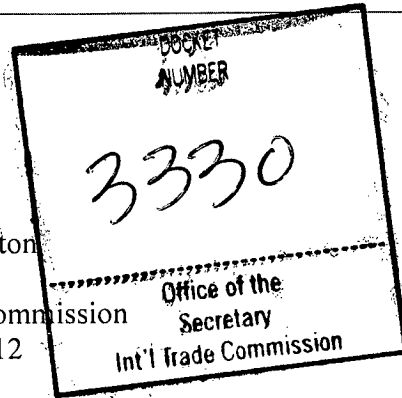


August 1, 2018

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



Frank C. Cimino, Jr.

T 202.344.4569
F 202.344.8300
FCCimino@Venable.com

Re: *Certain Motorized Vehicles and Components Thereof*
Inv. No. 337-TA-___

Dear Secretary Barton:

Enclosed for filing on behalf of Complainant FCA US LLC (“Complainant”) against proposed Respondents Mahindra & Mahindra Ltd. and Mahindra Automotive North America, Inc. (the “Proposed Respondents”) are documents in support of Complainant’s request that the Commission commence an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended. A request for confidential treatment of Confidential Exhibits 31C, 39C-40C, and 45C-46C is included with this letter.

1. An original and eight (8) copies of the verified Non-Confidential Complaint and the Public Interest Statement, one (1) CD of the accompanying non-confidential exhibits, and one (1) CD containing non-confidential video exhibits (submitted as a physical exhibit). (19 CFR §§ 201.6(c), 210.4(f)(2), 210.8(a)(1)(i), and 210.8(b).)
2. Two (2) additional copies of the verified Non-Confidential Complaint and the Public Interest Statement, two (2) CDs of the non-confidential exhibits, and two (2) CDs containing non-confidential video exhibits (submitted as a physical exhibit) for service upon the Proposed Respondents. (19 CFR §§ 210.8(a)(1)(iii).)
3. One (1) additional copy of the verified Non-Confidential Complaint and the Public Interest Statement, one (1) CD of the non-confidential exhibits, and one (1) CD containing non-confidential video exhibits (submitted as a physical exhibit) for service upon the Embassy of India. (19 CFR §§ 210.8(a)(1)(iii).)
4. An original and eight (8) copies of the verified Confidential Complaint and the Public Interest Statement and one (1) CD of the accompanying confidential exhibits. (19 CFR §§ 201.6(c), 210.4(f)(2), 210.8(a)(1)(i), and 210.8(b).)

The Honorable Lisa R. Barton
U.S. International Trade Commission
Page 2

5. Two (2) additional copies of the verified Confidential Complaint and the Public Interest Statement and two (2) CDs of the confidential exhibits, for service upon the Proposed Respondents. (19 CFR §§ 210.8(a)(1)(iii).)
6. Original certified copies of United States Trademark Registration Nos. 4,272,873 (“the ‘873 registration”), 2,862,487 (“the ‘487 registration”), 2,161,779 (“the ‘779 registration”), 2,794,553 (“the ‘553 registration”), and 4,043,984 (“the ‘984 registration”) (collectively the “Asserted Registrations”); and copies of the Asserted Registrations on CD, cited in the Complaint as Exhibits 1-5. (19 CFR §§ 210.8(a)(1)(iii) and 210.12(a)(9)(i).)
7. Certified copies of the assignments for the Asserted Registrations and copies of the assignments for the registrations on CD, cited in the Complaint as Exhibits 26-30 and continued in Appendix F. (19 CFR §§ 210.8(a)(1)(iii) and 210.12(a)(9)(ii).)
8. Certified copies of the prosecution histories of the Asserted Registrations included in the Complaint as Appendices A-E and three (3) additional copies of each on separate CDs. (19 CFR § 210.12.(c)(1).)

