

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN PERSONAL TRANSPORTERS,
COMPONENTS THEREOF, AND
PACKAGING AND MANUALS THEREFOR**

Inv. No. 337-TA-1007

Order No. 6

On June 29, 2016, pursuant to 19 C.F.R. § 210.14(b)(1), complainants Segway Inc.; DEKA Products Limited Partnership; and Ninebot (Tianjin) Technology Co., Ltd. (collectively, “Segway”) filed a motion to amend the complaint and notice of investigation. Motion Docket No. 1007-1.

The requested amendments seek to add the following proposed respondents to the pending investigation.

- Metem Teknoloji Sistemleri San, Changzhou Airwheel Technology Co., Ltd., Airwheel Technology Holding (USA) Co., Ltd., and Airwheel (collectively, “Airwheel”);
- Nanjing Fastwheel Intelligent Technology Co., Ltd (“Fastwheel”);
- Shenzhen Chenduoxing Electronic Technology Ltd., China (C-Star);
- Hangzhou Chic Intelligent Technology Co., Ltd. (“Chic”);
- Hovershop; and
- Powerboard LLC (“Powerboard”).

Mot. at 1-2. Additionally, the proposed amendments seek to make several minor changes in, and provide updated information to, the original verified Complaint, filed May 18, 2016. These changes are reflected in the redlined version of the Amended Complaint tracking all changes to the complaint (Appendix 3), including the addition of Exhibit Nos. 87-128 in support of the

Amended Complaint. Mot. at 2.

On July 11, 2016, proposed respondent Chic and the Commission Investigative Staff (“Staff”) filed a response. On July 14, 2016, complainants filed a motion for leave to file a reply to the Staff’s response. Motion Docket No. 1007-6.¹ On July 15, 2016, proposed respondent Powerboard filed a response opposing the pending motion.

Complainants argue that the pending motion is “made on the grounds that good cause exists for the amendments, that no other respondent will be prejudiced, and that the amendments are in the public interest.” It is argued that “Segway was only recently able to obtain and fully analyze products for the Proposed Additional Respondents. Because this investigation is only in the very early stages, having just been instituted on June 20, 2016, there is no prejudice to the parties, the Proposed Additional Respondents, or the public interest if the Motion is granted.”

Mot. at 2.

Proposed respondent Chic argues:

On balance, Chic[] does not oppose Complainants’[] request to amend its complaint to add Chic as a respondent in this investigation. Indeed, since Complainants seek a general exclusion order, Chic has a strong interest in participating in the investigation and its interests would be compromised if it were not part of the investigation. Accordingly, Chic agrees that the ALJ and the Commission should grant Complainants’ motion to add Chic as a respondent and permit Chic to join the investigation at the earliest time possible. But the mere fact that Chic supports the result sought in the motion to amend does not mean that Chic supports Complainants’ actions. As a preliminary matter, contrary to Commission Rule 210.14(b), Complainants did not serve the motion to amend on Chic. And more importantly, because Complainants waited to amend the complaint until after the investigation was instituted, Chic will be shut out of the case for the first several weeks and will have less time to defend itself than it would have had if Complainants had amended the complaint pre-institution. Accordingly, Chic further requests that the ALJ set a procedural schedule that takes into account the fact that Chic (and other newly named respondents) will be unable to participate fully in the investigation until the motion to amend is resolved.

¹ The motion for leave is granted.

Proposed respondent Powerboard argues:

Complainants deliberately left Powerboard out of their initial complaint and delayed in seeking to add Powerboard before institution despite acknowledging that they already had in their possession the information relied on for their infringement allegations. (*See* Mot. at 10.) As their showing of “good cause,” they simply assert that they had not yet “completed” their investigation of the Powerboard product. (*See* Mot. at 12.) Complainants had control of the timing of their complaint and chose to proceed with filing. Having made that choice, Complainants should not be excused from their obligation to complete their own investigation against known respondents before filing their complaint. *See Certain Action Metal Cutting Snips and Components Thereof*, Inv. No. 337-TA-197, Order No. 5, at 1 (Sep. 24, 1986). Moreover, It appears that Complainants completed their analysis of the Powerboard product **before** the institution of this investigation on June 20, 2016, yet inexplicably delayed in seeking to add Powerboard until after the Commission voted to institute. (*See* Mot. at 10.) Allowing Complainants to amend now would be to ignore the “good cause shown” requirement of §210.14(b)(1). Such a result would be nothing short of unjust, and in contravention to well- established ITC precedent. *See, e.g., EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices & Prods. Containing Same*, Inv. No. 337-TA-395, Order No. 18, at 1 (Aug. 27, 1997).

