

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

In the Matter of

**CERTAIN HAND DRYERS AND
HOUSINGS FOR HAND DRYERS**

Investigation No. 337-TA-1015

GENERAL EXCLUSION ORDER

The 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 of certain hand dryers and housings for hand dryers that infringe the trade dress of certain of Excel Dryer Inc.'s ("Excel") XLERATOR hand dryer products ("the XLERATOR Trade Dress"). The XLERATOR Trade Dress consists of the following features:

- a. a distinctive substantially compound curvature shaped cover with a projection for a bulbous front exit nozzle, soft rounded edges and substantially planar and parallel sidewalls;
- b. a distinctive name plate on the front of the compound curvature shaped cover above the bulbous front exit nozzle;
- c. a distinctive "arrow-shaped" label on the projection for the bulbous front exit nozzle.

Initial Determination at 8 (June 2, 2017) (unreviewed in relevant part).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is necessary because there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. Accordingly, the Commission has determined to

issue a general exclusion order prohibiting the unlicensed importation of infringing hand dryers and housings for hand dryers (“covered products”).

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the general exclusion order, and that the bond during the Presidential review period shall be in the amount of one hundred (100) percent of entered value for all covered products in question.

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

1. Hand dryers and housings for hand dryers that infringe the XLERATOR Trade Dress are excluded from entry into the United States for consumption, entry for consumption from a foreign-trade zone, and withdrawal from a warehouse for consumption until the XLERATOR Trade Dress has been abandoned or rendered invalid or unenforceable, except under license from, or with the permission of, the trade dress owner or as provided by law.

2. For the purpose of assisting U.S. Customs and Border Protection (“CBP”) in the enforcement of this Order, and without in any way limiting the scope of the Order, the Commission has attached images of an XLERATOR product as Exhibit 1.

3. Notwithstanding paragraph 1 of this Order, the aforesaid hand dryers and housings for hand dryers are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, and withdrawal from a warehouse for consumption, under a bond in the amount of one hundred (100) percent of entered value of the products pursuant to subsection (j) of Section 337 (19 U.S.C. § 1337(j)), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed Reg.* 43251), from the day after this Order is received by the United States Trade Representative and 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 (60) days after the date of receipt of this Order.

4. At the discretion of CBP and pursuant to procedures it establishes, persons seeking to import hand dryers and housings for hand dryers 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.

5. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to hand dryers and housings for hand dryers that are 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.

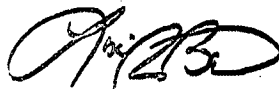
6. Complainant Excel shall file a written statement with the Commission, made under oath, each year on the anniversary of the issuance of this Order stating whether Excel continues to use the XLERATOR Trade Dress in commerce in the United States in connection with hand dryers and housing for hand dryers, and whether the aforesaid trade dress has been abandoned or rendered invalid or unenforceable

7. 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).

8. The Commission Secretary shall serve copies of this Order upon each party of record in this investigation and CBP.

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

By order of the Commission.

