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October 10, 2017

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

Re: *Certain Shaving Cartridges*, DN 337-3257
Request for Denial of Institution of Investigation Due to Lack of Importation
and, in the Alternative, Request for 100-Day Program

Dear Chairman Schmidlein:

I write respectfully on behalf of all proposed Respondents¹ (“Schick”) in the Section 337 Complaint filed by Gillette on September 25, 2017, in *Certain Shave Cartridges*, DN 337-3257.

The Commission should not institute an investigation because the Accused Products are not imported, not sold for importation, and not sold after importation. On the contrary, the Accused Products— Schick Hydro Connect™ shaving cartridges—are manufactured and assembled in Schick’s plant in Milford, Connecticut from raw materials. Moreover, the manufacture and assembly of all major components of the Accused Products occurs in Milford as well, including all components identified by Gillette to meet one or more claim elements of the Asserted Patent. Given that the Accused Products (and components thereof) are not and have never been imported, the Commission does not have the requisite subject-matter jurisdiction over Schick’s Accused Products.

Gillette’s evidence of importation is based solely on a statement product leaflet accompanying a shipment of the Accused Products. But as explained below, that leaflet recited assembly information for a different, unrelated product. This information has since been rectified, accurately reflecting that the Accused Products are made and assembled in the United States from raw materials.

To be sure, Schick has attached to this letter a signed, sworn declaration from its plant director, Mr. Paul S. White, detailing Schick’s manufacturing and assembly process for the Accused Products in Milford, Connecticut. It has also attached a signed, sworn declaration of Jennifer A.

¹ Proposed Respondents are Edgewell Personal Care Company; Edgewell Personal Care Brands, LLC; Schick Manufacturing, Inc.; and Schick (Guangzhou) Co., Limited.

Yomoah, describing the product labeling process, explaining the misstatement in the leaflet, and how the misstatement has since been rectified for all future shipments of Accused Products.

Because there has been no importation of the Accused Products, the Commission does not have subject-matter jurisdiction over this investigation. Thus, this investigation should not be instituted. Should the Commission or OUII have any additional concerns or questions, Schick respectfully asks for the opportunity to provide that information.

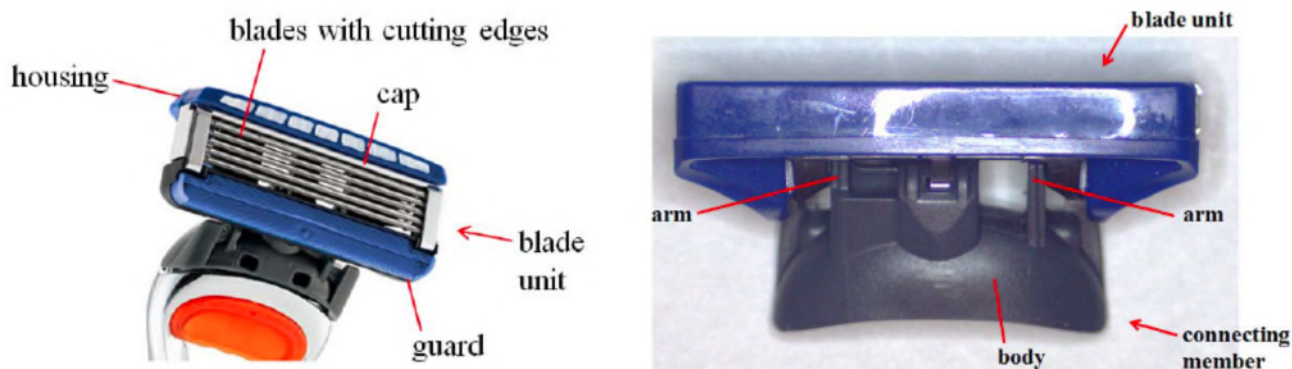
In the alternative, should the Commission decide to institute an investigation, the Commission should also order a 100-Day hearing on the issue of importation. It is undisputed that a lack of importation is a dispositive issue that, when resolved, would dispose of this entire investigation. At a time where the Commission is challenged with an influx of Section 337 complaints, a great deal of burden on the Commission could be avoided through early disposition of Gillette's baseless claims.