In accordance with Commission Rules 201.6 and 210.5, Complainant requests confidential treatment of the business information contained in Confidential Exhibits 31C, 39C-40C, and 45C-46C. A certification is provided below pursuant to 19 C.F.R §§ 201.06 and 210.5 requesting confidential treatment of Confidential Exhibits 31C, 39C-40C, and 45C-46C.

The information for which confidential treatment is sought is proprietary commercial information not otherwise publicly available. Specifically, Confidential Exhibits 31C, 39C-40C, and 45C-46C are declarations and license records that discuss proprietary and confidential business information of Complainant and Complainant’s investments in the domestic industry.

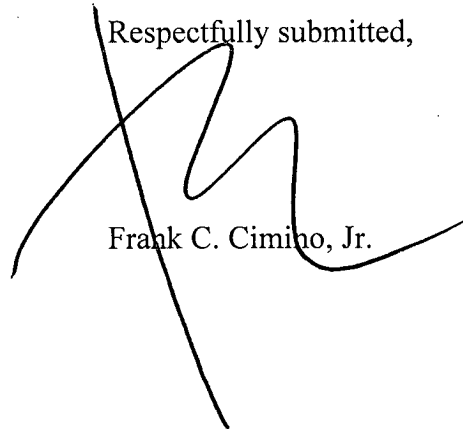
The information described above qualifies as confidential business information pursuant to Commission Rule 201.6 because:

- a. it is not available to the public;
- b. unauthorized disclosure of such information could cause substantial harm to the competitive position of Complainant; and
- c. its disclosure could impair the Commissions’ ability to obtain information necessary to perform its statutory function.

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U.S. International Trade Commission
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Thank you for your attention to this matter. Please contact me if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank C. Cimino, Jr.", written over the typed name.

Frank C. Cimino, Jr.

Enclosures

PUBLIC VERSION

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

In the Matter of

**CERTAIN MOTORIZED VEHICLES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-___

**VERIFIED COMPLAINT OF FCA US LLC
UNDER SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED**

COMPLAINANT

FCA US LLC
1000 Chrysler Dr.
Auburn Hills, MI 48321
Telephone: (248) 944-6519

RESPONDENTS

Mahindra & Mahindra Ltd.
Mahindra Towers
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EXHIBIT LIST

Exhibit No.	Designation	Description
1	Public	Certified Copy of U.S. Trademark Registration No. 4,272,873
2	Public	Certified Copy of U.S. Trademark Registration No. 2,862,487
3	Public	Certified Copy of U.S. Trademark Registration No. 2,161,779
4	Public	Certified Copy of U.S. Trademark Registration No. 2,794,553
5	Public	Certified Copy of U.S. Trademark Registration No. 4,043,984
6	Public	Jeep® Marketing Images
7	Public	Jeep® CJ Images
8	Public	Jeep.com Advertising
9	Public	November 29, 2017 Article entitled, “Jeep’s Chief Designer Explains How Vintage Design Inspired the 2018 Wrangler”
10	Public	75th Anniversary Commercial (submitted as physical exhibit on CD)
11	Public	Freedom & Adventure Commercial (submitted as physical exhibit on CD)
12	Public	Article entitled, “The History of the Jeep”
13	Public	Jeep® Wrangler® Images
14	Public	October 2009 Article entitled, “25 Most Iconic Cars of the Past 20 Years”
15	Public	Images of FCA Authorized Merchandise
16	Public	Jeep® History Poster
17	Public	March 23, 2018 Article entitled, “The Mahindra Roxor is a Reincarnated Willys Jeep and You Absolutely Need One”
18	Public	March 2, 2018 Article entitled, “First Look - Mahindra Roxor Off-Highway Vehicle”
19	Public	Images of Respondents’ Accused Product
20	Public	March 2, 2018 Article entitled, “The Mahindra Roxor is a New Side-by-Side that Looks like a Jeep CJ-7”
21	Public	March 6, 2018 Article entitled, “After Tariff Threat, Apprehension and Shock Among Detroit’s Businesses”
22	Public	March 2, 2018 Article entitled, “Detroit-Built Mahindra Roxor Off-Road Vehicle Revealed: Is This the Mini Jeep We Need?”
23	Public	March 2, 2018 Article entitled, “Howes: Meet Jeep’s Indian Cousin”
24	Public	March 3, 2018 Article entitled, “This is Why Mahindra Can Build Tiny Jeeps”
25	Public	Jeep Trade Dress Images
26	Public	Certified Copy of Recorded Assignments for U.S. Trademark Registration No. 4,272,873
27	Public	Certified Copy of Recorded Assignments for U.S. Trademark Registration No. 2,862,487

