D/B/A TOPLINE, et al.,

Case No.: 5:16-cv-00667-CAS-DTB

[PROPOSED] ORDER OF DISMISSAL

EXHIBIT B2

Defendants.

Pursuant to the Stipulated Motion For Dismissal With Prejudice of all claims in this case filed on behalf of Daimler AG (“Daimler”) and Trade Union International Inc. (“Trade Union”), who have agreed to the terms of a Settlement Agreement, effective October __, 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 hereby ORDERED, ADJUDGED AND DECREED that judgment be entered against Trade Union as follows:

1. This Court has jurisdiction over the subject matter of this action, and has *in personam* jurisdiction over Trade Union.

2. Trade Union hereby acknowledges and agrees that U.S. Design Patent No. D542,211 and U.S. Design Patent No. D570,760 (collectively, the “DAIMLER Patents”) are each valid and enforceable.

3. Trade Union hereby acknowledges 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, U.S. Trademark Reg. No. 1,660,727, U.S. Trademark Reg. No. 2,909,827, and U.S. Trademark Reg. No. 2,876,643 (collectively, the “DAIMLER Marks”), and that the DAIMLER Marks are each valid and enforceable. Trade Union agrees that it will not contest, or assist in the contest of, the validity or enforceability of the DAIMLER Patents and

EXHIBIT B2

1 the DAIMLER Marks, in any forum, including Federal Courts, United States
2 Patent and Trademark Office, and/or the International Trade Commission.
3

4 4. Trade Union is hereby enjoined from purchasing, importing, selling,
5 distributing, or marketing automotive wheels infringing the DAIMLER Patents or
6 the DAIMLER Marks.
7

8 5. Trade Union shall bear its own costs and expenses, including
9 attorneys' fees, arising out of this case.
10

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

13 7. This Court shall retain jurisdiction of this action to enforce this
14 judgment and the Parties' Settlement Agreement.
15

16 8. All claims in the above-entitled lawsuit between Daimler and Trade
17 Union are hereby dismissed with prejudice.
18
19
20

21 IT IS SO ORDERED.
22
23

24 Dated: _____

25 By: _____
26 Christina A. Snyder
27 United States District Judge
28

Exhibit C1

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 RESPONDENT TRADE UNION
INTERNATIONAL INC. D/B/A TOPLINE 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 Respondent Trade Union International Inc. d/b/a Topline (“Trade Union”) (collectively, the “Parties”) hereby jointly move to terminate this investigation as to Trade Union based on the attached Consent Order Stipulation (“Stipulation”) (JX-1), Proposed Consent Order (JX-2), and Settlement Agreement, effective November 10, 2016 (Public Version JX-3).

The motion is not opposed. On November 10, 2016, counsel for Daimler communicated with counsel for all Respondents¹ and Commission Investigative Staff of Daimler and Trade Union’s intent to file the instant motion and requests made herein. Counsel for OE Wheel Distributors, LLC, Amazon.com, Inc., and A-Z Wheels LLC d/b/a

¹ The other Respondents remaining in the Investigation are American Tire Distributors, Inc. and American Tire Distributors Holdings, Inc. (collectively, “ATD”) and Onyx Enterprises Int’l Corp. d/b/a CARiD.com. Although Motions to Terminate the Investigation as to the foregoing parties were officially filed with the Commission on October 25, 2016 and November 14, respectively, counsel for Daimler notified counsel for both parties, and counsel for those parties did not oppose.

Exhibit C1

UsaRim/USArim.com/Eurotech Wheels, and Infobahn International, Inc. d/b/a Infobahn/Eurotech/Eurotech Luxury Wheels/Eurotech Wheels/UsaRim have stated that they do not oppose the motion. Commission Investigative Staff reserved its position until after the filing of the instant motion and related documents.

Termination

Trade Union stipulates to the entry of the Proposed Consent Order and the parties jointly request that the Proposed Consent Order be entered for the purpose of resolving Trade Union's participation 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 Trade Union has entered into the Stipulation without conceding that an unfair act has been committed.

Daimler and Trade Union have entered into the attached settlement agreement effective November 10, 2016, 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 Trade Union. 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; indeed, the Commission instituted this

Exhibit C1

investigation only last month. The parties jointly seek to conclude this investigation as to Trade Union 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 and Trade Union further request that the service of an unredacted version of this Agreement be limited to the Commission and the settling parties, Daimler, and Trade Union. 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 Trade Union in the U.S. District Court for the Central District of California, styled and captioned, *Daimler AG v. Trade Union International Inc. DBA Topline*, 5:16-cv-00667-CAS-DTB (the "District Court Action"). The Agreement contains terms that resolve the District Court

Exhibit C1

Action. Pursuant to Section 6.3 of the Agreement, monetary and related 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.

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

Dated: November 15, 2016

THE MARBURY LAW GROUP, PLLC

SHULMAN HODGES & BASTIAN LLP

Shauna M. Wertheim
Timothy W. Johnson
Joanna L. Cohn
11800 Sunrise Valley Dr., 15th Fl.
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jcohn@marburylaw.com

James C. Bastian, Jr.
100 Spectrum Center Drive, Suite 600
Irvine, CA 92618
Tel: 949-340-3400
Fax: 949-340-3000
Email: JBastian@shbllp.com

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

Attorneys for Complainant DAIMLER AG

CERTIFICATE OF CONSENT

I hereby certify on this 15th day of November, 2016, that I have obtained the consent of James C. Bastian, Jr., counsel for Respondents Trade Union International Inc. d/b/a Topline 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 C1

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 **15th** day of **November, 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
Patricia.Chow@usitc.gov

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

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☐ 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
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Exhibit C1

Counsel for Respondent Amazon.com, Inc.

