UNITED STATES INTERNATIONAL TRADE COMMISSION Washington, DC

In the Matter of

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

and

CERTAIN PERSONAL TRANSPORTERS AND COMPONENTS THEREOF Inv. No. 337-TA-1007 Inv. No. 337-TA-1021 (Consolidated)

LIMITED EXCLUSION ORDER

The United States International Trade Commission ("Commission") has determined that there is a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation, sale for importation, or sale within the United States after importation by respondent Swagway LLC ("Swagway") of certain personal transporters, components thereof, and packaging and manuals therefor that infringe U.S. Trademark Registration Nos. 2,727,948 and 2,769,942, which cover the "SEGWAY" marks. The Commission has also found respondent Segaway in default pursuant to subsection (g)(1) of section 337, 19 U.S.C. § 1337(g)(1), and section 210.16 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.16, for failing to respond to a Complaint and Notice of Investigation that alleged a violation of section 337 with respect to the unlawful importation, sale for importation, and sale after importation of certain personal transporters, components thereof, and packaging and manuals therefor that

infringe U.S. Trademark Registration Nos. 2,727,948 and 2,769,942, which cover the "SEGWAY" marks.

Having reviewed the record of this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of covered personal transporters, components thereof, and packaging and manuals therefor manufactured by or on behalf of, or imported by or on behalf of, respondents Swagway and Segaway or any of their affiliated companies, parents, subsidiaries, or other related business entities, or its successors or assigns.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d)(1), (f)(1) and (g)(1) do not preclude the issuance of the limited exclusion order. The Commission has further determined that the bond during the period of Presidential review shall be in the amount of zero percent (*i.e.*, no bond) of the entered value of the imported subject articles of respondent Swagway and 100 percent of the entered value of the imported subject articles of respondents Segaway.

Accordingly, the Commission hereby **ORDERS** that:

SWAGWAY-branded personal transporters, components thereof, and packaging and manuals thereof manufactured outside the United States that infringe one or more of the following U.S. Trademark Registration Nos. 2,727,948 and 2,769,942 and that are manufactured abroad by or on behalf of, or imported by or on behalf of, respondents Swagway or Segaway, or any of their affiliated companies,
 parents, subsidiaries, or other related business entities, or its successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, except if imported by, under license from, or with the permission of

the trademark owner, or as provided by law, until such date as the trademarks are abandoned, canceled, or rendered invalid or unenforceable.

2.

Notwithstanding paragraph 1 of this Order, respondent Swagway's personal transporters, components thereof, and packaging and manuals thereof are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of zero percent of the entered value (i.e., no bond), and respondent Segaway's personal transporters, components thereof, and packaging and manuals thereof are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100 percent of the entered value, pursuant to subsection (i) of Section 337 (19 U.S.C. § 1337(i)) and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 Fed. Reg. 43,251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty days after the date of receipt of this Order.

3. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures that it establishes, persons seeking to import personal transporters, components thereof, and packaging and manuals thereof that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are

not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

- 4. In accordance with 19 U.S.C. § 1337(I), the provisions of this Order shall not apply to personal transporters, components thereof, and packaging and manuals thereof imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
- 5. Complainants Segway Inc., DEKA Products Limited Partnership, and Ninebot (Tianjin) Technology Co., Ltd. (collectively, "Complainants") shall file a written statement with the Commission, made under oath, each year on the anniversary of the issuance of this Order stating whether Segway continues to use each of the aforesaid trademarks in commerce in the United States in connection with personal transporters, components thereof, and packaging and manuals thereof, whether any of the aforesaid trademarks has been abandoned, canceled, or rendered invalid or unenforceable, and whether Segway continues to satisfy the economic requirements of Section 337(a)(2).
- The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).
- 7. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon CBP.

8. Notice of this Order shall be published in the *Federal Register*.

By order of the Commission.

Lisa R. Barton Secretary to the Commission

Issued: December 11, 2017

Inv. No. 337-TA-1007/1021 (Consolidated)

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served by hand upon the Commission Investigative Attorney, **Brian Koo, Esq.**, and the following parties as indicated, on **December 11, 2017**.

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

On Behalf of Complainants Segway Inc., DEKA Products Limited Partnership, and Ninebot (Tianjin) Technology Co., Ltd.:

Tony V. Pezzano, Esq. HOGAN LOVELLS US LLP 875 Third Avenue New York, NY 10022

On Behalf of Respondent Swagway, LLC:

Lei Mei, Esq. MARK & MEI LLP 818 18th Street, NW, Suite 410 Washington, DC 20006

On Behalf of Respondent Inventist, Inc.:

Jonathan J. Engler, Esq. **ADDUCI, MASTRIANI & SCHAUMBERG, LLP** 1133 Connecticut Avenue, NW, 12th Floor Washington, DC 20036

On Behalf of Respondent Jetson Electric Bikes LLC:

Ezra Sutton, Esq. EZRA SUTTON, P.A. 900 Route 9 North, Suite 201 Woodbridge, NJ 07095

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On Behalf of Respondent Hangzhou Chic Intelligent Technology Co., Ltd.:

Qingyu Yin, Esq. FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP 901 New York Ave. NW Washington, DC 20001

On Behalf of Respondent Powerboard LLC:

L. Peter Farkas, Esq. **HALLORAN FARKAS + KITTILA, LLP** 1101 30th Street NW, Suite 500 Washington, DC 20007

<u>On Behalf of Respondent Changzhou Airwheel Technology</u> <u>Co., Ltd.:</u>

Harold H. Davis, Jr., Esq. **K&L GATES, LLP** Four Embarcadero Center, Suite 1200 San Francisco, CA 94111

