

**PUBLIC VERSION**

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

**CERTAIN PUMPING BRAS**

**INV. NO. 337-TA-988**

**ORDER NO. 11: INITIAL DETERMINATION GRANTING COMPLAINANT'S MOTION FOR SUMMARY DETERMINATION WITH RESPECT TO DOMESTIC INDUSTRY AND VIOLATION OF SECTION 337, AND REQUEST FOR GENERAL EXCLUSION ORDER**

(October 31, 2016)

On August 30, 2016, Complainant Simple Wishes ("Complainant") filed a motion for summary determination with respect to domestic industry and violation of Section 337 of the Tariff Act of 1930 (Amended) as well as a request for a General Exclusion Order ("GEO"). (Motion No. 988-005.) Complainant seeks a determination that a domestic industry exists and that there has been importation and a violation of Section 337 by Respondents TANZKY, BabyPreg, and Deal Perfect (collectively "Defaulting Respondents"). On September 9, 2016, the Commission Investigative Staff ("Staff") submitted a response supporting the motion. As of the date of this order, no other party has responded.

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### I. BACKGROUND

#### A. Institution and Procedural History of This Investigation

By publication of a notice in the *Federal Register* on March 14, 2016, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, the Commission instituted this investigation to determine:

whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain pumping bras by reason of infringement of one or more of claims 10, 12, 14–16, and 27–37 of the '070 patent and claims 1–3, 5–7, 9 and 19 of the '247 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

81 Fed. Reg. 13419, 13420 (March 14, 2016).

The complainant is Simple Wishes, LLC of Sacramento, CA. (*Id.*) The respondents are TANZKY of Luohugu, China; BabyPreg of Shenzhen Guangdong, China; Deal Perfect of Shenzhen, Guangdong, China; and Buywish of Nanjing Jiangsu, China. (*Id.*) The Office of Unfair Import Investigations (“Staff”) is participating in this investigation. (*Id.*) TANZKY, BabyPreg, and Deal Perfect have defaulted. (*See* Order No. 8 (June 22, 2016); Commission Determination Not to Review (July 8, 2016).) Buywish was terminated from this investigation based on withdrawal of the complaint as to Buywish due to an inability to effect service and, further, because it appears that Buywish no longer sells the accused product on Amazon. (*See* Order No. 9 (July 14, 2016); Commission Determination Not to Review (Aug. 9, 2016).) In compliance with 19 C.F.R. § 210.16(c)(2), Complainant included in its Motion a declaration that it would seek a General Exclusion Order (“GEO”). (Mot. at 1). On June 17, 2016, the ALJ granted Complainant’s motion to stay the procedural schedule. (Order No. 7 (June 17, 2016).)

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### B. The Parties

Complainant Simple Wishes, LLC is a California limited liability company with its headquarters in Sacramento, California. (Compl. at ¶ 21.) Simple Wishes was founded in 2008 by four sisters who were also all mothers of young children. (*Id.*) Simple Wishes designs and sells products in the pumping and nursing bra market. (*Id.* at ¶¶ 21–23.) One such product is the Simple Wishes’ Hands Free Breast Pump Bra. (*Id.* at ¶ 22.) Simple Wishes’ Hands Free Breast Pump Bra is a particular standout in the pumping bra market. (*Id.*) In 2009, Simple Wishes’ Hands Free Breast Pump Bra received the New Parents Guide Seal of Approval. (*Id.*) And in 2015, it received a Parent Tested, Parent Approved Award. (*Id.*)

TANZKY is a Chinese company with a business address at Longhua Renming Road, Longhua Jiedao Baohua Road, 173HAO Chaohuilou 5-, 501(Am\_Tang) Luohugu, China. (*Id.* at ¶ 24.) TANZKY makes in China, has others make in China, exports from China to the United States, and/or imports into the United States for sale certain pumping bras (“TANZKY bras”). (*Id.* at 25.)

BabyPreg is a Chinese company with a business address at Room 501 Building 10 Fuxuan New Village, Dalang Street Office Longhua, BAOAN Shenzhen Guangdong 518000 China. (*Id.* at ¶ 26) BabyPreg makes in China, has others make in China, exports from China to the United States, and/or imports into the United States for sale certain pumping bras (“BabyPreg bras”). (*Id.* at 27.)