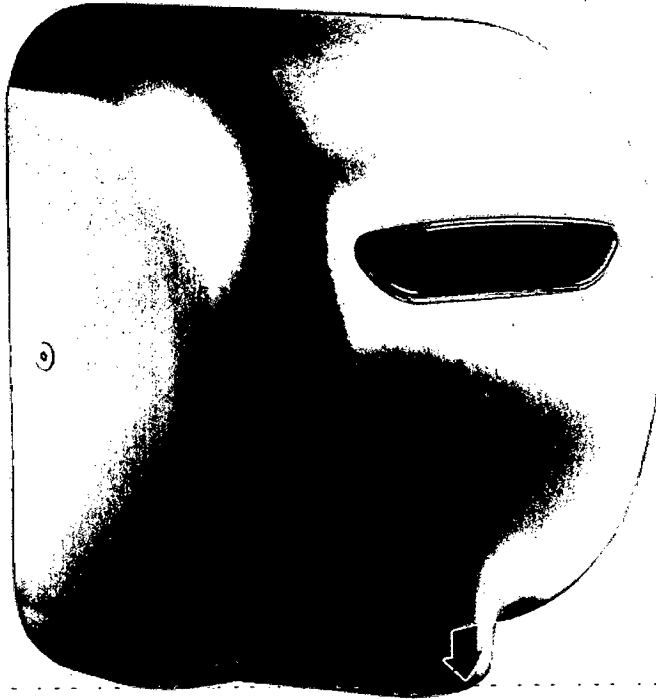
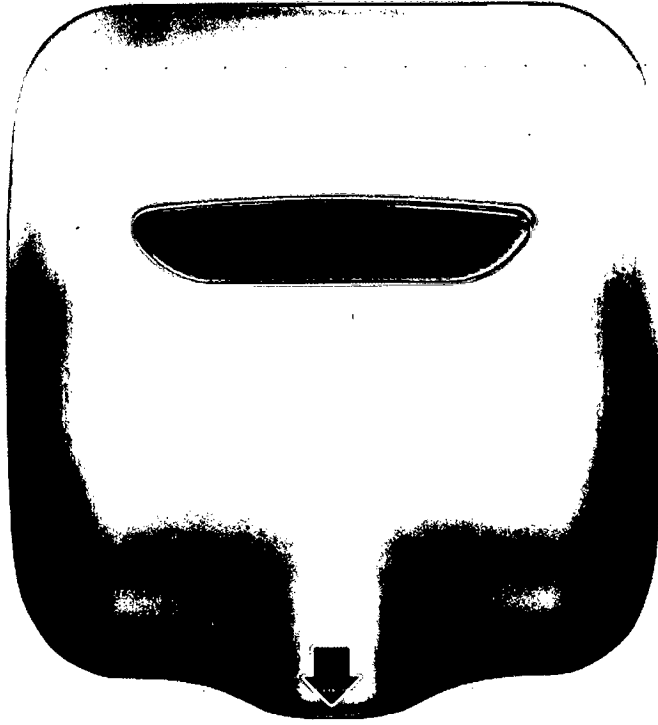
A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized and cursive.

Lisa R. Barton
Secretary to the Commission

Issued: October 30, 2017

EXHIBIT 1





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, Monisha Deka, Esq., and the following parties as indicated, on **October 30, 2017**.



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

On Behalf of Complainant Excel Dryer, Inc.:

Andrew F. Pratt, Esq.
VENABLE LLP
575 Seventh Street, NW
Washington, DC 20004

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

On Behalf of Respondent Jinhua Kingwe Electrical Co. Ltd. and Alpine Industries, Inc.:

Jordan L. Coyle, Esq.
ORRICK, HERRINGTON & SUTCLIFFE LLP
Columbia Center
1152 15th Street, NW
Washington, DC 20005

- Via Hand Delivery
- Via Express Delivery.
- Via First Class Mail
- Other: _____

On Behalf of Respondent ACL Group (Intl.):

Eric S. Parnes, Esq.
HUGHES, HUBBARD & REED LLP
1775 I Street, NW
Washington, DC 20006

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

On Behalf of Respondent Zhejiang Aike Appliance Co., Ltd.:

Jamie D. Underwood, Esq.
ALSTON & BIRD LLP
950 F Street, NW
Washington, DC 20004

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

CERTAIN HAND DRYERS AND HOUSINGS FOR HAND DRYERS

Inv. No. 337-TA-1015

Certificate of Service – Page 2

On Behalf of Respondents FactoryDirectSale and Toolsempire:

Ronald J. Pabis, Esq.
GREENBERG TRAUIG LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents :

TC Bunny Co., Ltd.
Room 201, Building 418, Madang Road
Shanghai
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Penson & Co.
Room 101 1
N 218 Hengfeng Road
Zhabei District, Shanghai, 200000
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Fujian Oryth Industrial Co., Ltd. (a/k/a Oryth)
No. 863 Xiahe Road, Siming District
Xiarnen, Fujian, 361006
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Taizhou Dihour Electrical Appliances Co. Ltd. (a/k/a Dihour)
North Dashi Class I Highway
Daxi Town, Wenling City
ZheJiang Province 317525
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Vinovo Sovereign Industrial Jiaxing Co., Ltd.
No. III Xiuxin Rd.
Xiuzhou Industrial Park
Jiaxing Zhejiang Jiaxing 314000
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