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28	Public	Certified Copy of Recorded Assignments for U.S. Trademark Registration No. 2,161,779
29	Public	Certified Copy of Recorded Assignments for U.S. Trademark Registration No. 2,794,553
30	Public	Certified Copy of Recorded Assignments for U.S. Trademark Registration No. 4,043,984
31	Public	Listing of Jeep IP Licensees (Public Version)
31C	Confidential	Listing of Jeep IP Licensees (Confidential Version)
32	Public	Dealership website showing sale of Accused Products in Virginia
33	Public	Dealership website showing sale of Accused Products in Michigan
34	Public	March 6, 2018 Article entitled, "Mahindra Roxor: Unseen Photos & Video Of The Thar-Based Roxor From Inside Detroit Plant"
35	Public	March 5, 2018 Article entitled, "Mahindra Roxor SUV: All You Need To Know"
36	Public	Respondents' Website to Customize and Buy Accused Products
37	Public	Respondent Press Release of March 2, 2018
38	Public	March 20, 2018 Article entitled, "Honest Review of New Mahindra Roxor from US: Awesome li'l Machine for Doing Jeep Stuff!"
39	Public	Declaration of Michael DiMambro (Public Version)
39C	Confidential	Declaration of Michael DiMambro (Confidential Version)
40	Public	CJ66 Concept Vehicle Investment (Public Version)
40C	Confidential	CJ66 Concept Vehicle Investment (Confidential Version)
41	Public	Images of FCA using the Jeep IP in Commerce
42	Public	Mahindra & Mahindra Ltd. Website
43	Public	Respondent Press Release of November 6, 2017
44	Public	Respondent Press Release of November 20, 2017
45	Public	Classic Enterprises Limited International License Agreement (Public Version)
45C	Confidential	Classic Enterprises Limited International License Agreement (Confidential Version)
46	Public	Omix-ADA, Inc. License Agreement (Public Version)
46C	Confidential	Omix-ADA, Inc. License Agreement (Confidential Version)

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APPENDICES LIST

Appendix No.	Designation	Description
A	Public	Certified Copy of File History for U.S. Trademark Registration No. 4,272,873
B	Public	Certified Copy of File History for U.S. Trademark Registration No. 2,862,487
C	Public	Certified Copy of File History for U.S. Trademark Registration No. 2,161,779
D	Public	Certified Copy of File History for U.S. Trademark Registration No. 2,794,553
E	Public	Certified Copy of File History for U.S. Trademark Registration No. 4,043,984
F	Public	Assignment Records

PUBLIC VERSION

I. INTRODUCTION

1. FCA US LLC (“FCA” or “Complainant”) requests that the United States International Trade Commission (“the Commission” or “ITC”) institute an investigation into violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“Section 337”), against Mahindra & Mahindra Ltd. and Mahindra Automotive North America, Inc. (collectively, “Mahindra” or “Respondents”).

2. This Complaint is based on Respondents’ unlawful and unauthorized importation into the United States, sale for importation into the United States, and/or sale within the United States after importation of certain motorized vehicles and components thereof (“Accused Products”) that violate the common law trade dress and registered trademarks used with and displayed on Jeep[®]-brand vehicles manufactured and sold by FCA and its predecessors. Pursuant to 19 C.F.R. § 210.12(a)(12), the Accused Products are motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for motorized vehicles.