Deal Perfect is a Chinese company with a business address at Huanancheng lhaojiaoyi guangchang Slou wanshang, Chuangyeyuan, Shenzhen, Guangdong, China. (*Id.* at ¶ 28.) Deal Perfect makes in China, has others make in China, exports from China to the United States, and/or imports into the United States for sale certain pumping bras (“Deal Perfect bras”). (*Id.* at ¶ 29.)

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Buywish is a Chinese company with a business address at 121 Longpan Road XuanWuQu, Nanjing Jiangsu 210009 China. (*Id.* at ¶ 30.) Buywish makes in China, has others make in China, exports from China to the United States, and/or imports into the United States for sale certain pumping bras (“Buywish bras”). (*Id.* at ¶ 31.)

### C. U.S. Patent No. 8,323,070<sup>1</sup>

U.S. Patent No. 8,323,070 (“the ’070 patent”), entitled “*Pumping/Nursing Bra*,” issued on December 4, 2012 based on U.S. Patent Application No. 12/585,829, which itself was filed September 25, 2009. (’070 Patent at p.1.) The ’070 patent claims priority to U.S. Provisional Application No. 61/193,731, which was filed December 19, 2008. (*Id.*) The ’070 Patent identifies Debra Abbaszadeh of Sacramento, California as the sole inventor, and lists Simple Wishes, LLC—the Complainant in this investigation—as the sole assignee. (*Id.*) Accordingly, Simple Wishes holds all rights, title, and interest to the ’070 patent. (Compl. at ¶ 32.)

### D. The Product at Issue

The product at issue is a bra that facilitates hands-free breast pumping. (Memo. at 72–73.) The bra comprises a panel with two openings, each opening covered with pairs of pieces of fabric on both the inside and the outside of the panel. (*Id.* at 72–75.) The pieces are arranged in such a way that they act to position and hold a breast pump adjacent to the wearer’s nipple for hands-free pumping. (*Id.*) Complainant refers to its product as the Simple Wishes Hands Free Breast Pump Bra. (*Id.* at 73.)

Complainant identifies the following three defaulting Respondents as being responsible for the importation of three accused products:

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<sup>1</sup> The original complaint in this investigation also asserted U.S. Patent No. 8,192,247. That patent was asserted only against Buywish. Because the complaint was withdrawn as to Buywish, (Order No. 9), the ’247 patent is no longer within the scope of this investigation.

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- (1) TANZKY (Chinese exporter of TANZKY bras),
- (2) BabyPreg (Chinese exporter of BabyPreg bras),
- (3) Deal Perfect (Chinese exporter of Deal Perfect bras).

(Compl. at ¶¶ 24–29.) Complainant also originally identified Buywish as being responsible for the importation from China of its own accused product. (*Id.* at ¶¶ 30–31.) Because the complaint was withdrawn as to Buywish, (Order 9), Buywish is not a Defaulting Respondent for the purposes of this determination.

Based on screenshots of internet product listings, the actual pumping bras being exported by the Defaulting Respondents appear to be identical. Indeed, the product photos on each listing appear to be identical, regardless of the identity of the seller. Complainant’s claim charts further support that conclusion, as detailed *infra*, given that each chart is substantially the same for each accused product, regardless of the identity of the respondent.

## II. LEGAL STANDARDS

### A. Summary Determination

Pursuant to Commission Rule 210.18, summary determination “. . . shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.” 19 C.F.R. § 210.18(b); *see also DeMarini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1322 (Fed. Cir. 2001); *Wenger Mfg., Inc. v. Coating Machinery Systems, Inc.*, 239 F.3d 1225, 1231 (Fed. Cir. 2001). The evidence “must be viewed in the light most favorable to the party opposing the motion . . . with doubt resolved in favor of the nonmovant.” *Crown Operations Int’l, Ltd. v. Solutia, Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002); *see also Xerox Corp. v. 3Com Corp.*, 267 F.3d 1361, 1364 (Fed. Cir. 2001) (“When ruling on a motion for summary judgment, all of the nonmovant’s

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