Powerboard Opp’n at 1-2 (emphasis in original).

The Staff states that it “does not oppose amending the Complaint and Notice of Institution of Investigation to include Chic as a respondent.” Staff at 2. The Staff argues that “[t]o extent any of the Proposed Additional Respondents do not oppose their inclusion as respondents in this investigation, the Staff also would not oppose.” *Id.* The Staff argues that “[t]o the extent that any of the Proposed Additional Respondents (i.e., Powerboard, Hovershop, Airwheel, Fastwheel and C-Star) *do oppose* the Motion, the Staff also opposes because Complainants’ have not established the requisite good cause. *Id.* (emphasis in original). The Staff argues that adding the proposed respondents is “unlikely to significantly prejudice” any of the parties or the proposed respondents. *Id.* at 9.

Commission Rule 210.14(b)(1) provides that after an investigation has been instituted, the complaint and notice of investigation may be amended only “by leave of the Commission for good cause shown and upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation.” 19 C.F.R. § 210.14(b)(1).

Complainants have not shown the requisite good cause for adding the additional respondents. As argued by the responding parties, the evidence shows that complainants could have added Chic and Powerboard as respondents in the original complaint, or could have delayed filing the complaint. *See* Staff at 5-9; Chic Response at 3; Powerboard Opp’n at 4-8. As in the case of Chic and Powerboard, complainants do not seek to add proposed respondents Airwheel, Fastwheel, C-Star, and Hovershop in response to information obtained through discovery in this investigation. The administrative law judge agrees with the Staff that complainants have not shown the requisite good cause to add these proposed respondents. *See* Staff at 5-6, 8.

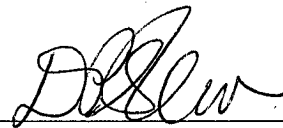
Chic argues that complainants’ delay in seeking to add Chic as a respondent “will prejudice Chic’s ability to defend its interests if the investigation proceeds.” Chic Response at 4. Chic states in its response that it may request an extension of the target date in the future in order to make up lost time. *See id.* at 5. In its opposition, Powerboard argues that it would potentially be prejudiced due to approximately two months of lost time. *See* Powerboard Opp’n at 8-9. Powerboard argues that “Complainants’ failure to name Powerboard in the original Complaint or notice of institution necessarily delays its ability to participate in the investigation for a significant amount of time.” *Id.* at 8. As argued by proposed respondents Chic and Powerboard, although this investigation is in the early stages, the administrative finds that there is prejudice to those respondents.

A target date is already in place in this investigation. *See* Order No. 4. It should not be

extended to accommodate complainants' request to add additional respondents, especially in the absence of the requisite good cause. Furthermore, the target date in this investigation could not be extended without affecting the target dates in other investigations.²

Accordingly, Motion No. 1007-1 is denied.³

So ordered.



David P. Shaw
Administrative Law Judge

Issued: July 25, 2016

² There is very little flexibility in the administrative law judge's current docket. The initial determination on alleged violation for this investigation is due May 18, 2017. *See* Order No. 4. The initial determination is due April 28, 2017 for Inv. No. 337-TA-1001, and June 2, 2017 for Inv. No. 337-TA-1012. Additionally, other complaints have been filed recently.

³ Nonetheless, complainants may file a new motion to amend the complaint and notice of investigation for the "minor changes." *See* Mot. at 2.

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PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Order No. 6** has been served by hand upon the Commission Investigative Attorney, **Sarah Sladic, Esq.**, and the following parties as indicated, on _____.

JUL 26 2016



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

**FOR COMPLAINANTS SEGWAY INC.; DEKA PRODUCTS LIMITED
PARTNERSHIP; AND NINEBOT (TIANJIN) TECHNOLOGY CO., LTD.:**

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FOR RESPONDENT JETSON ELECTRIC BIKES LLC:	
Ezra Sutton, Esq. EZRA SUTTON, P.A. 900 Route 9 North, Suite 201 Woodbridge, NJ 07095	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Express Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
RESPONDENT SEGAWAY:	
Segaway 3940 Laurel Canyon Boulevard #376 Studio City, CA 91604	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Express Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
RESPONDENT PHUNKEEDUCK, INC.:	
PhunkeeDuck, Inc. 250 Jericho Turnpike Floral Park, NY 11001	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Express Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____