

PUBLIC VERSION

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN ELECTRIC SHAVERS AND
COMPONENTS AND ACCESSORIES
THEREOF**

Investigation No. 337-TA-1230

COMMISSION OPINION

I. INTRODUCTION

On November 18, 2021, the presiding administrative law judge (“ALJ”) issued an initial determination (“ID”) granting complainant’s motion for summary determination (“MSD”) of a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based on infringement of claims 1-3 of U.S. Patent No. 8,726,528 (“the ’528 patent”) and the sole claim of U.S. Design Patent No. D672,504 (“the ’504 design patent”).

On January 3, 2022, the Commission determined to review the ID’s findings on the economic prong of the domestic industry requirement. Notice, 87 Fed. Reg. 990, 991 (Jan. 7, 2022). The review notice solicited written submissions, including on remedy, the public interest, and bonding from the parties, interested government agencies, and the public. *Id.*

The Commission has determined to affirm the ID’s finding that Complainant has satisfied the economic prong of the domestic industry requirement for the reasons provided in the ID. Accordingly, the Commission finds a violation of section 337 as to respondents Yiwu Xingye Network Technology Co. Ltd. (“Yiwu Xingye”) d.b.a. “Roziapro” of Yiwu, China, and Yiwu City Qiaoyu Trading Co., Ltd. (“Yiwu City”) of Yiwu, China as to claims 1-3 of the ’528 patent and the sole claim of the ’504 design patent.

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The Commission determines that the appropriate remedy in this investigation is a general exclusion order (“GEO”) prohibiting the unlicensed importation of electric shavers and components thereof that infringe one or more of claims 1-3 of the ’528 patent or the sole claim of the ’504 design patent, and cease and desist orders (“CDOs”) prohibiting respondents Yiwu Xingye and Yiwu City from further importing, selling, and distributing infringing products in the United States. The Commission also determines that the public interest factors do not preclude issuance of these remedial orders. Finally, the Commission determines that the bond during the period of Presidential review pursuant to 19 U.S.C. § 1337(j) shall be in the amount of one hundred percent (100%) of the entered value of the imported articles.

II. BACKGROUND

A. Procedural History

1. The ID and RD

On November 18, 2020, the Commission instituted this investigation based on a complaint filed by Skull Shaver, LLC (“Skull Shaver”) of Moorestown, New Jersey. 85 Fed. Reg. 73510-11 (Nov. 18, 2020). The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electric shavers and components and accessories thereof by reason of infringement of claims 1-3 of the ’528 patent and the sole claim of the ’504 design patent. The Commission’s notice of investigation named the following eleven entities as respondents: Yiwu Xingye; Yiwu City; Rayenbarny Inc. (“Rayenbarny”) of New York, New York; Bald Shaver Inc. (“Bald Shaver”) of Toronto, Canada; Suzhou Kaidiya Garments Trading Co., Ltd. (“Suzhou”) d.b.a. “Digimotor” of Suzhou, China; Shenzhen Aiweilai Trading Co., Ltd. (“Aiweilei”) d.b.a. “Teamyo” of Shenzhen, China; Wenzhou Wending Electric Appliance Co., Ltd. d.b.a. “Paitree” of Yueqing City, China; Shenzhen Nukun Technology Co., Ltd. (“Nukun”) d.b.a. “OriHea” of

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Shenzhen, China; Magicfly LLC (“Magicfly”) of Hong Kong; Shenzhen Wantong Information Technology Co., Ltd. (“Wantong”) d.b.a. “WTONG” of Shenzhen, China; and Shenzhen Junmao International Technology Co., Ltd. (“Junmao”) d.b.a. “Homeas” of Shenzhen, China. The notice of investigation also named the Office of Unfair Import Investigations (“OUII”) as a party. *Id.*

The Commission terminated Rayenbarny from the investigation because its accused product was actually imported by Benepuri LLC (“Benepuri”) of Menands, New York; the Commission allowed Benepuri to intervene as a respondent. Notice, 85 Fed. Reg. 82514, 82515 (Dec. 18, 2020). The Commission later granted Skull Shaver’s motion to amend the Complaint and the notice of investigation to correct the name of Wenzhou Wending Electric Appliance Co., Ltd. d.b.a. “Paitree” to Wenzhou Wending Electric Appliance Co., Ltd. (“Wenzhou”), and to correct its address and the addresses of several other respondents. Notice, 86 Fed. Reg. 14645, 14645 (Mar. 17, 2021). The Commission terminated Magicfly from the investigation on the basis of settlement. Notice at 2 (May 19, 2021). The Commission terminated Nukun and Benepuri from the investigation on the basis of withdrawal of the complaint. Notice at 2 (June 21, 2021) (Nukun); Notice at 2 (Oct. 28, 2021) (Benepuri). All of the remaining respondents (*i.e.*, all respondents other than Magicfly, Nukun, Benepuri and Rayenbarny) defaulted. *See* Notice at 3 (May 21, 2021) (seven defaulting respondents); Notice at 2 (Dec. 9, 2021) (Bald Shaver defaulting). The eight defaulting respondents are: Suzhou; Yiwu City; Wenzhou; Aiweilai; Junmao; Wantong; Yiwu Xingye; and Bald Shaver (collectively, “the Defaulting Respondents”).