Gillette's Complaint. Gillette's complaint alleges Schick's unlawful conduct as:

[T]he importation into the United States, the sale for importation into the United States, and/or the sale within the United States after importation of Schick® Hydro Connect 5 shaving cartridges and Schick® Hydro Connect 5 Sensitive shaving cartridges ("the Accused Products" or collectively "Hydro Connect 5") that infringe at least claims 1-4, 11-14 and 18-20 of U.S. Patent No. 9,193,077.

(Compl. at ¶18). The Accused Products are members of Schick's line of Hydro Connect™ shave cartridges, namely the Schick Hydro Connect™ 5 and Schick Hydro Connect™ 5 Sensitive shaving cartridges.

The claims of the lone asserted patent recite two main components: a "blade unit" and a "connecting member." Gillette's allegations of infringement accordingly point to an alleged "blade unit" and an alleged "connecting member":



Front View (left), Back view (right) (See Ex. 16 to Compl.)

As explained below, 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 from raw materials.

The Accused Products are Manufactured and Assembled in the United States.

Schick's Hydro Connect™ Cartridges were released for sale in May of 2017 in the United States. Since then, they have been available exclusively online at Schick's website to customers in the United States.² And since their first sale, these cartridges have all been manufactured and assembled in the United States, including each major component (*See* Declaration of Paul B. White (White Decl.) at ¶5, Attachment A hereto).

The manufacture and assembly of the Hydro Connect™ Cartridges involves raw materials of both domestic and imported sources. It is a multistep process involving dozens of pieces of equipment and many Schick employees to transform the raw materials into the finished product: the Schick Hydro Connect™ Cartridge. The only imported materials for the cartridges are raw materials: strips of blade steel or raw aluminum, polymer resin pellets, a lubrication box, and a spring (White Decl. at ¶¶8, 12, 14, 17, and 21). None of these materials are accused of infringement; nor could they be. These are generic, staple parts and materials that could be and indeed are used in many other products that are not accused and not within scope of this investigation (*id.*).

There is No Evidence of Importation.

Gillette relies entirely on “on information and belief” to allege that the Accused Products have been “sold after importation into the United States” (*see* Compl. at ¶48 (citing Ex. 4)). But no instances of actual importation of the Accused Products are pled, let alone evidenced. Gillette's only supplied evidence is a declaration from a hired private investigator detailing the purchase of the Accused Products containing the old product leaflet. *See* Ex. 4 to Complaint. The product leaflet identified by Gillette's private investigator does indeed state that the Schick Hydro Connect™ Cartridges “blades are made in USA, assembled in China.” As explained in the attached declaration of Jennifer Yomoah, however, this leaflet contained a misstatement about the assembly location of the cartridges that has since been rectified to accurately reflect that the blades and cartridges are both made and assembled in the United States (*see* Declaration of Jennifer Yomoah at ¶¶3-7, attachment B hereto). But the Accused Products discussed in Exhibit 4 were all manufactured and assembled in Milford—just like every other Accused Product ever sold in the United States (*id.*).

The Commission Should Not Institute an Investigation.

This is not a close case where the Commission could “assume jurisdiction” and proceed. This is a situation where no Accused Products (or components thereof) have been imported and there is no pleading (or showing of supporting facts) of imminent importation. Moreover, the handful of raw materials that are imported for the manufacture and assembly process are not and could not be accused of infringement as they are staple products that can be and are used in many other products (*see* White Decl. at ¶¶8, 12, 14, 17, and 21).

² <http://www.schickhydro.com>

To allow the investigation to proceed on a demonstrably insufficient pleading would present an undue burden on Schick and the Commission. ITC investigations are burdensome affairs that apply different legal standards and issue different remedies from district court. The ITC is justified in doing so, in part, by statute by virtue of the importation of the products in question. *See e.g. Spansion, Inc. v. International Trade Commission*, 629 F.3d 1331, 1359 (Fed. Cir. 2010) (The difference between exclusion orders granted under Section 337 and injunctions granted under the Patent Act, 35 U.S.C. § 283, follows “the long-standing principle that importation is treated differently than domestic activity.”) There is no importation of the products here to justify an investigation and the resulting burden on Schick and the Commission. Thus, the Commission should deny institution of an investigation.