3. Respondents have engaged in unlawful acts in violation of Section 337(a)(1)(A) through their unlicensed importation, sale for importation, or sale after importation of Accused Products that infringe and dilute FCA’s distinctive Jeep[®] vehicle trade dress, including the overall exterior appearance and styling of the vehicle design, including a boxy body shape with flat appearing vertical side and rear body panels ending at about the same height as the hood, substantially flat hood with curved side edges that tapers to be narrower at the front, trapezoidal front wheel wells with front fenders or fender flares that extend beyond the front of the grille, a flat appearing grille with vertical elongated grille slots and a trapezoidal outline that curves around round headlamps positioned on the upper part of the grille, exterior hood latches, and door cutouts above a bottom portion of the side body panels (the “Jeep Trade Dress”).

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4. In addition, Respondents have violated Section 337(a)(1)(C) through their unlicensed importation, sale for importation, or sale after importation of Accused Products that infringe one or more of FCA's federally registered trademarks: U.S. Trademark Registration Nos. 4,272,873 ('873 Mark); 2,862,487 ('487 Mark); 2,161,779 ('779 Mark); 2,794,553 ('553 Mark); and 4,043,984 ('984 Mark) (the underlying designs and registrations for them, collectively, the "Jeep Design Marks"). Certified copies of the registrations are attached as Exhibits 1-5. FCA uses the Jeep Design Marks in connection with products sold in the United States and throughout the world.

5. FCA has an existing domestic industry under Section 337(a)(3)(A)-(C) through its investments in plant, equipment, labor, capital, and exploitation relating to articles protected by the Jeep Trade Dress and the Jeep Design Marks (collectively, the "Jeep IP"). For example, FCA currently produces the Jeep® Wrangler® at its Toledo Assembly Complex in Toledo, Ohio.

6. Respondents' unfair acts in violation of Section 337(a)(1)(A) have substantially injured, or threaten to substantially injure, FCA's domestic industry.

7. FCA seeks relief from the Commission in the form of a limited exclusion order, excluding from entry into the United States Accused Products that infringe the Jeep IP. FCA further seeks cease and desist orders halting Respondents from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring, or soliciting U.S. agents or distributors for, vehicles that incorporate or display or are marketed or sold in connection with the Jeep IP or designs that are confusingly similar to the Jeep IP.

II. THE PARTIES

A. Complainant FCA US LLC

8. Complainant FCA is a Delaware limited liability company having its headquarters at 1000 Chrysler Drive, Auburn Hills, Michigan.

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9. FCA is a vehicle manufacturer in the United States, selling vehicles under several brands, including the Jeep® brand. FCA's corporate roots relate back to the Chrysler Corporation, which was first organized in 1925.

10. FCA is the owner of the Jeep® brand, Jeep Trade Dress, and Jeep Design Marks as the assignee and successor-in-interest to the extent applicable with respect to the Jeep IP to Chrysler Group LLC, Chrysler LLC, DaimlerChrysler Company LLC, DaimlerChrysler Corporation, Chrysler Corporation, American Motors Corporation, Jeep Corporation, Kaiser Jeep Corporation, Willys Motors, Inc., and Willys-Overland Motors, Inc. (References hereinafter to "FCA" will include these predecessors-in-interest).

B. Respondents

11. Upon information and belief, Respondent Mahindra & Mahindra Ltd. ("Mahindra India") is an Indian multinational vehicle manufacturing corporation headquartered in Mumbai, Maharashtra, India. Mahindra India is part of the Mahindra Group, an Indian multinational conglomerate with operations in over 100 countries around the world.

12. Upon information and belief, Respondent Mahindra Automotive North America, Inc. ("Mahindra NA") is a Delaware corporation, with its corporate headquarters and principal place of business in Michigan.

