

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN STARTER MOTORS AND
ALTERNATORS**

Inv. No. 337-TA-755

**ORDER NO. 11: DENYING RESPONDENT'S MOTION TO TERMINATE
INVESTIGATION BASED ON A CONSENT ORDER**

(March 22, 2011)

On March 9, 2011, respondent Yongkang Boyu Auto Motor Company ("Yongkang Boyu") filed a motion to terminate the investigation as to Yongkang Boyu based upon a consent order. (Motion Docket No. 755-010.) On March 18, 2011, complainants Remy International, Inc. and Remy Technology L.L.C. (collectively "Remy") filed a response opposing the motion. On March 21, 2011, the Commission Investigative Staff ("Staff") filed a response opposing the motion.

Yongkang Boyu seeks to enter into a consent order so that it may be terminated from the investigation. Along with its motion, Yongkang Boyu submitted a Consent Order Stipulation and a Proposed Consent Order. Remy and Staff oppose the motion because Yongkang Boyu's Consent Order Stipulation and Proposed Consent Order are limited to a single product – the N8206-5 alternator.

I concur with Remy and Staff and find that it is improper for Yongkang Boyu to limit the Consent Order Stipulation and Proposed Consent Order to a single named product. The scope of the investigation is defined by the Notice of Investigation. 19 CFR § 210.10(b). Yongkang

Boyu's Proposed Consent Order provides a remedy that is narrower than the scope of the investigation. A Proposed Consent Order that does not afford Remy all of the relief to which it would be otherwise entitled is inadequate.

In addition, the Consent Order Stipulation submitted by Yongkang Boyu contains other errors. Commission Rule 210.21(c)(3)(i) outlines the specific statements required in the Consent Order Stipulation. Commission Rule 210.21(c)(3)(i)(A)(4) requires "[a] statement that the enforcement, modification, and revocation of the consent order will be carried out pursuant to subpart I of this part, incorporating by reference the Commission's Rules of Practice and Procedure." While Yongkang Boyu did, in Consent Order Stipulation paragraph 5, agree that enforcement, modification and revocation of the Consent Order will be carried out pursuant to Subpart I of 19 CFR, Chapter II, Subchapter C, Part 210, it did not include the specific and additionally required language incorporating by reference the Commission's Rules of Practice and Procedure in that statement.

Commission Rule 210.21(c)(3)(i)(B)(2) requires "[a] statement that each signatory to the stipulation who was a respondent in the investigation will not seek to challenge the validity of the intellectual property right(s), in any administrative or judicial proceeding to enforce the consent order." Yongkang Boyu includes such a statement in Consent Order Stipulation paragraph 7, but further includes the statement that they "reserve their rights to do so in any other litigation or proceeding." That qualifying statement is not permitted by the Commission Rules.


Commission Rule 210.21(c)(3)(i)(C) states that "[t]he consent order stipulation may contain a statement that the signing thereof is for settlement purposes only and does not constitute admission by any respondent that an unfair act has been committed." Paragraph 8 of Yongkang Boyu's Consent Order Stipulation states that the signing of the Consent Order

Stipulation does not constitute an admission of infringement, validity, enforceability, or the existence of a domestic industry. That statement goes beyond the language permitted by the rule.

ORDER

Motion No. 755-010 is hereby DENIED. Yongkang Boyu may re-file its motion to terminate based on a consent order that is consistent with this Order and Commission rules.

SO ORDERED.



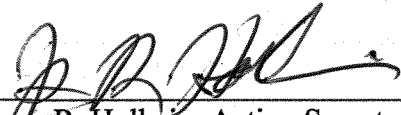
Robert K. Rogers, Jr.
Administrative Law Judge

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PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **ORDER** was served upon **Jeffrey T. Hsu, Esq.**, Commission Investigative Attorney, and the following parties via first class mail delivery on March 22, 2011



James R. Holbein, Acting Secretary
U.S. International Trade Commission
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PUBLIC CERTIFICATE OF SERVICE PAGE 2

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PUBLIC CERTIFICATE OF SERVICE PAGE 3

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