US Air Hand Dryer
c/o Kristen Nguyen
9221 Rose Parade Way
Sacramento, CA 95826

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN HAND DRYERS AND
HOUSINGS FOR HAND DRYERS**

Investigation No. 337-TA-1015

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT US Air Hand Dryer of 9221 Rose Parade Way, Sacramento, California, 95826, 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), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of hand dryers and hand dryer housings that are covered by the trade dress of certain of Excel Dryer Inc.'s XLERATOR hand dryer products or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin or sponsorship, 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) "Complainant" shall mean Excel Dryer, Inc. of East Longmeadow, Massachusetts.
- (C) "Respondent" shall mean US Air Hand Dryer of 9221 Rose Parade Way,
Sacramento, California, 95826.

- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 "XLERATOR Trade Dress" shall mean the following features:
- a distinctive substantially compound curvature shaped cover with a projection for a bulbous front exit nozzle, soft rounded edges and substantially planar and parallel sidewalls;
 - a distinctive name plate on the front of the compound curvature shaped cover above the bulbous front exit nozzle;
 - a distinctive "arrow-shaped" label on the projection for the bulbous front exit nozzle.¹

Images of XLERATOR products are attached as Exhibit 1.

- (H) The term "covered products" shall mean hand dryers and housings for hand dryers of Respondent that are covered by the XLERATOR Trade Dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin or sponsorship.

¹ Initial Determination at 8 (June 2, 2017) (unreviewed in relevant part).

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. Until the relevant XLERATOR Trade Dress has been abandoned or rendered invalid or unenforceable, Respondent shall not:

- (A) import into the United States covered products;
- (B) market, distribute, sell, offer for sale, distribute or otherwise transfer (except for exportation) imported covered products;
- (C) market or 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 the relevant XLERATOR Trade Dress 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2017. 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 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-1015") in a prominent place on the cover pages and/or the first page. See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.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 Complainant's counsel.²

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.
- (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.

² Complainant 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.

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.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the XLERATOR Trade Dress has been abandoned or rendered invalid or unenforceable.

VIII.
Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to section V I 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)), subject to Respondent's posting of a bond in the amount of one hundred (100) percent of the entered value of the covered products. 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.³

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.

