



Marcia H. Sundeen  
+1 202 346 4179  
MSundeen@goodwinlaw.com

Goodwin Procter LLP  
901 New York Avenue NW  
Washington, DC 20001

goodwinlaw.com  
+1 202 346 4000

October 13, 2017

**VIA HAND DELIVERY**

Honorable Rhonda K. Schmidlein  
Chairman  
U.S. International Trade Commission  
500 E Street, S.W., Suite 112  
Washington, DC 20436

Re: *Certain Shaving Cartridges, Components Thereof and Products Containing Same,*  
DN 3257

Dear Chairman Schmidlein:

On behalf of The Gillette Company LLC (“Gillette”), I submit this response to the pre-institution letter of the proposed Respondents (collectively “Schick”) regarding the above referenced complaint urging the Commission not to institute an investigation. Briefly, Schick argues that the Commission should decline to institute an investigation because Gillette’s allegations of importation are insufficient, despite the fact that a product leaflet included with the accused products indisputably states that the accused products are “assembled in China.” Not only does Schick fail to cite any Commission precedent for its request for non-institution, but there are numerous ambiguities in Schick’s statements that cast doubt on Schick’s assertions – Schick does not unequivocally state that it never assembled the accused products or manufactured components thereof in China or anywhere else outside of the United States. Its statements are limited to the present tense. As the Commission has already recognized, this is not a basis for denying institution. Gillette, therefore, respectfully requests that the Commission institute a Section 337 investigation.

On September 25, 2017, Gillette filed its complaint alleging that Schick’s Hydro Connect 5 shaving cartridges, that are designed to only fit onto a Gillette handle and not a Schick handle, infringe one of its patents. Gillette alleged that Schick’s accused products were assembled in China, based on a product leaflet that accompanied numerous shipments of the accused products. *See* Complaint, ¶¶ 41-48 and Ex. 8. In support of these allegations, a private investigator retained by counsel for Gillette placed multiple orders of the accused products. He received three separate boxes of the accused products in two shipments. Complaint, Ex. 4, Declaration of Kevin Porter, ¶ 14. In each box of accused Schick Hydro Connect 5 cartridges there was an identical product leaflet stating that the cartridges were “assembled in China.” *Id.* Hydro Connect 5 at ¶¶ 8, 13.

The Commission has instituted investigations where an accused product, a disk, was manufactured in the United States and then shipped overseas to be assembled into a drive and reimported into the United States (*see Certain Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives*, Inv. No. 337-TA-350, Comm’n Op. (Oct. 27, 1993)); where an

Honorable Rhonda K. Schmidlein

October 13, 2017

Page 2

accused product is partially assembled or manufactured offshore (*see Certain Plastic Encapsulated Integrated Circuits*, Inv. No. 337-TA-315, Initial Determination (Oct. 15, 1991)); and where components are manufactured offshore and then imported into the United States to be assembled into a finished product (*see Certain Cardiac Pacemakers and Components Thereof*, Inv. No. 337-TA-162, Order No. 37 (March 21, 1984)).

Schick, in an attempt to evade a Section 337 action, asserts that its statements about the accused products being assembled in China were “misstatements” and that it *now* manufactures and assembles the Hydro Connect 5 product in the United States. Yet, there are ambiguities and omissions in its statements. For example, all of Schick’s statements about manufacture and assembly of the accused product are in the present tense and Schick never states that no Hydro Connect 5 cartridge was assembled in China, nor does Schick explain how the alleged “misstatement” occurred.

Schick’s counsel states that “the Accused Products – Schick Hydro Connect shaving cartridges – are manufactured and assembled in Schick’s plant in Milford, Connecticut.” Swain letter at 1. Schick further maintains that “the entirety of the cartridge, including the components Gillette identifies as the “blade unit” and “connecting member,” *is* manufactured and assembled in the United States.” *Id.* at 2 (emphasis added). Somewhat surprisingly, Schick omits any statement that its Hydro Connect 5 cartridges *were never* assembled in China.<sup>1</sup> Rather, in a carefully worded sentence, Schick’s counsel states that “since their first sale,” the subject cartridges have been manufactured and assembled in the United States (*id.* at 3), leaving open at least the questions of (i) whether products prior to the first sale were assembled in China and (ii) where were the Accused Products “first sold” manufactured and/or assembled.