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☐ VIA OVERNIGHT COURIER
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Exhibit C1

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

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Shauna M. Wertheim

Exhibit C2

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
TRADE UNION INTERNATIONAL INC. D/B/A TOPLINE

Concurrent with the joint motion to terminate, Respondent Trade Union International Inc. d/b/a Topline ("Trade Union") 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 Trade Union.

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 Trade Union, of certain passenger vehicle automotive wheels that allegedly infringe the claims of U.S. Design Patent No. D542,211 and U.S. Design Patent No. D570,760 (collectively, the "Asserted Design Patents") and/or allegedly infringe U.S. Trademark Reg. No. 3,305,055, U.S. Trademark Reg. No. 1,807,353, U.S. Trademark Reg. No. 1,660,727, U.S. Trademark Reg. No. 2,909,827, and U.S. Trademark Reg. No. 2,876,643 (collectively, the "Asserted Trademarks"). 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).

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

Exhibit C2

1. Trade Union is a corporation organized and existing under the laws of the State of California, and has a principal place of business located at 4651 State Street, Montclair, CA 91763.

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

3. Trade Union admits and acknowledges that the Commission has *in rem* jurisdiction over the articles that are the subject of the Complaint. Trade Union 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, attached hereto. Trade Union admits and acknowledges that the Commission has subject matter jurisdiction in the matter under investigation.

4. Upon entry of the Consent Order, Trade Union 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 and the Asserted Trademarks (collectively, "Subject Articles").

5. Trade Union 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.

6. Trade Union 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 C2

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. Trade Union's signing of this Stipulation is for settlement purposes only and does not constitute admission by Trade Union 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. Trade Union will not seek to challenge the validity of any of the Asserted Design Patents or Asserted Trademarks in any administrative or judicial proceeding to enforce the Consent Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: _____

By: _____
[Name]

[Position]
Trade Union International Inc.
4651 State Street
Montclair, CA 91763

Exhibit C3

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 Trade Union International Inc. d/b/a Topline ("Trade Union"). 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 Trade Union, of certain passenger vehicle automotive wheels that allegedly infringe the claims of U.S. Design Patent No. D542,211 and U.S. Design Patent No. D570,760 (collectively, the "Asserted Design Patents") and/or allegedly infringe U.S. Trademark Reg. No. 3,305,055, U.S. Trademark Reg. No. 1,807,353, U.S. Trademark Reg. No. 1,660,727, U.S. Trademark Reg. No. 2,909,827, and U.S. Trademark Reg. No. 2,876,643 (collectively, the "Asserted Trademarks"). 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).

Trade Union has executed a Consent Order Stipulation ("Stipulation") and moved jointly with Daimler for an Initial Determination terminating this investigation as to Trade Union by entry of a consent order. The Parties have entered into a Settlement Agreement effective

Exhibit C3

November ___, 2016, a copy of which is provided as an attachment to the Parties' Joint Motion to Terminate. Trade Union has 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. Trade Union has admitted and acknowledged that the Commission has *in rem* jurisdiction over the articles that are the subject of the Complaint. Trade Union has admitted and acknowledged that the Commission has *in personam* jurisdiction over it for the purposes of the Stipulation and this Consent Order. Trade Union has admitted and acknowledged that the Commission has subject matter jurisdiction in this Investigation.

2. Effective immediately upon the entry of this Consent Order, Trade Union 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 Design Patents or the Asserted Trademarks (collectively, the "Trade Union Subject Articles"), and with respect to the Trade Union 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. Trade Union shall be precluded from seeking judicial review or otherwise challenging the validity of this Consent Order.

4. Trade Union 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. Trade Union 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

Exhibit C3

enforceability of Asserted Design Patent(s) or Asserted Trademark(s) in any administrative or judicial proceeding to enforce this Consent Order.

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

7. If any Asserted Design Patent or Asserted 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 Design Patent or Asserted 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 Design Patent or Asserted Trademark.

8. The matter under investigation is hereby terminated with respect to Trade Union, 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

EXHIBIT D –LIST OF REMAINING INVENTORY

Item No.	Description	In Stock QTY
V1174- 784435G	CL65 17X8 +35MM GUN METAL/MACH FACE 5X112 66.6MM BORE	1
V1174- 884435G	CL65 18X8.5 +35MM GUN METAL/MACH FACE 5X112 66.6MM BORE	1
V1174- 984435G	CL65 19X8.5 +35MM GUN METAL/MACH FACE 5X112 66.6MM BORE	1
V1175- 784435G	SL63 17X8 +35MM GUN METAL/MACH FACE 5X112 66.6MM BORE	1
V1175- 884435G	SL63 18X8.5 +35MM GUN METAL/MACH FACE 5X112 66.6MM BORE	1
V1175- 984435G	SL63 19X8.5 +35MM GUN METAL/MACH FACE 5X112 66.6MM BORE	1

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. 17** has been served upon the **Commission Investigative Attorney, Vu Bui, Esq.**, and the following parties as indicated on _____

DEC 01 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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FOR RESPONDENT O.E. WHEEL DISTRIBUTORS, LLC

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Washington, DC 20036

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**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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RESPONDENT

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

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