Request for 100-Day Treatment

The Commission should not institute an investigation based on Gillette’s Complaint. If Gillette insists, however, on burdening the Commission with an uninformed Complaint, the Commission should delegate the investigation for the 100-Day program for early adjudication of importation. Importation is a dispositive issue that touches all products and all respondents at issue. While even a 100-Day investigation would substantially burden Schick and the Commission, the early disposition program could alleviate some harm.

We appreciate the Commission’s time and consideration.

Sincerely,



Adam D. Swain
Alston & Bird LLP
Lead Counsel for all Proposed Respondents

ATTACHMENT A

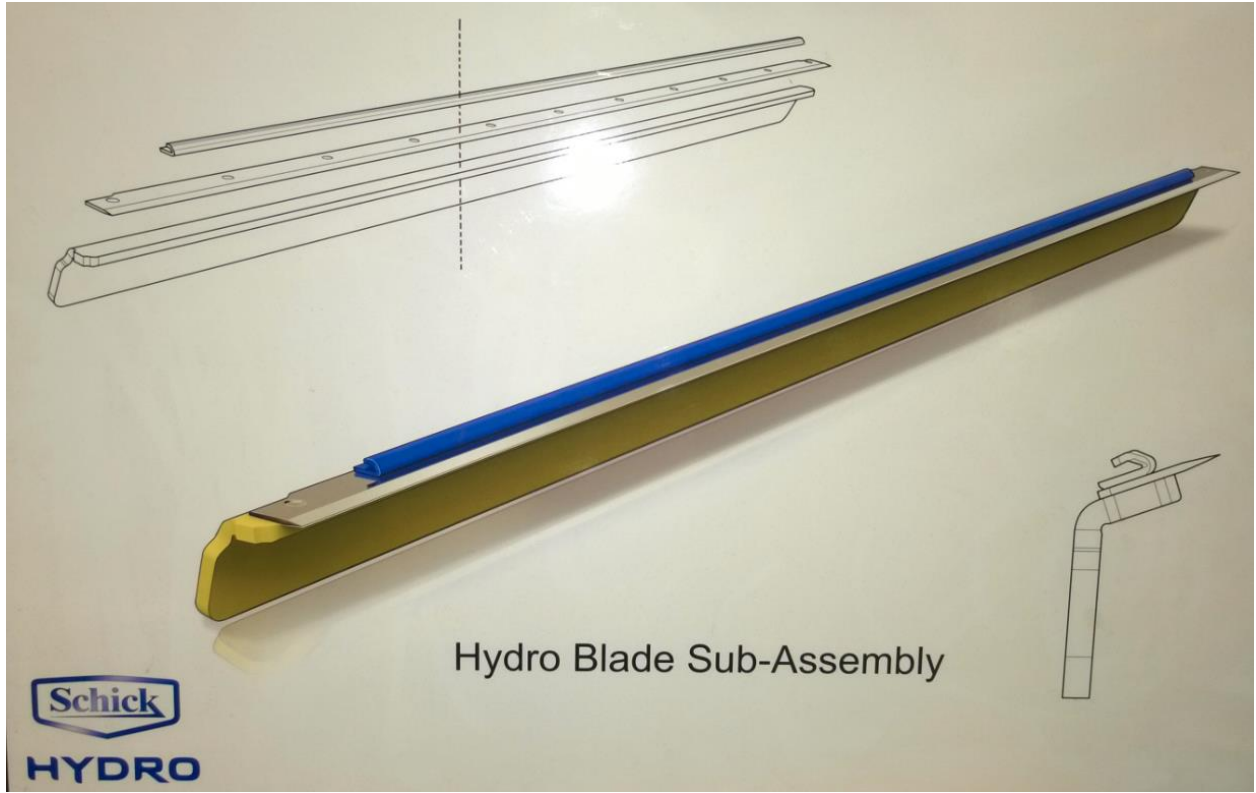
UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