On May 26, 2021, Skull Shaver filed a motion for summary determination of violation of section 337 by the eight defaulting respondents, and for a recommendation that the Commission issue a general exclusion order and cease and desist orders. *See* Complainants’ Motion for

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Summary Determination of Violation and for Recommended Determination on Remedy and Bonding. On June 7, 2021, OUII filed a response in support of Skull Shaver's motion. *See* Commission Investigative Staff's Response to Skull Shaver's Motion for Summary Determination of Violation. No respondent filed a response to Skull Shaver's motion.

On September 23, 2021, OUII filed a notice of supplemental authority containing the Commission's opinion in *Certain Electronic Candle Products and Components Thereof*, Inv. No. 337-TA-1195, which OUII asserted may be relevant to the domestic industry analysis. On September 28, 2021, the ALJ issued an order (Order No. 31) ordering certain supplementation of Skull Shaver's domestic industry analysis. On October 14, 2021, Skull Shaver submitted its supplement in response to Order No. 31. OUII did not respond to Order No. 31 or to Skull Shaver's response to Order No. 31.

On November 18, 2021, the ALJ granted-in-part, as the subject ID, Skull Shaver's motion for summary determination. Specifically, the ID found that Skull Shaver owns the asserted patents, and that those patents are not invalid or unenforceable. ID at 3. The ID further found that although all of the Defaulting Respondents imported, sold for importation, or sold within the United States after importation at least one accused article, only Yiwu Xingye's and Yiwu City's articles infringe the asserted claims of the asserted patents. *Id.* at 3-4. The ID found that personal jurisdiction is not necessary over each defaulting respondent, but that defaulting waives any opportunity to contest the allegation that personal jurisdiction exists. *Id.* The ID further found that Skull Shaver meets the technical prong and the economic prong of the domestic industry requirement. *Id.* at 4. The ID also found that there is a widespread pattern of unauthorized use of the asserted patents and that a GEO is necessary to prevent circumvention. *Id.* at 4. The ID also recommended issuance of CDOs against the two infringing respondents,

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who maintain domestic inventories. RD at 80-81. The RD recommended a bond in the amount of 100% of the entered value of infringing articles. *Id.* at 82. The RD observed full information on pricing or royalties is unavailable because none of the Defaulting Respondents participated in or produced discovery. *Id.* at 81-82.

2. Commission Review and Briefing

The Commission determined to review the ID as to the economic prong of the domestic industry requirement, and the review notice solicited briefing on the issue. The Commission also solicited written submissions on remedy, the public interest, and bonding from the parties, interested government agencies, and interested persons. *Id.* In response to the Commission notice, Skull Shaver and OUII each filed an opening submission¹ and a reply²; the Commission received no other submissions.

B. Technology and Asserted Patents

The technology and products at issue are electric shavers for facilitating shaving a head, by including a grip to facilitate head shaving. Independent claims 1 and 3 of the '528 patent, for example, each contain limitations for two pairs of recesses: two pairs of perpendicular grooves that allow the shaver to be gripped on top or by sticking fingers through the housing. These are most clearly shown in Figure 2 of the '528 patent:

¹ Compl't Skull Shaver, LLC's Resp. to Comm'n Notice to Rev. in Part an Initial Determination Granting in Part a Mot. for Summ. Determination of a Section 337 Violation (Jan. 18, 2022) ("Skull Shaver Br."); Submission of the Office of Unfair Import Investigations in Resp. to the Commission's Notice (Jan. 18, 2022) ("OUII Br.").

² Compl't Skull Shaver, LLC's Reply to the Submission of the Office of Unfair Import Investigations in Resp. to the Commission's Notice (Jan. 25, 2022); Reply Submission of the Office of Unfair Import Investigations in Resp. to the Commission's Notice (Jan. 25, 2022).

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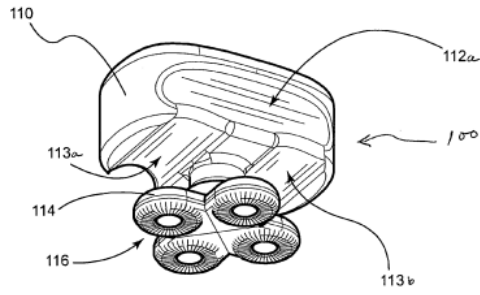


Figure 2

These recesses allow a variety of hand grips to facilitate shaving, as shown in Figures 4-6 of the '528 patent:

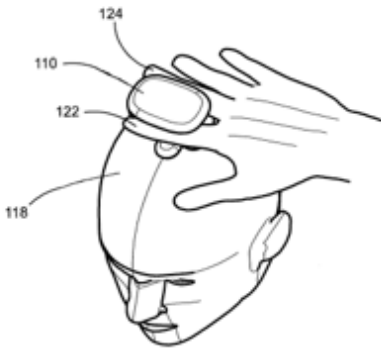


Figure 4

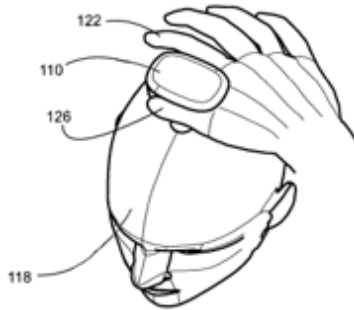


Figure 5

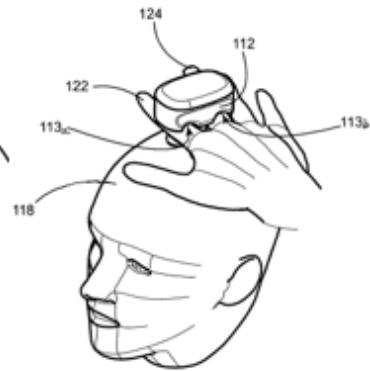
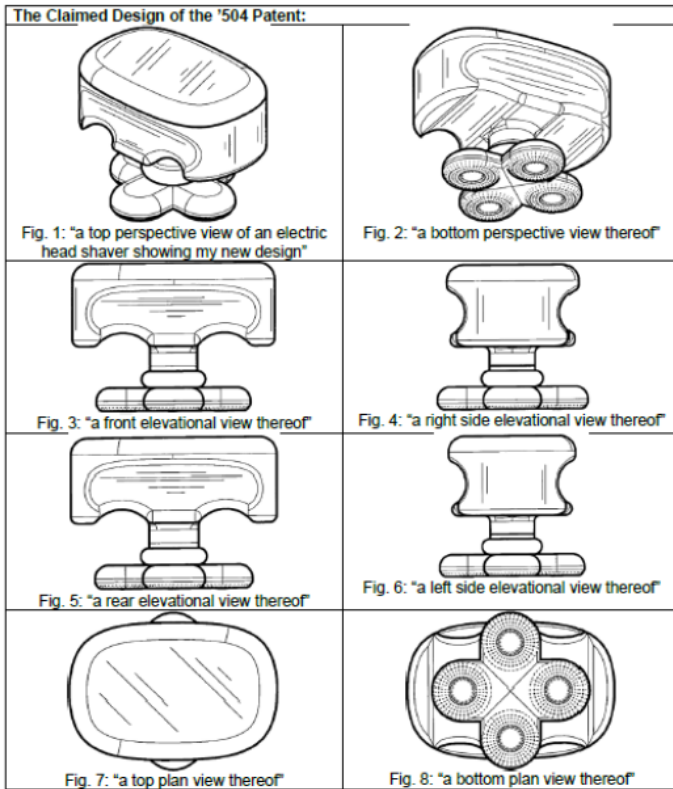


Figure 6

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The '504 design patent claims, in pictures, a similar device:



ID at 15.

C. Products at Issue

Skull Shaver's domestic industry products are its Pitbull Platinum PRO, Pitbull Gold PRO, Pitbull Silver PRO, Butterfly II Smart, Butterfly Kiss PRO, Butterfly Kiss, Bald Eagle, Trinity, and Palm. ID at 4 n.4. The ALJ found that each of the domestic industry products practices the claims of the '528 patent, and that each of the domestic industry products—except for the Butterfly II Smart, Butterfly Kiss PRO, and Butterfly Kiss—embody the design of the '504 design patent. ID at 53-54. The ALJ thus found Skull Shaver met the technical prong for each asserted patent. *Id.*

Skull Shaver accused Yiwu Xingye and Yiwu City of infringing claims 1-3 of the '528 patent and the '504 design patent; Skull Shaver accused the other defaulters of infringing claim 1 of the '528 patent:

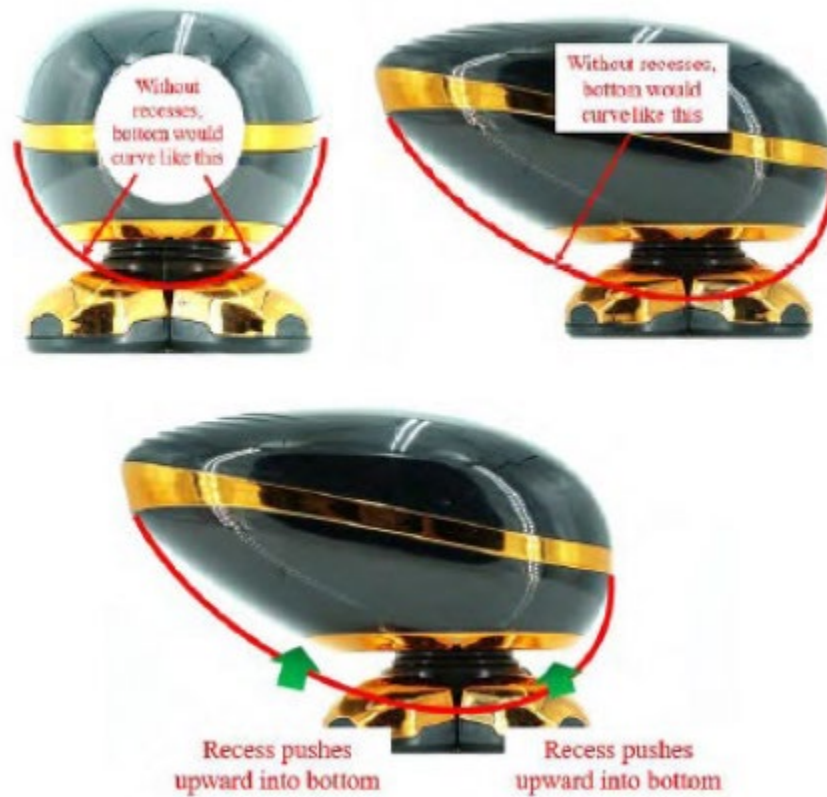
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Respondent	Infringing Product Model	Infringed Skull Shaver Patents (Claims Infringed)
Bald Shaver	LK-1800 Shaver	'528 patent (1)
Suzhou Kaidiya	Kibiy Bald Head Shaver LED Mens Electric Shaving Razor by Digimator	'528 patent (1)
Shenzhen Aiweilai	Teamyo 5D Floating Deep Clean Head Shaver for Bald Men	'528 patent (1)
Wenzhou Wending	PaiTree 5 in 1 Head and Face Electric Rotary Shaver	'528 patent (1)
Yiwu Xingye	Roziapro Electric Razor for Men 6 in 1 Bald Head Shaver	'528 patent (1, 2, 3); '504 patent
Yiwu City	Surker 6 in 1 Electric Shavers for Men Bald Head	'528 patent (1, 2, 3); '504 patent
Shenzhen Wantong	Electric Razor Grooming Kit for Men 4 in 1 Dry Wet Waterproof Rotary Bald Head Shaver by WTONG	'528 patent (1)
Shenzhen Junmao	Homeasy Men Electric Razor Bald Head Shaver	'528 patent (1)