Similarly, in the two declarations accompanying the letter of Schick’s counsel, neither declarant states that the accused products have never been assembled in China. Rather, Schick’s declarant Mr. White, again uses the present tense and states that the “Accused Products *are* manufactured and

---

<sup>1</sup> Counsel for Schick initially states, using the present tense, that the “Accused Products are not imported,” but then a few sentences later makes the sweeping statement that the “Accused Products (and components thereof) are not and have never been imported.” Swain letter at 1. Yet, Mr. White in his declaration admits that at least some components, the raw material (blade steel strip), is imported and that the “Advanced Lubrication Box is molded and formed by Edgewell Personal Care in China.” White Dec. at ¶¶ 8, 18. Nowhere does Schick make the simple statement that no Hydro Connect 5 cartridge was ever assembled in China and then shipped to the United States.

Honorable Rhonda K. Schmidlein

October 13, 2017

Page 3

assembled in the United States.” Ex. A, ¶ 5.<sup>2</sup> Ms. Yomoah’s declaration is similarly vague and incomplete. Ms. Yomoah apparently does not have firsthand knowledge about the location of the manufacture and assembly of the accused products because she relies solely on the declaration of Mr. White to support her statements that the accused products are manufactured and assembled in the United States. Ex. B, at ¶¶ 4, 6. Moreover, although Ms. Yomoah alleges that the statement in the product leaflet about assembly of the accused product was an inadvertent misstatement, she, like Mr. White and counsel for Schick, does not contend that the accused products have never been assembled in China. Nor does she explain how the alleged misstatement occurred or why Schick’s internal control procedures – which presumably include detailed reviews of any marketing material for accuracy before releasing it – failed to uncover the alleged misstatement. Moreover, both declarations are silent as to whether Schick has future plans to manufacture or assemble Hydro Connect 5 products or components thereof in China or elsewhere outside of the United States. Likewise, Schick’s submission leaves open the possibility that it will manufacture components in the United States, ship them overseas for packaging and reimportation in the United States, a practice that is similarly forbidden by the Commission. *See, e.g., Certain Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives*, Inv. No. 337-TA-350, Comm’n Op. at 6 (Oct. 27, 1993).

Schick also never explains how its original product leaflet expressly stating that the Hydro Connect 5 cartridges are “assembled in China” complied with the federal country of origin marking requirements if the product was always assembled in Connecticut. 19 U.S.C. § 1304. Further confusing the importation issue and the statements in the product leaflet, is Mr. White’s statement in paragraph 19 of his declaration that the Advanced Lubrication Box, which is a component in the accused products, “is molded and formed by Edgewell Personal Care in China.” Moreover, the product information for the Schick Hydro 5 cartridge, a cartridge that is not an accused product, states that the Hydro 5 is “assembled in China.” *See, Exhibit A, attached hereto.* Considering Mr. White’s statement and Schick’s country of origin markings on non-accused products, it is clear that Schick has and continues to manufacture and assemble products in China.

If the accused products were ever assembled in China and then imported into the United States, than the Commission has jurisdiction regardless of whether Schick has ceased importing accused products or components thereof manufactured or assembled overseas. *See, e.g., Certain Hardware Logic Emulation Systems and Components Thereof*, ITC Inv. 337-TA-383, Initial Determination at 5, n. 6 (July 31, 1997) (“Respondents have argued that ‘[they] voluntarily ceased its importation of the accused device and moved its manufacturing to the United States.’ However, the fact that respondents

---

<sup>2</sup> In paragraph 22 of his declaration, Mr. White states that the final product is subsequently shipped from Schick to a third party for packaging and distribution, but he does not state where that third party is located.



Honorable Rhonda K. Schmidlein  
October 13, 2017  
Page 4

allege to have discontinued importation does not preclude a finding that section 337 has been violated, nor does it preclude the imposition of a remedy.”) (citations omitted).

While Schick argues that the Commission lacks jurisdiction and therefore should decline to institute an investigation, it ignores the Commission’s two-step process for determining jurisdiction. First, the Commission determines whether to institute an investigation and second, once an investigation is instituted, the Commission determines whether there is a violation of Section 337. In *Amgen, Inc. v. U.S. Int’l Trade Comm.*, 902 F.2 1532 (Fed. Cir. 1990), the Commission terminated an investigation based on lack of subject matter jurisdiction. The Federal Circuit reversed the Commission and ruled that the Commission should assume jurisdiction based on the allegations in the complaint and institute an investigation. The decision to institute is different from whether there is a violation. *See, e.g., Certain Electronic Devices, Inv. 337-TA-724, Comm’n Op. at \*7* (Dec. 21, 2011), *Certain Cardiac Pacemakers and Components Thereof, Inv. No. 337-TA-162, Order No. 37* (March 21, 1984).