DECLARATION OF PAUL B. WHITE

1. My name is Paul B. White, and I am an employee of Schick Manufacturing Inc., a subsidiary of Edgewell Personal Care Company. The facts stated in this declaration are based on my personal knowledge obtained through my duties at Schick and I have confirmed my understanding with appropriate personnel at Schick.
2. I am Director of Operations at Schick's razor manufacturing facility in Milford, Connecticut. I have been working for the company since June of 2005. Over the past 12+ years I have gained extensive understanding and knowledge of our razor manufacturing process. I have held several positions within operations including Blade Manufacturing Engineer, Technical Manager of Blade Manufacturing, and Production Manager for both Blade Manufacturing and the assembly department. I have been in my current position of Director of Operations for 2.5 years.
3. My job duties include knowing each step of our manufacturing and assembly process on an advanced level. This includes not only the dozens of manufacturing and assembly steps, but also the materials involved in that step. Thus, I have an intimate knowledge of the sourcing and provisioning of the raw materials and components of our razors and razor cartridges. It is important to know not only what our materials and components are but also where they are coming from.
4. I understand Gillette has made certain allegations against our Schick Hydro Connect 5 and Schick Hydro Connect 5 Sensitive Cartridges (the "Accused Products").

5. These Accused Products are not, and have never been, imported into the United States. The Accused Products are manufactured and assembled in the United States at our Milford, Connecticut facility. I provide details of our manufacturing and assembly process below:
6. The manufacture of our Schick Hydro Connect 5 and Schick Hydro Connect 5 Sensitive cartridges begins with the manufacture of the five individual blades used in the cartridges themselves.
7. The blades are manufactured entirely from raw material (dimensioned coils) in our Milford facility using several consecutive, labor and equipment-intensive steps. The process starts with a single continuous blade steel strip coil that is unrolled into a straight strip. From there, the strip of steel is perforated using-stamping equipment in order to ready the steel to be assembled into the cartridges. Then, the steel is hardened using a series of heating and cooling equipment. Once hardened, the steel strip is then sharpened using specialized edge grinding equipment. The steel is then cut to length and prepared for the assembly process. Finally, three film coatings are successively applied using three successive processes.
8. The raw material (blade steel strip) is imported, but is not specifically made or used exclusively for any particular Schick product, including the Accused Products.
9. The manufacture of the blade subassembly (“BSA”) comes next. The BSA is comprised of the blades, Blade Stiffener (or Support), and Blade Guard.