MSD at 5.

The ID found that Yiwu Xingye and Yiwu City's accused products meet the limitations of claims 1-3 of the '528 patent. ID at 22-43. The ID also found that those same two respondents' products embody the ornamental design of the '504 design patent. *Id.* at 43-49. The ID also found that Skull Shaver failed to demonstrate that any of the other respondents' products infringe claim 1 of the '528 patent. For those products, there was no second set of recesses. Suzhou's accused product is representative:

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ID at 51 (reprinting Hatch Decl., Ex. H at App. A-7 at 13-14). Instead, Skull Shaver argued that by projecting the (egg-like) shape of the shaver, certain areas that are not concave should nonetheless be considered recesses. ID at 51. Having previously construed the claimed “recesses” to be “indentations that are substantially concave surfaces,” *id.* at 16 (citing Order No. 20, App. A at 10-23), the ALJ rejected Skull Shaver’s theory of infringement. ID at 51-52. The ALJ found that Skull Shaver did not brief the doctrine of equivalents in its motion for summary determination, and that the issue is waived pursuant to the ALJ’s Ground Rules. *Id.* at 50 n.7. Accordingly, the ALJ found that Skull Shaver failed to demonstrate that Suzhou, Wenzhou, Aiweilai, Junmao, Wantong and Bald Shaver’s product infringe claim 1 of the ’528 patent. *Id.* at 51-52.

None of these findings were reviewed by the Commission.

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II. DISCUSSION

A. Economic Prong of the Domestic Industry Requirement

Skull Shaver relied upon section 337(a)(3)(A) (plant and equipment) and (a)(3)(B) (labor or capital) to establish the domestic industry requirement.³ The ALJ found that Skull Shaver demonstrated the existence of a domestic industry based on labor or capital, but not based on plant and equipment. ID at 60-69. On review, the Commission affirms the ID's findings and the ID's conclusion that the economic prong of the domestic industry is satisfied.

1. The ID's Findings

All of Skull Shaver's [[REDACTED]] employees work in the United States and perform "job duties and responsibilities that relate[] either directly or indirectly to the DI Products." ID at 60. "This included product design and development, customer service, product support, and other functions such as management and sales." *Id.* Skull Shaver designed its products and patented them in the United States, and all of its employees work to support that domestically-developed business. The ID included a chart illustrating Skull Shaver's investment in labor, *i.e.*, an allocation of its employees' time spent on the domestic industry products:

³ Skull Shaver stated in its motion for summary determination that "the ALJ may find that Complainant has satisfied the economic prong of the domestic industry requirement under any one of the Section 337(a)(3)(A)-(C) provisions." ID at 60 n.10 (quotation omitted). The ID found that Skull Shaver failed to "specifically brief" the issue of whether it satisfies the economic prong under subparagraph (C) and thereby waived the issue. *Id.* Skull Shaver did not petition for review of that waiver determination, and the Commission affirms it.

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[[CHART REDACTED]]

ID at 66-67.

The ALJ considered the Commission’s determination in *Certain Bone Cements, Components Thereof & Products Containing the Same*, Inv. No. 337-TA-1153, Comm’n Op. (Jan. 12, 2021). The ALJ found, in view of that opinion, that “[h]ere, where there is no evidence of domestic manufacturing activity, it is appropriate not to credit certain of Skull Shaver’s

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employees *solely* dedicated to activities such as sales and marketing, for example.” ID at 61 (emphasis in original). The ALJ found that “[e]ven with sales and marketing expenses withdrawn from” Skull Shaver’s investments, “Skull Shaver would still not qualify as a mere importer.” ID at 61.

The ID found that Skull Shaver “expends a substantial amount of resources for”:
“(i) customer service operations (customer service, product support, and education); and
(ii) domestic quality control measures (quality control and repair services).” ID at 61. In particular, for 2019 through the first half of 2020, the customer service labor expenses amounted to “\$[[REDACTED]] for customer service operations and \$[[REDACTED]] for domestic quality control measures,” as shown in the chart above. *Id.* The ALJ found that:

The Commission “has routinely recognized these types of activities and expenditures as characteristic of a significant domestic industry rather than of a mere importer. *See Certain Video Displays, Components Thereof, and Prods. Containing the Same*, Inv. No. 337-TA-687, Order No. 20 (ID), 2010 WL 2306671, at *5 (May 20, 2010) (noting that the analysis under 19 U.S.C. § 1337(a)(3)(B) need not be “strictly tied to monetary expenditures,” as “[d]omestic activities relating to customer support, quality control, and repairs for similar products/industries have supported a finding of economic domestic industry under . . . section (B)”).

