

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC**

In the Matter of

**CERTAIN CARBON SPINE BOARD,
CERVICAL COLLAR, CPR MASKS
AND VARIOUS MEDICAL TRAINING
MANIKIN DEVICES, AND
TRADEMARKS, COPYRIGHTS OF
PRODUCT CATALOGUES, PRODUCT
INSERTS AND COMPONENTS
THEREOF**

Investigation No. 337-TA-1008

ORDER TO CEASE AND DESIST

Having found that Respondent Basic Medical Supply, LLC in default and that consideration of the public interest factors does not prevent the issuance of a cease and desist order,

IT IS HEREBY ORDERED THAT Basic Medical Supply, LLC, 19902 Flax Flower Drive, Richmond, Texas 77407 (hereinafter "Respondent") 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 U.S. agents, retailers, resellers and distributors for cervical collars and CPR masks that infringe (1) claim 1 of U.S. Patent No. 6,090,058 ("the '058 patent"); and /or (2) U.S. Trademark Registration No. 3,476,656 ("the '656 mark"), 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 Laerdal Medical Corp. and Laerdal Medical AS.

(C) “Respondent” shall refer to Basic Medical Supply, LLC, of 19902 Flax Flower Drive, Richmond, Texas 77407.

(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 “covered products” shall mean cervical collars that infringe claim 1 of the '058 patent, and CPR masks that infringe the '656 mark.

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. For the remaining term of the '058 patent, and while the '656 mark remains valid and

enforceable, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation) imported covered products in the United States;
- (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 imported covered products.

IV.

CONDUCT PERMITTED

Notwithstanding any other provision of this Order, Respondent shall be permitted to engage in specific conduct otherwise prohibited by the terms of this Order if, in a written instrument, the owner of the relevant '058 patent or the '656 mark licenses or authorizes such specific conduct; or if such specific conduct is related to the importation or sale of covered products by or for the United States as described in Section 337(l) of the Tariff Act of 1930, 19 U.S.C. § 1337(l).

V.

REPORTING

For purposes of this reporting requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. However, the first report required under this section shall cover the period from the day after issuance of this Order through December 31, 2017. This reporting requirement shall continue in force until 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 Respondent 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. The 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 CFR 210.4(f). Submissions should refer to the investigation number (Inv. No. 337-TA-1008) 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 serve a copy of the confidential version on Complainant's 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

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

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, and subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, 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, both in detail and in summary form as are required to be retained by 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.

The obligations set forth in subparagraphs VII (B) and VII (C) shall remain in effect until

the '058 patent has expired, and until the '656 mark has been abandoned, canceled, or rendered invalid or unenforceable.

VIII.

CONFIDENTIALITY

Any request for confidential treatment of information obtained by the Commission pursuant to Sections VI of the Order should be 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 in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and 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 Respondent 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 (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 FR 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 100 percent (100%) of the entered value for 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* Commission Rule 210.68, 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 which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) Respondent must serve a copy of the bond and any accompanying documentation on Complainants' counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless 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 unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

² *See* Footnote 1.

The 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.

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: June 14, 2017

**CERTAIN CARBON SPINE BOARD, CERVICAL COLLAR,
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Inv. No. 337-TA-1008

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION OPINION** has been served by hand upon the Commission Investigative Attorney, Monica Bhattacharyya, Esq., and the following parties as indicated, on **June 14, 2017**.



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

**On Behalf of Complainants Laerdal Medical Corp. and
Laerdal Medical AS:**

Joseph W. Bain, Esq.
SHUTTS & BOWEN LLP
525 Okeechobee Blvd, Suite 110
West Palm Beach, FL 33401

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

Respondents:

Basic Medical Supply, LLC
19902 Flax Flower Drive
Richmond, TX 77407

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