10. A diagram of the BSA is shown below:

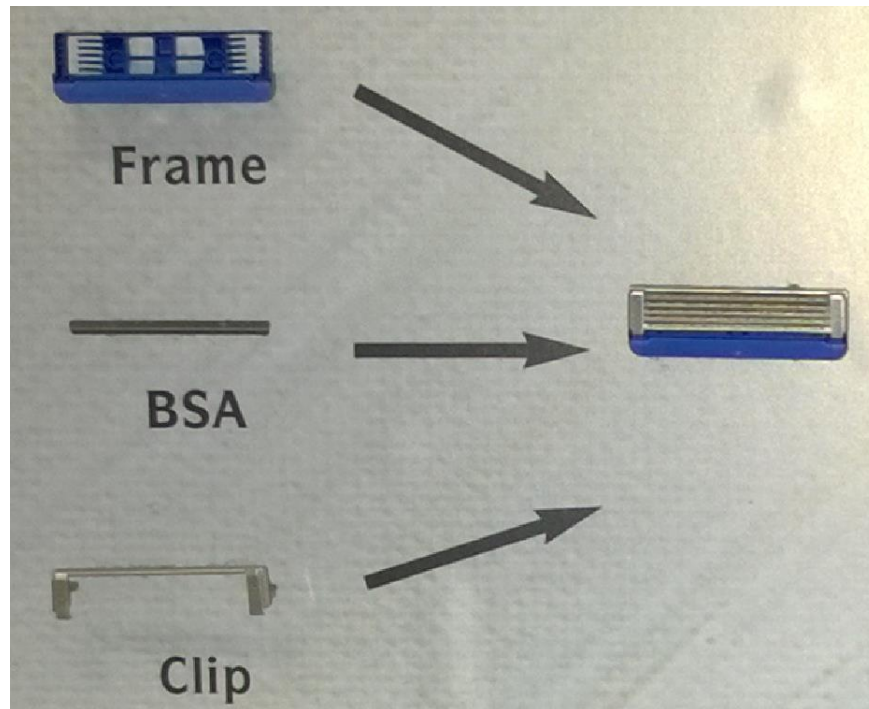


11. The BSA, as well as each of its components, are manufactured and assembled in Milford, Connecticut. The Blade Stiffener is formed using specialized equipment that stamps and subsequently forms raw material (a stainless steel strip) into a specific shape that will eventually be welded to the bottom of the blade. The Blade Guard is formed in a similar fashion, using specialized equipment to stamp and form a stainless steel strip to be placed and welded to the top of the blades. And, as explained above, the blades are manufactured in Milford as well. Once all three components are ready, the BSA is manufactured and assembled in Milford.

12. The raw steel used for the Blade Stiffener and Blade Guard, like the blades are imported in continuous strips of steel, and is not made or used exclusively for any particular Schick product, including the Accused Products. An example of this raw material is shown below:

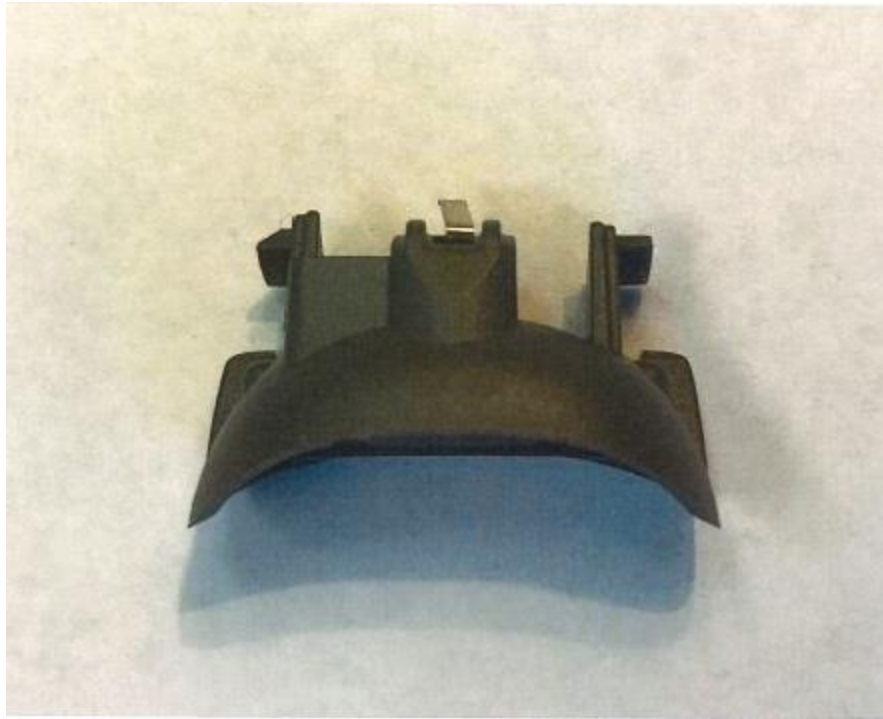


13. The next major component is the plastic cartridge frame that holds the BSA. The plastic frame is manufactured by a “two-shot” injection molding process done by first, melting raw polymer resin pellets and injecting into a mold which forms the shape of the frame. Following the first shot the rubber guard, also made from a polymer resin, is injected into the mold and onto the frame. Once the second shot is finished the finished Frame is ejected from the mold.
14. The raw polymer resin is domestically sourced.
15. The cartridge manufacture and assembly is next, which first involves the loading of the BSA along with an aluminum clip into the cartridge frame.