ID at 61-62. In this timeframe, Skull Shaver’s costs of goods sold was approximately \$[[REDACTED]]. *Id.* at 65. Skull Shaver’s employment of labor and capital was therefore “approximately [[REDACTED]] of the total cost of making and procuring the DI Products,” *id.* at 65, which the ALJ found quantitatively significant, *id.*

The ALJ rejected Skull Shaver’s showing under subparagraph (a)(3)(A) because Skull Shaver’s allocations mixed “rent with expenses that should not be allocated to section (A) – *i.e.*, payroll, operational and marketing expenses, and other operational expenses.” *Id.* at 68. When the ALJ extrapolated Skull Shaver’s rent costs alone (approximately \$[[REDACTED]]), she

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found it represented approximately [[REDACTED]]% of Skull Shaver’s cost of goods sold, depending on the allocation used. *Id.* at 69. The ALJ found this to be inadequate to demonstrate a significant investment.

2. Commission Review

On review, the Commission affirms the ID’s findings and the ID’s conclusion that the economic prong of the domestic industry is satisfied, for the reasons set forth in the ID.⁴

B. Remedy

1. General Exclusion Order

The Commission’s authority to issue a GEO when respondents appear to contest the investigation is found in section 337(d)(2).⁵ Section 337(d)(2) provides that the Commission may, after an investigation determining that there is a violation of section 337 based on

⁴ Commissioners Karpel and Schmidlein take no position as to whether Skull Shaver satisfied the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(A). They concur in the finding that Skull Shaver satisfied the economic prong under subsection (B) of section 337(a)(3).

In addition, although not outcome determinative here, Commissioners Karpel and Schmidlein do not support the ALJ’s statement that “where there is no evidence of domestic manufacturing activity, it is appropriate not to credit certain of Skull Shaver’s employees *solely* dedicated to activities such as sales and marketing, for example.” ID at 61 (emphasis in original). *See Certain In Vitro Fertilization Products, Components Thereof, and Products Containing the Same*, Inv. No. 337-TA-1196, Dissenting Views of Commissioners Schmidlein and Karpel, at 11 n.10 (October 28, 2021).

⁵ While all remaining respondents were found in default, one respondent appeared to contest the complaint but subsequently entered into a settlement agreement with the complainant and was terminated from the investigation. *See* Notice at 2 (May 19, 2021) (termination of Magicfly by settlement agreement). Two other respondents appeared to contest the complaint and moved for summary determination of no violation of section 337; Skull Shaver later withdrew the complaint as to them. Notice at 2 (June 21, 2021) (Nukun); Notice at 2 (Oct. 28, 2021) (Benepuri). In contrast to section 337(d)(2), section 337(g)(2) provides the authority to issue a GEO when “no person appears to contest an investigation concerning a violation of the provisions of this section.” 19 U.S.C. § 1337(g)(2).

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substantial, reliable, and probative evidence and the public interest does not warrant against it, issue a GEO that applies to all infringing products, regardless of their manufacturer, when:

(A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or,

(B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

19 U.S.C. § 1337(d)(2).

The ALJ recommended that the Commission issue a GEO under both 19 U.S.C. §§ 1337(d)(2)(A) and (B). RD at 70-71. The RD found that the criteria for obtaining a GEO under section 337(d)(2)(A) are satisfied. The RD stated that “sellers of knockoff electric shavers can take advantage of the market and can maintain lower startup and production costs by reverse engineering and using e-commerce selling sites.” RD at 71. The RD also explained that on such sites as Amazon.com and Alibaba.com “sellers pop-up, disappear, and then pop-up again under a different name or brand, providing anonymity, and making it easier to circumvent a limited exclusion order.” RD at 72 (quotation omitted). Skull Shaver demonstrated its own experience with Yiwu Xingye’s and Yiwu City’s products being sold under various other names on Amazon.com. *Id.* The RD found that “Skull Shaver has established that a GEO is necessary to prevent circumvention of LEOs.” RD at 73.

Likewise, the RD found that the criteria for obtaining a GEO under section 337(d)(2)(B) are satisfied. Skull Shaver asserted that “the volume of infringers is very large, which precluded” Skull Shaver from naming them all in the investigation. *Id.* at 73. Recently, for example, Skull Shaver purchased newly-available electric shavers from online platforms “nearly identical in appearance and form” to those of Yiwu Xingye and Yiwu City. *Id.* at 74. The RD found that Skull Shaver presented “compelling evidence of a pattern of infringement of the

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Asserted Patents, including from entities not named as respondents in this Investigation.” *Id.*

The RD also found that it is difficult to identify the sources of infringing products “[d]ue to their generic packaging.” *Id.*

Having reviewed the record of the investigation, the Commission adopts the RD’s recommended findings that the statutory requirements for a general exclusion from entry of infringing articles under section 337(d)(2), 19 U.S.C. § 1337(d)(2), are met in this investigation. Based on the evidence in the record, the Commission finds that: (1) there is a pattern of violation of section 337 and a difficulty identifying the source of infringing products; and (2) a GEO is necessary to prevent circumvention of an exclusion order limited to products of named persons.

