

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN DIGITAL TELEVISIONS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-789

**ORDER NO. 22: DENYING COMPLAINANT VIZIO, INC.'S MOTION TO AMEND
THE COMPLAINT AND NOTICE OF INVESTIGATION**

(November 23, 2011)

On October 24, 2011, Complainant VIZIO, Inc. ("Vizio") moved (789-016) to amend the Complaint and Notice of Investigation to add Coby Electronics Co., Ltd. ("Coby China") and Coby Manufacturing Co., Ltd. ("Coby Hong Kong") as respondents in this Investigation.¹ On November 8, 2011, the Commission Investigative Staff ("Staff") filed a response indicating that it did not oppose Vizio's motion. On November 21, 2011, Coby China and Coby Hong Kong (collectively, "the Coby Asia entities") filed an opposition to Vizio's motion.

Vizio seeks to add Coby China and Coby Hong Kong as respondents in this Investigation to reduce the need to conduct third-party discovery, to develop a complete factual record, and to afford Vizio effective relief. (Mem. at 1.) Vizio claims that confidential discovery obtained from Respondent Coby Electronics Corp. ("Coby USA") indicates that [

] Vizio further claims that Coby China and Coby Hong Kong are in possession and custody of documents relevant to the accused products. (*Id.* at 3, 7.) Vizio

¹ While the motion was filed on October 24, 2011, it was not served on Coby China and Coby Hong Kong until November 4, 2011.

asserts that it did not learn of Coby China's and Coby Hong Kong's activities until it received and had an opportunity to examine discovery produced by Coby USA in this Investigation. (*Id.* at 8.) In addition, Vizio asserts that there is no prejudice to the parties by adding the Coby Asia entities given their close relationship with Coby USA. (*Id.* at 10.) Lastly, Vizio asserts that because this Investigation is still in the early stages, all parties will have ample time to conduct discovery and prepare their cases. (*Id.*)

In opposition, the Coby Asia entities assert that Vizio has failed to show good cause because Coby China's and Coby Hong Kong's identities and alleged involvement could have been ascertained by Vizio at a much earlier date. (Opp. at 3.) For example, counsel for the Coby Asia entities claims that a basic internet search for the term "Coby" led to information about "Coby Electronics Co. of Hong Kong," "COBY Electronics Co. Ltd. – GMC Certified Manufacturer," "Coby Mfg Co Ltd – Company Home – Hong Kong Manufacturer," and "COBY Manufacturing Co Ltd." (*Id.* at 3-4.) The Coby Asia entities also claim that even if Vizio only learned of their identities through discovery, it was still dilatory in bringing its motion because it at least learned of Coby China's involvement with Coby USA as early as August 2011. (*Id.* at 5-6.) Lastly, the Coby Asia entities claim that granting Vizio's motion would severely prejudice them because they will have missed the *Markman* briefing deadlines, as well as other procedural deadlines, and would not have sufficient time to prepare for the *Markman* hearing. (*Id.* at 7.)

Staff submits that good cause exists to amend the Complaint and add the Coby Asia entities as respondents [

] Staff further submits that it does not appear that Vizio could have obtained this information

from sufficiently reliable public sources before filing its original Complaint. (*Id.* at 4.) Staff claims that including the Coby Asia entities as respondents will reduce the need to conduct third-party discovery to obtain a complete record. (*Id.* at 4.)

After an investigation has been instituted, the complaint may be amended only by leave of the Commission for good cause when and upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation. *See* 19 C.F.R. § 210.14(b)(1). A motion to amend must be submitted to the Administrative Law Judge who may grant it by filing an initial determination or deny it by order. *Id.*


The undersigned finds that Vizio has failed to show good cause for adding Coby China and Coby Hong Kong as respondents to this Investigation. As counsel for the Coby Asia entities noted, a simple internet search for the term “Coby” would easily lead to information about Coby China and Coby Hong Kong. Vizio, therefore, could have ascertained information about Coby China and Coby Hong Kong at a much earlier date through a diligent pre-filing investigation. *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”). Nonetheless, even if Vizio had only learned of the Coby Asia entities through discovery, Vizio at least learned of Coby China as early as August 2011. (*See* Mot. Ex. 2.) Vizio’s two-month delay in filing its motion does not constitute good cause, especially in light of the impending deadlines in the procedural schedule. *See Certain Non-Contact Laser Precision Dimensional Measuring Devices and Components Thereof*, Inv. No. 239, Order No. 4, 1986 ITC LEXIS 194, at *5 (Apr. 10, 1986). In addition, the undersigned agrees with Coby China and Coby Hong Kong that allowance of such an

amendment at this stage in the investigation would prejudice them. Accordingly, Complainant's motion (789-016) is hereby denied.

Within seven days of the date of this document, each party shall submit to the Office of the Administrative Law Judges a statement as to whether or not it seeks to have any portion of this document deleted from the public version. The parties' submission may be made by facsimile and/or hard copy by the aforementioned date.

Any party seeking to have any portion of this document deleted from the public version thereof must submit to this office a copy of this document with red brackets indicating any portion asserted to contain confidential business information. The parties' submissions concerning the public version of this document need not be filed with the Commission Secretary.

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 **PUBLIC VERSION ORDER NO. 22** has been served upon, **Matthew N. Bathon, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on December 6, 2011.


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