Gillette, at a minimum, should be given the opportunity to probe the facts regarding Schick’s assembly of the Hydro Connect 5 product.<sup>3</sup> Accordingly, Gillette respectfully requests that the Commission institute an investigation based on its complaint.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Marcia H. Sundeen', written in a cursive style.

Marcia H. Sundeen

MHS:drb

---

<sup>3</sup> Schick alternatively requests that Commission institute a 100 day proceeding. In view of the deficiencies in Schick’s submission and the schedules of the Administrative Law Judges, Gillette submits that the decision of whether or not to order a 100 day proceeding should be left to the Administrative Law Judge.

# **Exhibit A**





FREE YOUR SKIN®



HYDRO  
E



H<sub>2</sub>O

**Hydrating Gel Reservoir**  
40% less friction than lube strips

**Réservoir de gel hydratant**  
40 % moins de friction que les  
bandes lubrifiantes

**5**  
BLADES  
LAMES

**Innovative Skin Guards**  
Control Skin Flow Across 5 Ultra Glide® Blades

**Bandes protectrices novatrices**  
fixées aux 5 lames Ultra Glide®,  
pour contrôler la glisse



**FLIP BACK TOP**  
BASCULER LE RÉSERVOIR VERS L'ARRIÈRE



**PRECISELY TRIM**  
TAILLER AVEC PRÉCISION

INGREDIENTS / INGRÉDIENTS : PEG-115M, CERAMIDE NG, TITANIUM DIOXIDE, ZINC STEARATE, CYCLODEXTRIN, ALOE BARBADENSIS LEAF JUICE, AVENA SATIVA (OAT) KERNEL FLOUR, PANTHENOL, SODIUM HYALURONATE, TOCOPHEROL, MALTODEXTRIN, WATER/EAU.

SCHICK HYDRO® BLADES MADE IN THE USA, ASSEMBLED IN CHINA FOR EDGEWELL PERSONAL CARE BRANDS, LLC., SHELTON, CT 06484. LES LAMES SCHICK HYDRO® SONT FABRIQUÉES AUX É.-U. ET ASSEMBLÉES EN CHINE POUR EDGEWELL PERSONAL CARE BRANDS, LLC., SHELTON, CT 06484. IN CANADA IMPORTED BY / AU CANADA, IMPORTÉ PAR EDGEWELL

PERSONAL CARE CANADA, U.L.C. HANOVER, ON N4N 0B1. TM USED UNDER LIC. / MC UTILISÉE SOUS LICENCE. © 2015 EDGEWELL.

PERFORMANCE GUARANTEE: SCHICK HYDRO® is unconditionally guaranteed, see back for details. GARANTIE DE PERFORMANCE: SCHICK HYDRO® est garanti inconditionnellement. Voir les détails au dos.

Proof of Purchase · Preuve d'achat



93015050

8 4 1058 01500 0

Shaving questions? Questions sur le rasage?  
1-800-SHAVERS www.schickhydro.com / www.schickhydro.ca  
© 2015 Edgewell.

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing document,

**CORRESPONDENCE FROM M. SUNDEEN TO CHAIRMAN SCHMIDTLEIN**

have been served on this 13<sup>th</sup> day of October 2017, on the following:

<p>The Honorable Lisa Barton Secretary U.S. International Trade Commission 500 E Street, SW, Room 112-A Washington, DC 20436</p> <p>Vu Q. Bui Esq Margaret MacDonald Jeffrey Hsu Office of Unfair Import Investigations 500 E Street, SW Suite 401 Washington, DC 20436 Vu.Bui@usitc.gov Margaret.MacDonald@usitc.gov Jeffrey.Hsu@usitc.gov</p>	<p><input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Electronic Docket Filing</p>
<p>Adam D. Swain Alston &amp; Bird The Atlantic Building 950 F Street NW Washington, DC 20004-1404 Tel: 202-239-3300 Fax: 202-239-3333 adam.swain@alston.com</p> <p><i>Counsel for Respondents' Edgewell Personal Care Company, Edgewell Personal Care Brands, LLC, Edgewell Personal Care, LLC, Shick Manufacturing, Inc., and Schick (Guangzhou) Co., Limited</i></p>	<p><input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Electronic Docket Filing</p>

---

/s/ Marcia H. Sundeen  
Marcia H. Sundeen