As to the pattern of violation, the record demonstrates that the volume of importers is very large, and new items substantially the same as the infringing products appear in online marketplaces from new importers. RD at 74. The RD noted Skull Shaver’s evidence showing multiple identical products became newly available during the course of the investigation under different brand and seller names that were virtually identical to the infringing products of Respondent Yiwu Xingye. *Id.* at 71-72. Skull Shaver showed this same pattern for Respondent Yiwu City’s infringing product, which became available on Amazon under the brand name Surker sold by an entity named Yunce. *Id.* at 72. Skull Shaver showed how these electric shavers are nearly identical in appearance and form to Respondents Yiwu Xingye’s and Yiwu City’s infringing products, and that these newly-available electric shavers infringe the asserted patents in the same manner as Respondents Yiwu Xingye’s and Yiwu City’s infringing products. *Id.* at 74.

The record also demonstrates that the source(s) of such new products are difficult to identify because the products are poorly marked, and the whereabouts of the importers false or

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confusing. *Id.* at 75-76. For example, of the fourteen newly-available shavers that Skull Shaver identified since filing its Complaint, at least twelve arrived in nearly identical packaging labeled as Electric Shaver LK-8820, despite being advertised on Amazon.com under different brand names (including Soonsell, Rockubot, MAWAER, Vsmooth, RoZIAhome, Foxsonic, Eenten, and Anself) and by different sellers (including Guangrong, Fanyo, May Faulkner, Ruidemi Store, Sanxiaobro, Ningchen Store, Xindi office, Szkj, youngle, and alyer). *Id.* The RD noted further that many of these electric shavers are sold or advertised without branding, and thus can be sold under a variety of brand names, changing brand names, or no brand names, which makes identifying the source, sellers, and manufacturers difficult. *Id.* at 76. Moreover, the RD found the evidence demonstrates a complicated and confusing web of entities involved in selling electric shavers manufactured abroad. *Id.* at 76-77.

The record further demonstrates that a GEO is necessary to prevent circumvention by the named respondents because of the ease with which online sellers can list, and have listed, identical products with different brand names or by different third-party sellers. *Id.* at 72. The RD explained that, on such sites as Amazon.com and Alibaba.com, “sellers pop-up, disappear, and then pop-up again under a different name or brand, providing anonymity, and making it easier to circumvent a limited exclusion order.” RD at 72 (quotation omitted). The evidence also shows that sellers of infringing merchandise take advantage of existing sales channels on internet websites, such as Amazon.com and Alibaba.com, to sell their infringing shavers under various brands and seller names. *Id.* at 71. Skull Shaver demonstrated the ease of circumvention by its own experience with respondents Yiwu Xingye’s and Yiwu City’s products being sold under various other names on Amazon.com. *Id.* This evidence shows that the named

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respondents in this investigation have the capability and incentives to circumvent an LEO directed to them.

The Commission therefore determines to issue a GEO prohibiting the unlicensed entry of electric shavers and components and accessories thereof that infringe one or more of claims 1-3 of the '528 patent and the sole claim of the '504 design patent.

At the request of Skull Shaver, the RD recommended that the GEO contain an explicit carve out to exempt the specific accused products of terminated respondents Benepuri and Nukun. *See* RD at 78 (“Skull Shaver submits that “[a]ny remedy that may issue in this Investigation should not apply to those Respondents’ [Benepuri’s and Nukun’s] formerly accused articles.”) (quoting Mem. at 43 n.4). Complainant had previously sought, and received, termination of these two respondents from the investigation before the ALJ. Skull Shaver provided proposed language to identify the products of Benepuri and Nukun that it agreed should be exempt from the scope of the GEO:

This Order does not apply to the following articles that are imported or manufactured abroad by entities:

a. Benepuri LLC: AsaVea Model LK-1800 5-in-1 Electric Shaver and Grooming Kit, Aroamas Model AS5-PRO300 5-in-1 Electric Shaver and Grooming Kit.

b. Shenzhen Nukun Technology Co., Ltd.: OriHea OH-BS02 5-in-1 Head Shaver, OriHea OH-BS03 5-in-1 Head Shaver, OriHea OH-BS06 6-in-1 Electric Razor, OH-BS07 5-in-1 Electric Razor.

RD at 78. In response to Skull Shaver’s request, OUII did not oppose exempting these accused products of Benepuri and Nukun. *Id.*

Complainant did not renew its request for an exemption for Benepuri’s and Nukun’s accused products in its opening remedy brief before the Commission (*see* Skull Shaver Br. at 17-22) as required by the Commission’s Notice. 87 Fed. Reg. at 991. Complainant’s draft GEO appended to its remedy brief, however, includes such language. *See id.* at Ex. A.

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The Commission finds that Complainant agrees and consents to the continued importation of the formerly Accused Products of Benepuri and Nukun. In Complainants' own words, as reproduced in the RD, Complainant states that the GEO "does not apply to the following articles that are imported or manufactured abroad by entities:

a. Benepuri LLC: AsaVea Model LK-1800 5-in-1 Electric Shaver and Grooming Kit, Aroamas Model AS5-PRO300 5-in-1 Electric Shaver and Grooming Kit.

b. Shenzhen Nukun Technology Co., Ltd.: OriHea OH-BS02 5-in-1 Head Shaver, OriHea OH-BS03 5-in-1 Head Shaver, OriHea OH-BS06 6-in-1 Electric Razor, OH-BS07 5-in-1 Electric Razor."