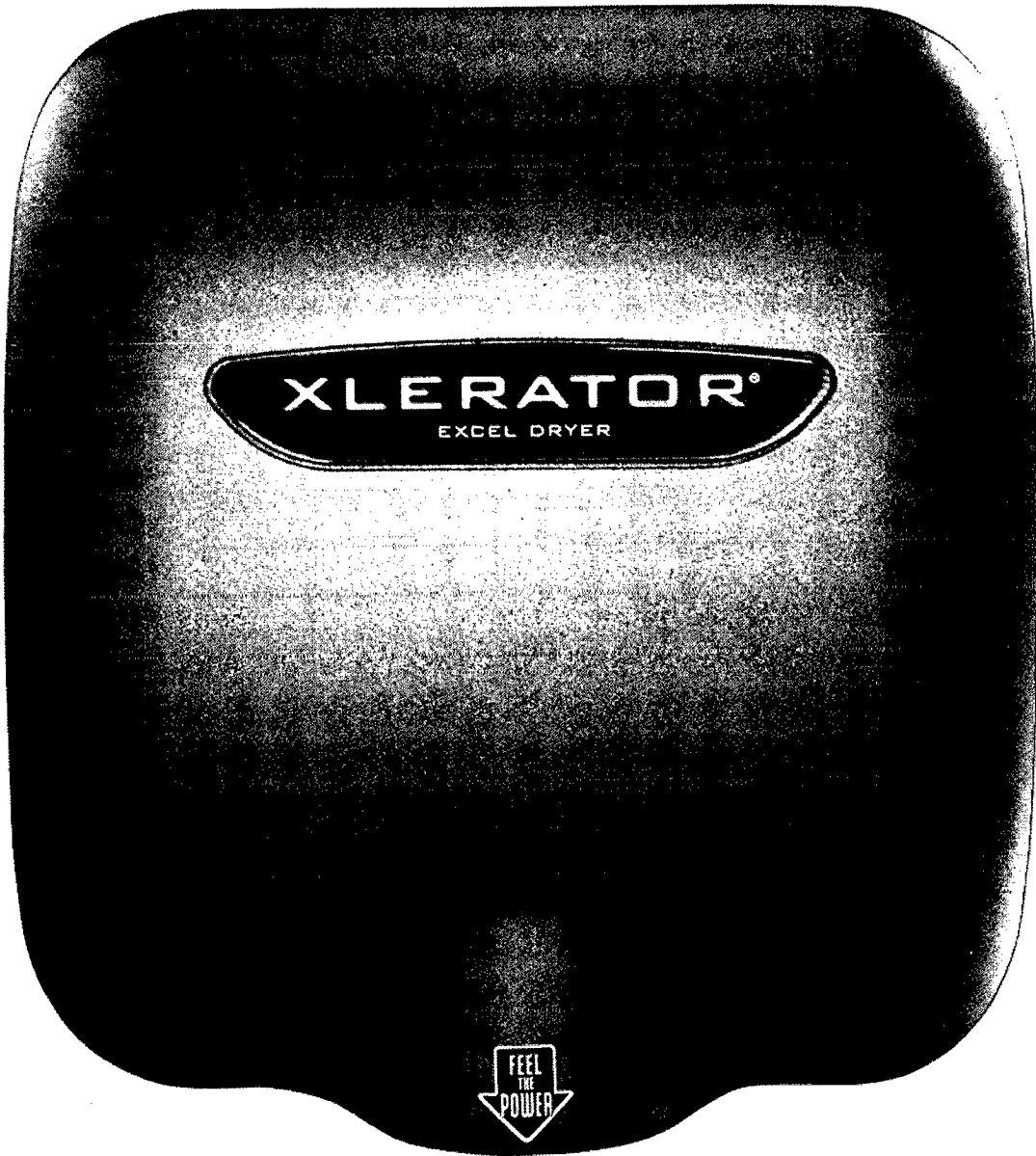


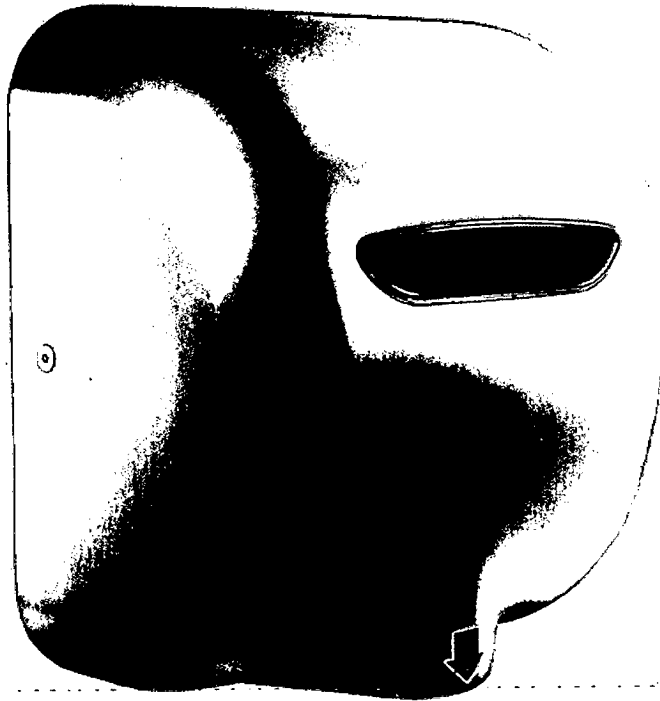
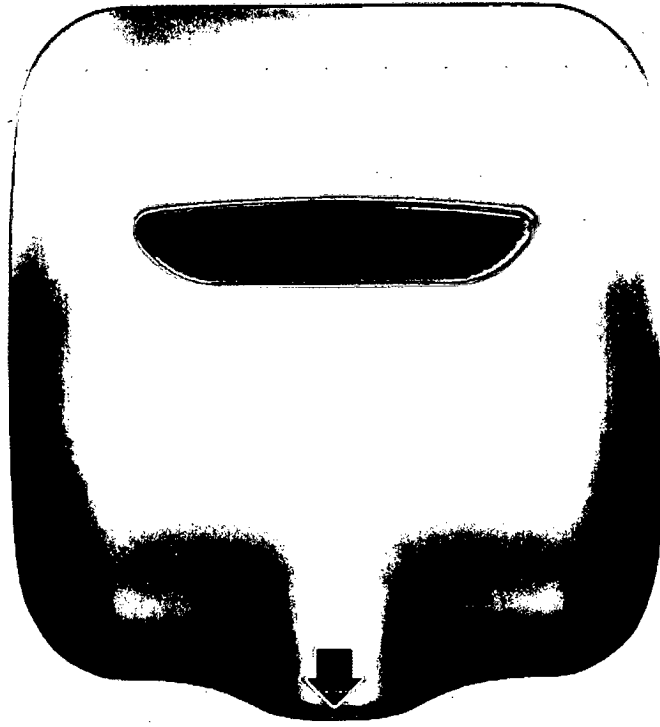
Lisa R. Barton
Secretary to the Commission

Issued: October 30, 2017

³ See Footnote 2.

EXHIBIT 1





SECRETARY



UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C. 20436

October 30, 2017

Charles Steuart, Chief
IPR & Restricted Merchandise Branch
Office of International Trade
Regulation and Rulings
U.S. Customs and Border Protection
90 K Street, N.E.
Washington, DC 20229-1177

Re: General exclusion order issued by the U.S. International Trade Commission in Investigation No. 337-TA-1015, *Certain Hand Dryers and Housings for Hand Dryers*.

Dear Mr. Steuart:

On October 30, 2017, the United States International Trade Commission issued a general exclusion order in the above-referenced investigation prohibiting the importation into the United States of hand dryers and housing for hand dryers covered by the Excel Trade Dress.

The owner of the Excel Trade Dress is Excel Dryer, Inc., of East Longmeadow, Massachusetts. Andrew F. Pratt, of the law firm Venable LLP, 575 Seventh Street, NW, Washington, DC 20004, (202) 344-4000, served as lead counsel for the complainant before the Commission.

The products in question are believed to be imported under at least HTSUS Numbers 8516.33.00 and 8414.59.6095.

The Commission's order is in effect until such date that the Excel Trade Dress is abandoned, canceled, or rendered invalid or unenforceable. We separately transmitted the general exclusion order to you, along with the Commission record, on the day of its issuance.

Per the general exclusion order, the covered products are entitled to entry for consumption into the United States, entry for consumption from foreign trade zone, or

withdrawal from a warehouse for consumption under bond from the day after this order is received by the United States Trade Representative, pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, and the Presidential Memorandum of July 21, 2005 (70 Fed. Reg. 43251), until such time as the Representative notifies the Commission that he approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action. For the covered products, the amount of the bond during the period of Presidential review is 100 percent of the value of the infringing goods.

If you have any questions concerning the general exclusion order, please feel free to contact Robert Needham, Esq., at robert.needham@usitc.gov, or at 202-708-5468.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Enclosures

cc: Office of the General Counsel
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN HAND DRYERS AND
HOUSINGS FOR HAND DRYERS**

Investigation No. 337-TA-1015

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT Penson & Co. of Room 1011, N 218 Hengfeng Road, Zhabei District, Shanghai, China, 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), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of hand dryers and hand dryer housings that are covered by the trade dress of certain of Excel Dryer Inc.'s XLERATOR hand dryer products or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin or sponsorship, 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) "Complainant" shall mean Excel Dryer, Inc. of East Longmeadow, Massachusetts.
- (C) "Respondent" shall mean Penson & Co. of Room 1011, N 218 Hengfeng Road, Zhabei District, Shanghai, China.

- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 "XLERATOR Trade Dress" shall mean the following features:
- a distinctive substantially compound curvature shaped cover with a projection for a bulbous front exit nozzle, soft rounded edges and substantially planar and parallel sidewalls;
 - a distinctive name plate on the front of the compound curvature shaped cover above the bulbous front exit nozzle;
 - a distinctive "arrow-shaped" label on the projection for the bulbous front exit nozzle.¹

Images of XLERATOR products are attached as Exhibit 1.

- (H) The term "covered products" shall mean hand dryers and housings for hand dryers of Respondent that are covered by the XLERATOR Trade Dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin or sponsorship.

¹ Initial Determination at 8 (June 2, 2017) (unreviewed in relevant part).

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. Until the relevant XLERATOR Trade Dress has been abandoned or rendered invalid or unenforceable, Respondent shall not:

- (A) import into the United States covered products;
- (B) market, distribute, sell, offer for sale, distribute or otherwise transfer (except for exportation) imported covered products;
- (C) market or 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 the relevant XLERATOR Trade Dress 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2017. 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 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-1015") in a prominent place on the cover pages and/or the first page. See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.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 Complainant's counsel.²

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.
- (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.

² Complainant 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.

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.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the XLERATOR Trade Dress has been abandoned or rendered invalid or unenforceable.

VIII.
Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to section V I 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)), subject to Respondent's posting of a bond in the amount of one hundred (100) percent of the entered value of the covered products. 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.³

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.



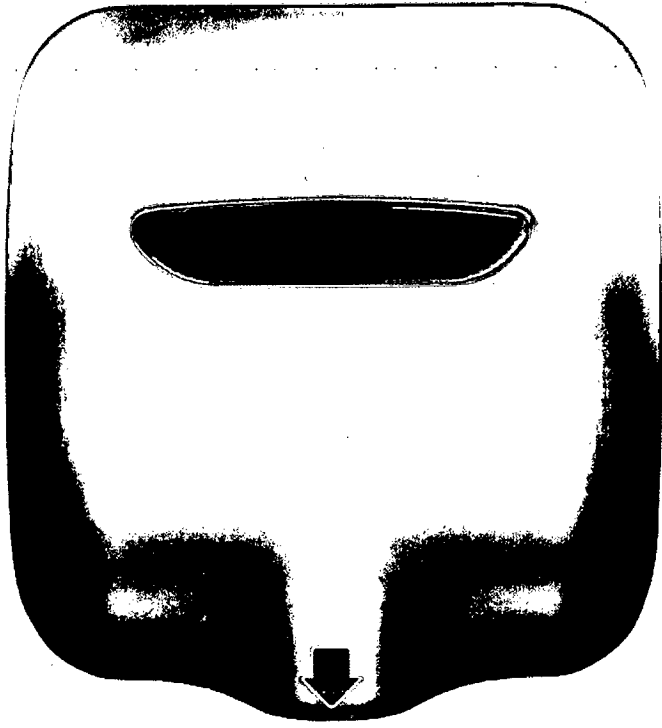
Lisa R. Barton
Secretary to the Commission

Issued: October 30, 2017

³ See Footnote 2.

EXHIBIT 1





UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN HAND DRYERS AND
HOUSINGS FOR HAND DRYERS**

Investigation No. 337-TA-1015

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT TC Bunny Co., Ltd. of Room F, 9th Floor, Shengquan Building No. 28, Tanjiadu Road. Putuo District, Shanghai 200063, China, 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), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of hand dryers and hand dryer housings that are covered by the trade dress of certain of Excel Dryer Inc.'s XLERATOR hand dryer products or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin or sponsorship, 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) "Complainant" shall mean Excel Dryer, Inc. of East Longmeadow, Massachusetts.
- (C) "Respondent" shall mean TC Bunny Co., Ltd. of Room F, 9th Floor, Shengquan

Building No. 28, Tanjiadu Road. Putuo District, Shanghai 200063, China.

- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent 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 "XLERATOR Trade Dress" shall mean the following features:
- a distinctive substantially compound curvature shaped cover with a projection for a bulbous front exit nozzle, soft rounded edges and substantially planar and parallel sidewalls;
 - a distinctive name plate on the front of the compound curvature shaped cover above the bulbous front exit nozzle;
 - a distinctive "arrow-shaped" label on the projection for the bulbous front exit nozzle.¹

Images of XLERATOR products are attached as Exhibit 1.

- (H) The term "covered products" shall mean hand dryers and housings for hand dryers of Respondent that are covered by the XLERATOR Trade Dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin or sponsorship.

¹ Initial Determination at 8 (June 2, 2017) (unreviewed in relevant part).

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. Until the relevant XLERATOR Trade Dress has been abandoned or rendered invalid or unenforceable, Respondent shall not:

- (A) import into the United States covered products;
- (B) market, distribute, sell, offer for sale, distribute or otherwise transfer (except for exportation) imported covered products;
- (C) market or 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 the relevant XLERATOR Trade Dress 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.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2017. 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 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-1015") in a prominent place on the cover pages and/or the first page. See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.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 Complainant's counsel.²

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.
- (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.

² Complainant 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.

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.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the XLERATOR Trade Dress has been abandoned or rendered invalid or unenforceable.

VIII.
Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to section V I 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.

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XI. Bonding

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By order of the Commission.



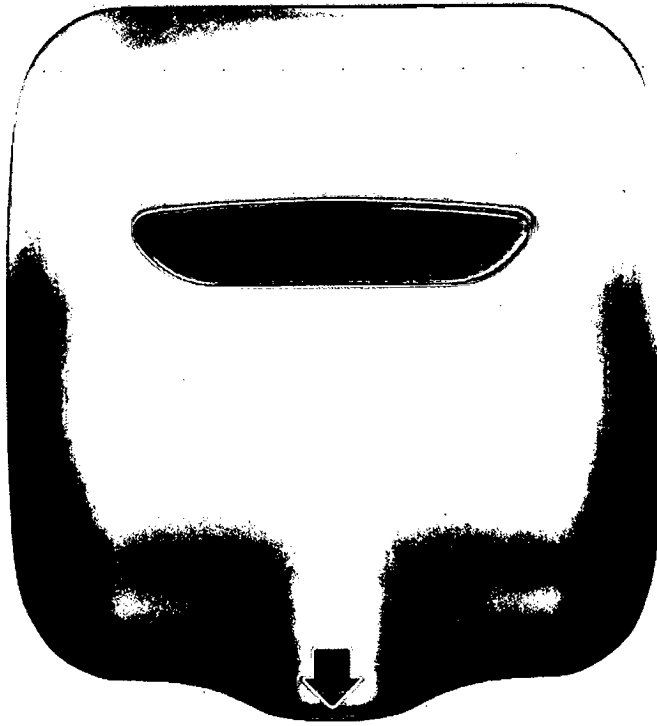
Lisa R. Barton
Secretary to the Commission

Issued: October 30, 2017

³ See Footnote 2.

EXHIBIT 1





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, Monisha Deka, Esq., and the following parties as indicated, on **October 30, 2017**.



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

On Behalf of Complainant Excel Dryer, Inc.:

Andrew F. Pratt, Esq.
VENABLE LLP
575 Seventh Street, NW
Washington, DC 20004

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents :

TC Bunny Co., Ltd.
Room 201, Building 418, Madang Road
Shanghai
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Penson & Co.
Room 101 1
N 218 Hengfeng Road
Zhabei District, Shanghai, 200000
China

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

US Air Hand Dryer
c/o Kristen Nguyen
9221 Rose Parade Way
Sacramento, CA 95826

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____