

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

LASHIFY, INC.,
Appellant

v.

INTERNATIONAL TRADE COMMISSION,
Appellee

**QINGDAO HOLLYREN COSMETICS CO., LTD, dba
Hollyren, QINGDAO XIZI INTERNATIONAL
TRADING CO., LTD, dba Xizi Lashes, QIANGDAO
LASHBEAUTY COSMETIC CO., LTD, dba
Worldbeauty, KISS NAIL PRODUCTS, INC., ULTA
SALON, COSMETICS & FRAGRANCE, INC.,
WALMART, INC., CVS PHARMACY, INC., ARTEMIS
FAMILY BEGINNINGS, INC., dba Lilac Street,
ALICIA ZENG,**
Intervenors

2022-1566

Appeal from the United States International Trade
Commission in Investigation No. 337-TA-1226.

ON MOTION

Before LOURIE, TARANTO, and HUGHES, *Circuit Judges*.

PER CURIAM.

ORDER

Appellee International Trade Commission moves to dismiss Appeal No. 2022-1566 as premature. ECF No. 21. Lashify, Inc. opposes dismissal and requests instead that the appeal be held in abeyance. ECF No. 26.

Lashify filed a notice of appeal seeking review of the Commission's decision not to review certain non-infringement findings regarding U.S. Patent No. 10,721,984. ECF No. 1-2 at 2. But even Lashify's notice characterized the Commission's decision as not "final" for purposes of judicial review under *Tessera, Inc. v. ITC*, 646 F.3d 1357, 1367–69 (Fed. Cir. 2011) (citing 19 U.S.C. § 1337(c)), based on the Commission's pending consideration of certain other issues in the investigation. ECF No. 1-2 at 4. We agree with the parties that, under the circumstances of this case, we lack jurisdiction over Lashify's appeal because there has been no final determination. Having considered the parties' arguments, the court determines that dismissal (rather than a stay) is appropriate in this case, *see, e.g., A & J Mfg., LLC v. ITC*, 584 F. App'x 933 (Fed. Cir. 2014), but the court will allow Lashify to reinstate its appeal if, within 60 days of the entry of this order, it appeals from a final determination.

Accordingly,

IT IS ORDERED THAT:

LASHIFY, INC. v. ITC

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(1) The appeal is dismissed for lack of jurisdiction, subject, however, to reinstatement under the same docket number without payment of any additional filing fee if, within 60 days of the entry of this order, Lashify appeals from the entry of a final determination. The mandate shall issue simultaneously with this order.

(2) Each party shall bear its own costs.

FOR THE COURT

June 1, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

ISSUED AS A MANDATE: June 1, 2022