This statement constitutes the express permission of Complainant necessary for the continued importation by Nukun and Benepuri of their Accused Products pursuant to paragraph 1 of the GEO:

Electric shavers and components and accessories thereof that infringe one or more of claims 1-3 of the '528 patent and the claim of the '504 patent are excluded from entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the patents, *except under license from, or with the permission of, the owner of the patents*, or as provided by law.

GEO ¶ 1 (emphasis added). Complainant's express permission in this investigation is limited to importation by two named respondents, Benepuri and Nukun, and the only products that Complainant has authorized for importation are the specific products identified in the language above. The Commission acknowledges that such express permission may be given by Complainant for the importation of these specific products otherwise within the scope of a GEO because, in this investigation, Skull Shaver expressly agreed (including in its proposed GEO) that the GEO should not cover them. Because Skull Shaver has provided written permission for Benepuri and Nukun to import the products detailed above, the Commission finds it is not necessary to include an express exemption for the Benepuri and Nukun Accused Products in the text of the GEO.

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2. Cease and Desist Orders

The RD also recommended that the Commission issue CDOs against Yiwu Xingye and Yiwu City. RD at 81. The RD found that Yiwu Xingye and Yiwu City fulfill orders through Amazon.com fulfillment centers in the United States, which leads to the inference that those two respondents maintain commercially significant inventory. *Id.* (citing *Certain Hand Dryers & Housing for Hand Dryers*, Inv. No. 337-TA-1015, Comm’n Op. at 10-11 (Oct. 30, 2017)).

The Commission finds that the record supports the ALJ’s recommendation that the Commission issue CDOs against Yiwu Xingye and Yiwu City, prohibiting those respondents from further importing, selling, and distributing infringing products in the United States. CDOs are generally issued when, with respect to the imported infringing products, respondents maintain commercially significant inventories in the United States or have significant domestic operations that could undercut the remedy provided by an exclusion order. *See, e.g., Certain Table Saws Incorporating Active Injury Mitigation Technology & Components Thereof* (“*Table Saws*”), Inv. No. 337-TA-965, Comm’n Op. at 4-6 (Feb. 1, 2017); *Certain Protective Cases & Components Thereof*, Inv. No. 337-TA-780, USITC Pub. No. 4405, Comm’n Op. at 28 (Nov. 19, 2012) (citing *Certain Laser Bar Code Scanners & Scan Engines, Components Thereof & Prods. Containing Same*, Inv. No. 337-TA-551, Comm’n Op. at 22 (June 24, 2007)). Complainants bear the burden on this issue. “A complainant seeking a cease and desist order must demonstrate, based on the record, that this remedy is necessary to address the violation found in the investigation so as to not undercut the relief provided by the exclusion order.” *Table Saws*, Comm’n Op. at 5 (citing *Certain Integrated Repeaters, Switches, Transceivers, & Prods. Containing Same*, Inv. No. 337-TA-435, USITC Pub. No. 3547 (Oct. 2002), Comm’n Op. at 27 (Aug. 16, 2002); *see also* H.R. Rep. No. 100-40, at 160 (1987)). Based on respondents’ use of Amazon’s U.S. fulfillment centers to distribute and sell their merchandise in the United States,

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we find the record sufficient to conclude that respondents maintain commercially significant inventories in the United States, and hence it is appropriate to issue CDOs to bar further infringing activity in the United States.⁶

C. The Public Interest

Before issuing any remedial order, the Commission must “consider[] the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers.” 19 U.S.C. §§ 1337(d)(1), (f)(1), (g)(1).

⁶ Commissioners Karpel and Schmidlein concur with the majority that CDOs directed to defaulting respondents Yiwu Xingye and Yiwu City should be issued but base their decision on grounds that differ from the majority view. For the reasons noted in *Certain Vaporizer Cartridges and Components Thereof*, Inv. No. 337-TA-1211, Comm’n Op. at 13-14, n.23 (March 1, 2022); *Certain Percussive Massage Devices*, Inv. No. 337-TA-1206, Comm’n Op. at 19-20 n.12 (Jan. 4, 2022); *Certain Powered Cover Plates*, Inv. No. 337-TA-1124, Comm’n Op. at 22-23 n.20 (June 11, 2020), *Certain Pocket Lighters*, Inv. No. 337-TA-1142, Comm’n Op. at 19-20 n.15 (July 13, 2020), and *Certain Footwear*, Inv. No. 337-TA-936 (remand), Comm’n Op. at 120-21 n.66 (Sept. 9, 2020), Commissioners Karpel and Schmidlein do not consider the Commission’s determination to issue a GEO under section 337(d)(2) to direct that the requested CDOs be considered under section 337(f)(1). Rather, they consider section 337(g)(1) to be the appropriate authority for the issuance of CDOs when the criteria of subsection 337(g)(1)(A)-(E) are met. In the present investigation, Yiwu Xingye and Yiwu City were named in the complaint and served with the complaint and notice of investigation. See Order No. 23 (May 10, 2021), *unreviewed by* Comm’n Notice (May 21, 2021). The ALJ issued a show cause order ordering these respondents to show cause why they should not be held in default for failing to respond to the complaint and notice of investigation. See *id.* Neither Yiwu Xingye nor Yiwu City filed a response to the show cause orders. *Id.* These findings satisfy subsections 337(g)(1)(A)-(D). Skull Shaver requested CDOs limited to each of these defaulting respondents (Skull Shaver Br. at 21), thus satisfying subsection 337(g)(1)(E). Given that subsections 337(g)(1)(A)-(E) are satisfied and Skull Shaver requested CDOs directed to these respondents, the statute directs the Commission to issue the requested CDOs, subject to consideration of the public interest. The public interest factors as detailed in Part II(C) *infra* do not support a finding that the remedial orders in this investigation would be contrary to the public interest. Accordingly, Commissioners Karpel and Schmidlein would issue CDOs against Yiwu Xingye and Yiwu City under section 337(g)(1).