16. The aluminum clip is manufactured and assembled in Milford using imported raw aluminum material, and acts to bind the frame and BSA together. The aluminum clip, cartridge frame, and BSA are assembled together in the Milford plant.
17. The raw aluminum material used for the Aluminum clip is imported but is not used exclusively for any particular Schick product, including the Accused Products.
18. Next, the Advanced Lubrication Box piece is added to the cartridge. The Advanced Lubrication Box piece is a plastic part containing lubrication material that is affixed to the cartridge. It is assembled to the cartridge in Milford using specialized equipment.
19. The Advanced Lubrication Box is molded and formed by Edgewell Personal Care in China. It is used in both the Accused Products as well other non-Accused Schick products that do not contain a Connector.

20. The Connector, shown below, is also manufactured and affixed to the cartridge in Milford as part of the manufacture and assembly process.



21. The Connector itself is manufactured in Milford using an injection molding process by melting and molding polymer pellets and forming the Connector. Using a specialized machine, the Connector, spring, and cartridge are assembled in Milford to create the Connector-Cartridge assembly. First, a metal spring¹ is attached to the Connector. Next, the Connector/spring assembly is then affixed to the Cartridge². Lastly, the completed Connector-Cartridge assembly exits the equipment and is placed into the shipping dispenser. The raw polymer material that makes up the Connector is imported but is not designed or made for any particular Schick product, including the Accused Products.

¹ Imported from third party supplier.

² Schick also utilized a U.S. third-party to assist with the attachment of the Cartridge to the Connector for a small amount of products. This activity occurred in the United States.

22. This results in a final product shown below that is subsequently shipped to a third party distributor for packaging and distribution to consumers in the United States.



23. I declare under perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Paul B. White".

Paul B. White
October 10, 2017

ATTACHMENT B

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

DECLARATION OF JENNIFER B. YOMOAH

1. My name is Jennifer B. Yomoah, and I am an employee of Edgewell Personal Care Brands, LLC, a subsidiary of Edgewell Personal Care Company. The facts stated in this declaration are based on my personal knowledge obtained through my duties at Edgewell and I have confirmed my understanding with appropriate personnel at Edgewell.
2. I am Customer Experience Manager, E-Commerce with responsibilities for the marketing of Edgewell's E-Commerce businesses, including sales via our <http://www.schickhydro.com> website. I have worked for Edgewell Personal Care for 4+ years. During my employment with Edgewell, I have held the positions of Associate Brand Manager, Suncare, and Brand Manager, North America Marketing. I have been in my current position for approximately 3 months. In my capacity as both Brand Manager, North America Marketing and Customer Experience Manager, E-Commerce, the launch and on-going support of the <http://www.schickhydro.com> website.
3. I understand Gillette has filed a Complaint with the International Trade Commission against our Schick Hydro ConnectTM cartridges. In its Complaint, Gillette has identified a product insert obtained from a shipment of our Accused Products for alleging that the Accused Products are imported.

FREE YOUR SKIN®

Schick

**HYDRO
CONNECT.**

HYDRO CARTRIDGE

7 Hydrating Gel Pools
Hydrate Throughout Each Shave

Ultra Glide® Blades
To Deliver Our Best Shave

Large Guardbar Design
To Increase Skin Stretch

Hydro Connect 5
Hydro Connect 5 Sensitive
Hydro Connect 3

Compatible with
Gillette® Fusion®† Handle

Compatible with
Gillette® Fusion®† Handle

Compatible with
Gillette® Mach3®† Handle

Learn more at www.schickhydro.com

†This product is not manufactured or distributed by The Gillette Company LLC, owners of the registered trademarks Fusion® and Mach3®.

SCHICK HYDRO® BLADES MADE IN THE USA, ASSEMBLED IN CHINA FOR EDGEWELL PERSONAL CARE BRANDS, LLC, SHELTON, CT 06484. PERFORMANCE GUARANTEE: IF YOU ARE DISSATISFIED WITH THIS RAZOR OR HAVE QUESTIONS, CALL 800-503-0125.