Respondents:

Segaway 3431 Laurel Canyon Blvd., #376 Studio City, CA 91604

PhunkeeDuck, Inc. 250 Jericho Turnpike Floral Park, NY 11001

Airwheel Kabelweg 43 1014BA Amsterdam, Netherlands

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Shenzhen Chenduoxing Electronic Technology Ltd., China a/k/a	
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Jiuwei, Xixiang, Bao'an, Shenzhen, China	

Metem Teknoloji Sistemleri San Necatibey Cad. No. 61 Karakoy, Istanbul, Turkey

Shenzhen Jomo Technology Co., Ltd. a/k/a Koowheel Floor 4t h and 7t h , Caiyue Bldg., Meilong Road Bao'an Dist. Shenzhen City, 518112, China

Guanghzou Kebye Electronic Technology Co., Ltd. a/k/a Got way A2, 2n d floor, Building 39, Dayangtian Industry Park Wanfeng, No. 56, Fengtang Road Bao'an District, Shenzhen, China

Inv. No. 337-TA-1007/1021 (Consolidated)

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UNITED STATES INTERNATIONAL TRADE COMMISSION Washington, DC

In the Matter of

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

and

CERTAIN PERSONAL TRANSPORTERS AND COMPONENTS THEREOF

Inv. No. 337-TA-1007 Inv. No. 337-TA-1021 (Consolidated)

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Swagway LLC, 3431 William Richardson Drive,

Suite F, South Bend, IN 46628, cease and desist from conducting any of the following activities in the United States: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation) and soliciting United States agents or distributors for personal transporters, components thereof, and packaging and manuals therefor that infringe U.S. Trademark Registration Nos. 2,727,948 or 2,769,942, in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I. Definitions

As used in this order:

- (A) "Commission" shall mean the United States International Trade Commission.
- (B) "Complainants" shall mean Segway Inc. of Bedford, New Hampshire; DEKA
 Products Limited Partnership of Manchester, New Hampshire; and Ninebot
 (Tianjin) Technology Co., Ltd. of Tianjin, China.

- (C) "Respondent" shall mean Swagway LLC, 3431 William Richardson Drive, SuiteF, South Bend, IN 46628.
- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term "covered products" shall mean SWAGWAY-branded personal transporters, components thereof, and packaging and manuals therefor that infringe one or more of U.S. Trademark Registration Nos. 2,727,948 and 2,769,942.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order. While U.S. Trademark Registration Nos. 2,727,948 and 2,769,942 remain valid and enforceable, Respondent shall not:

(A) import, sell for importation, or sell after importation into the United States

covered products;

- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation) in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Trademark Registration Nos. 2,727,948 and 2,769,942 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States, as applicable.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2018. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that it has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in U.S. dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-947") in a prominent place on the cover pages and/or the first page. *See* Handbook for Electronic Filing Procedures,

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf. Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainants' counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI. Record-Keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

¹ Complainants must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this Order. The designated attorney must be on the protective order entered in the investigation.

(B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to section V of this Order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which

confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

X. Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI. Bonding

The conduct prohibited by section III of this order may be continued during the sixty-day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), under bond in the amount of zero percent of the entered value (*i.e.*, no bond). This bond provision does not apply to conduct that is otherwise permitted by section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of

temporary exclusion orders. *See* 19 C.F.R. § 210.68. The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this Order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves this Order (or does not disapprove it within the review period), unless (i) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

Lisa R. Barton Secretary to the Commission

Issued: December 11, 2017

² See Footnote 1.

Inv. No. 337-TA-1007/1021 (Consolidated)

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served by hand upon the Commission Investigative Attorney, **Brian Koo, Esq.**, and the following parties as indicated, on **December 11, 2017**.

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

<u>On Behalf of Complainants Segway Inc., DEKA Products</u> <u>Limited Partnership, and Ninebot (Tianjin) Technology Co.,</u> <u>Ltd.:</u>

Tony V. Pezzano, Esq. HOGAN LOVELLS US LLP 875 Third Avenue New York, NY 10022

On Behalf of Respondent Swagway, LLC:

Lei Mei, Esq. MARK & MEI LLP 818 18th Street, NW, Suite 410 Washington, DC 20006

On Behalf of Respondent Inventist, Inc.:

Jonathan J. Engler, Esq. **ADDUCI, MASTRIANI & SCHAUMBERG, LLP** 1133 Connecticut Avenue, NW, 12th Floor Washington, DC 20036

On Behalf of Respondent Jetson Electric Bikes LLC:

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Inv. No. 337-TA-1007/1021 (Consolidated)

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

Certificate of Service – Page 2

<u>On Behalf of Respondent Hangzhou Chic Intelligent</u> <u>Technology Co., Ltd.:</u>

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On Behalf of Respondent Powerboard LLC:

L. Peter Farkas, Esq. HALLORAN FARKAS + KITTILA, LLP 1101 30th Street NW, Suite 500 Washington, DC 20007

<u>On Behalf of Respondent Changzhou Airwheel Technology</u> <u>Co., Ltd.:</u>

Harold H. Davis, Jr., Esq. **K&L GATES, LLP** Four Embarcadero Center, Suite 1200 San Francisco, CA 94111

Respondents:

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Shenzhen Chenduoxing Electronic Technology Ltd., China a/k/a C-Star 4F, Block C11, Fuyuan Industrial Area Jiuwei, Xixiang, Bao'an, Shenzhen, China

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