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The Commission did not ask the presiding ALJ to make findings regarding the public interest when it instituted this investigation, so the RD did not address that issue. The Commission also received no responses to its request for comments from the public or interested government agencies. *See* Notice, 87 Fed. Reg. 990 (Jan. 7, 2022); Notice, 86 Fed. Reg. 67722 (Nov. 29, 2021); Notice, 85 Fed. Reg. 66356 (Oct. 19, 2020).

Skull Shaver states that issuance of the requested remedial orders will protect Skull Shaver's intellectual property rights, will serve the public interest of stopping infringement, and will not have adverse effects on the public interest. Skull Shaver Br. 22. OUII stated that the issuance of the requested remedial orders will not conflict with any of the statutory public interest factors, *see* 19 U.S.C. § 1337(d)(1), (g)(1). OUII Br. 25-26.

With respect to the public health or welfare, the record contains no information, evidence, or argument to indicate any adverse effect on this public interest factor. Skull Shaver explains that the products subject to exclusion are "personal grooming products that do not indicate public health and welfare concerns." Skull Shaver Br. 22. OUII agrees. OUII Br. 26.

Likewise, there is no indication that issuance of relief will adversely affect competitive conditions in the U.S. economy, production of like or directly competitive articles in the United States, or U.S. consumers. Skull Shaver asserts that the electric shaver market in the United States shows significant competition. Skull Shaver Br. 23. Skull Shaver has the ability and capacity to replace the sale of shavers that are excluded from the United States. *Id.*; OUII Br. 26. There is also no evidence that domestic production, if any, of such shavers in the United States would be affected. Skull Shaver Br. 23; OUII Br. 26. As the ALJ's noninfringement determination demonstrates, there are numerous electric shavers in the marketplace that are widely available and that do not infringe the asserted patents. OUII Br. 26.

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Accordingly, based on the record of this investigation, the Commission determines that the public interest does not preclude the issuance of the remedial orders.

D. Bonding

During the 60-day period of Presidential review under 19 U.S.C. § 1337(j), “articles directed to be excluded from entry under subsection (d) . . . shall . . . be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury.” 19 U.S.C. § 1337(j)(3).

The Commission typically sets the Presidential review period bond based upon the price differential between the imported or infringing product or based upon a reasonable royalty. *See, e.g., Certain Ink Cartridges and Components Thereof*, Inv. No. 337-TA-565, Comm’n Op. at 63 (Nov. 2007) (setting bond based on price differentials); *Certain Plastic Encapsulated Integrated Circuits*, Inv. No. 337-TA-315, Comm’n Op. on Issues Under Review and on Remedy, the Public Interest, and Bonding at 45, USITC Pub. 2574 (November 1992) (setting the bond based on a reasonable royalty). However, where the available pricing or royalty information is inadequate, the bond may be set at 100% of the entered value of the accused product. *See, e.g., Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Products Containing Same*, Inv. No. 337-TA-372, Comm’n Op. on Remedy, the Public Interest and Bonding at 15, USITC Pub. 2964 (May 1996).

In proceedings before the ALJ, Skull Shaver sought a bond of 161% based on the average sales price of the accused products. RD at 82. In its complaint, Skull Shaver avers that it has not licensed the asserted patents. Complaint ¶ 88. None of Defaulting Respondents provided pricing discovery. Thus, neither complete pricing nor royalty information is available. The RD recommended a bond rate of 100% due to the lack of pricing and because Skull Shaver’s proposal did not reflect a weighted average of sales price for the accused products. RD at 81-82.

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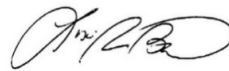
Skull Shaver now agrees with the 100% bond rate, and adopts it as its requested relief. Skull Shaver Br. at 24. OUII concurs. OUII Br. at 25.

Upon review of the record of the investigation, the Commission has determined to adopt the ALJ's recommendation that the bond rate be set at 100% of the entered value of subject products because neither complete pricing nor royalty information is available.

III. CONCLUSION

For the reasons detailed above, the Commission determines to issue a GEO prohibiting the unlicensed importation of electric shavers and components and accessories thereof that infringe one or more claims of claims 1-3 of the '528 patent and the sole claim of the '504 design patent and CDOs prohibiting respondents Yiwu Xingye and Yiwu City from further importing, selling, and distributing infringing products in the United States. The Commission also determines that the public interest will not be adversely affected by the issuance of the remedial orders. Finally, the Commission determines that the bond during the period of Presidential review pursuant to 19 U.S.C. § 1337(j) shall be in the amount of one hundred percent (100%) of the entered value of the imported articles.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: May 3, 2022