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

Questions? 1-800-503-0125 © 2017 Edgewell. 93021534

4. This insert states that the Schick Hydro Connect™ blades are “Made in the USA, Assembled in China.” As detailed in the Declaration of Paul White, Schick Hydro Connect™ blades and cartridges are manufactured and assembled in the United States at our Milford, Connecticut facility. The label shown above contains an inadvertent

misstatement that implies that Schick Hydro Connect™ blades and cartridges, while made in the USA, are assembled in China. To the contrary, as detailed in the Declaration of Paul White, Schick Hydro Connect™ blades and cartridges are manufactured and assembled in the United States.

5. We first became aware of the misstatement on our insert when Gillette filed its Complaint. After an internal investigation, it was determined that the insert in question mistakenly contained origin information for a different, non-accused Schick product. Upon determining the mistake, we immediately halted all orders for the Accused Products and developed appropriate origin language for a new product insert. This insert is shown below:

FREE YOUR SKIN®

Schick
HYDRO
CONNECT™

HYDRO CARTRIDGE

7 Hydrating Gel Pools
Hydrate Throughout Each Shave

Ultra Glide® Blades
To Deliver Our Best Shave

Large Guardbar Design
To Increase Skin Stretch

Hydro Connect 5
Compatible with Fusion®† Handle

Hydro Connect 5 Sensitive
Compatible with Fusion®† Handle

Hydro Connect 3
Compatible with Mach3®† Handle

Learn more at www.schickhydro.com

†This product is not manufactured or distributed by The Gillette Company LLC, owner of the registered trademarks Fusion® and Mach3®.

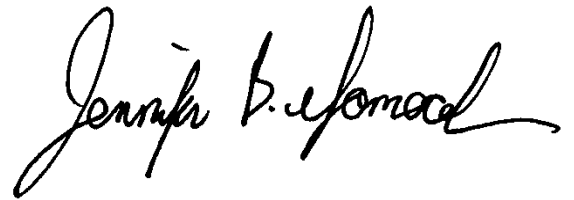
BLADES MADE IN THE USA OF IMPORTED STEEL; CARTRIDGES MADE IN THE USA OF IMPORTED AND US MATERIALS; DISPENSER BOX MADE IN USA OF IMPORTED MATERIALS. EDGEWELL PERSONAL CARE BRANDS, LLC, SHELTON, CT 06484. PERFORMANCE GUARANTEE: IF YOU ARE DISSATISFIED WITH THIS RAZOR OR HAVE QUESTIONS, CALL 800-503-0125.

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

Questions? 1-800-503-0125 © 2017 Edgewell. 93024347

6. As can be seen, the updated label states “Blades Made in the USA of Imported Steel; Cartridges Made in the USA of Imported and US Materials; Dispenser Box Made in USA of Imported Materials.” This accurately reflects the domestic manufacture and assembly of all Schick Hydro Connect™ cartridges, as described in detail in the Declaration of Paul White.
7. Future sales of the Accused Products will have the correct origin information on the packaging.

I hereby declare the above is true to the best of my knowledge under penalty of perjury.

A handwritten signature in black ink, appearing to read "Jennifer B. Yomoah". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Jennifer B. Yomoah

October 10, 2017

Shelton, CT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day, a true and correct copy of the foregoing document was served by the indicated means to the persons at the addresses below:

<p>The Honorable Rhonda K. Schmidlein Chairman U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, SW, Room 112-A Washington, DC 20436</p> <p>Margaret MacDonald Jeffrey Hsu Office of Unfair Import Investigations U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, SW, Washington, DC 20436</p> <p>Marcia H. Sundeen Mark J. Abate Srikanth K. Reddy Goodwin Procter LLP msundeen@goodwinlaw.com mabate@goodwinlaw.com sreddy@goodwinlaw.com</p> <p><i>Counsel for Complainant The Gillette Company LLC</i></p>	<p>Via Electronic Filing and Via Hand Delivery (8 copies)</p> <p>Via electronic mail</p> <p>Via electronic mail</p>
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Date: October 10, 2017

/s/ Adam D. Swain
Adam D. Swain