

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN COMPUTER FORENSIC
DEVICES AND PRODUCTS
CONTAINING THE SAME**

Inv. No. 337-TA-799

**ORDER NO. 21: DENYING COMPLAINANT MYKEY TECHNOLOGY, INC.'S
MOTION TO AMEND THE COMPLAINT AND NOTICE OF
INVESTIGATION**

(February 16, 2012)

For the reasons set forth below, MyKey's motion to amend the Complaint and Notice of Investigation is hereby denied for failure to show good cause.

I. Procedural Background

On November 8, 2011, pursuant to 19 C.F.R. § 210.14, Complainant MyKey Technology Inc. ("MyKey") filed a motion (799-012) to amend the Complaint and Notice of Investigation to substitute Diskology, LLC for named Respondent Diskology, Inc. In its motion, MyKey asserted that good cause existed for the amendment because it did not know that Diskology, Inc. had dissolved at the time MyKey filed its Complaint. On November 10, 2011, the Commission Investigative Staff ("Staff") filed its response in support of MyKey's motion. On November 22, 2011, the undersigned issued an initial determination granting the motion, finding good cause based on MyKey's assertion that it did not know prior to filing its Complaint that Diskology, Inc. had dissolved.

Approximately two weeks later on December 7, 2011, MyKey sent a letter to the undersigned to "clarify the record" relating to MyKey's motion, wherein MyKey stated that certain representations made in its motion were "incorrect." In particular, MyKey stated that it

was, in fact, aware that Diskology, Inc. had dissolved prior to preparing its motion for order to show cause and entry of default. On December 13, 2011, Staff filed a motion for leave to file a petition out of time for review of the undersigned's initial determination. In support thereof, Staff argued that the factual statements relied upon by Staff in supporting MyKey's motion and the undersigned in granting the motion were incorrect and that this was only revealed after the deadline for petitions for review of the initial determination.

Pursuant to 19 C.F.R. § 210.44, the Commission determined to review the record "because it appears that, through no fault of the ALJ, an error is present in the initial determination." (Notice Of Comm'n Determination To Review And Remand An Initial Determination To Amend The Complaint And Notice Of Investigation (Dec. 22, 2011).) After review, the Commission determined to vacate the initial determination and remanded MyKey's motion to the undersigned for consideration of the factual statements in MyKey's letter of December 7, 2011.

II. Legal Standard

Commission Rule 210.14(b) governs amending the Complaint and Notice of Investigation after an investigation has been instituted. It states, *inter alia*:

After an investigation has been instituted, the complaint or notice of investigation may be amended only by leave of the Commission for good cause shown and upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation. A motion for amendment must be made to the presiding administrative law judge. If the proposed amendment of the complaint would require amending the notice of investigation, the presiding administrative law judge may grant the motion only by filing with the Commission an initial determination. All other dispositions of such motions shall be by order.

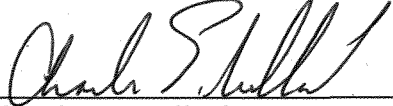
19 C.F.R. § 210.14(b)(1).

III. Discussion

After review of MyKey's letter of December 7, 2011, the undersigned finds that good cause does not exist to amend the Complaint and Notice of Investigation to substitute Diskology, LLC for named Respondent Diskology, Inc. In its letter, MyKey submits that its "clarification" (*i.e.*, that MyKey was informed by on June 30, 2011 that Diskology, Inc. had dissolved) does not affect the substance of its motion to amend. The undersigned disagrees. By MyKey's own admission, its counsel knew that Diskology, Inc. had dissolved ***over three weeks prior to MyKey filing its Complaint***. This alone negates any "good cause" argument. *See Certain Elec. Power Tools, Battery Cartridges and Battery Chargers*, Inv. No. 337-TA-284, Order No. 21, 1988 ITC LEXIS 153, at *4 (Dec. 8, 1988) (denying motion to amend the complaint "[i]n view of the fact that complainant knew or should have known of the existence of these proposed respondents several months ago"). MyKey, as Complainant, had complete control over the filing of its Complaint and despite knowing that Diskology, Inc. had dissolved, made the decision to still name Diskology, Inc. as a respondent. Further compounding the situation is the fact that MyKey waited over four months to file its motion to amend and provided absolutely no explanation for its delay. This is, quite simply, inexcusable and MyKey should not be rewarded for such behavior. Moreover, the undersigned can find no prejudice to MyKey by denying this motion since MyKey remains free to bring any allegations against Diskology, LLC in a new complaint.

Accordingly, MyKey's motion to amend the Complaint and Notice of Investigation is hereby denied.

SO ORDERED.



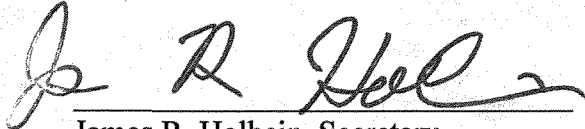
Charles E. Bullock
Chief Administrative Law Judge

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CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **ORDER NO. 21** has been served upon, **Daniel E. Valencia, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on February 16, **2012**.



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