13. Upon information and belief, Mahindra NA operates as the U.S. subsidiary of Mahindra India and is used as the conglomerate's U.S.-based operation responsible for manufacturing and assembly of product with the goal of expanding the company's presence in North America.

14. Upon information and belief, Respondents sell for importation, import, or sell after importation motorized vehicles and components thereof that are manufactured in India and imported and sold in the United States, and which infringe and dilute the Jeep IP.

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III. BACKGROUND INFORMATION ON THE PRODUCTS AT ISSUE

15. The Jeep® brand is one of FCA's most well-known brands. FCA spends significant sums each year promoting and protecting the Jeep® brand. FCA markets the iconic history of the Jeep® brand by focusing on images of the vehicle's renowned Jeep Trade Dress, including the grille design and headlamps, and by touting the vehicle's off-road capabilities. Representative examples of Jeep® marketing are attached as Exhibit 6.

A. The Jeep® CJ Vehicle

16. The Jeep® CJ (CJ stands for Civilian Jeep) design was manufactured and sold for a 40-year period from 1945 until the mid-1980s, upon the introduction of its successor, the Jeep® Wrangler®. The Jeep® CJ included the following models: the Jeep® CJ-2A, the Jeep® CJ-3A, the Jeep® CJ-3B, the Jeep® CJ-5, the Jeep® CJ-6, the Jeep® CJ-7, and the Jeep® CJ-8 Scrambler (collectively, the "Jeep® CJ models").

17. During its extended period of production, the Jeep® CJ design became iconic. While each of the early Jeep® CJ models offered some product variations and improvements, all shared the same overall exterior appearance and styling of the vehicle design that embodies the Jeep Trade Dress. Representative examples of the Jeep® CJ are attached as Exhibit 7.

18. Through decades of sales, together with extensive advertising and promotion, FCA successfully developed strong consumer recognition for the iconic trade dress of the Jeep® CJ, resulting in its being featured in popular movies and television series, such as The Terminator, Lost, The Dukes of Hazard, Mork & Mindy, and Charlie's Angels.

19. The Jeep® CJ design resonates in the minds of consumers even today, due to its fame and FCA's continued use and promotion of the vintage Jeep® CJ design through ongoing sales of memorabilia, including Jeep® CJ toy replicas, and custom concept show vehicles based on the Jeep® CJ design. FCA's current advertising for its current Jeep® brand lineup also relates back

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to older Jeep® brand vehicles, capturing the goodwill associated with the Jeep® CJ design. Representative examples of Jeep® brand advertising are attached as Exhibits 8-11 (Exhibits 10 and 11 are submitted as physical exhibits on CD).

20. Further demonstrating the ongoing continued use of the Jeep® CJ design, there remains a strong secondary market for Jeep® CJ vehicles and components, including components covered by the Jeep Trade Dress, and FCA continues to license rights to manufacture and sell components to satisfy that market.

B. The Jeep® Wrangler® Vehicle

21. The Jeep® CJ was discontinued in 1986, but its legacy and design have lived on in the Jeep® Wrangler®. For the Jeep® brand, the Jeep® Wrangler® was a continuation of the Jeep® CJ heritage and Jeep Trade Dress, with an updated design that retained the impact and same basic commercial impression as before.

22. The Jeep® Wrangler®'s iconic design, such as the front headlamps, signature grille, boxy body design, front fender flares, and door cutouts all honor the Jeep® brand tradition, while offering new levels of technology, capability, and safety.

23. Manufactured with the similar look of the Jeep® CJ, the Jeep® Wrangler® line of vehicles has garnered critical acclaim and proved to be a distinctively adaptable trail vehicle. The success of the Jeep® Wrangler® has allowed it to engrain its legacy in American culture. As one article notes: the “Wrangler is the ultimate, all-American 4x4 freedom machine - the Jeep® brand’s modern-day descendant of the original, heroic Willys MB.” See Exhibit 12.

24. Over the past 30 years, a number of Jeep® Wrangler® vehicles have been introduced, including the Wrangler® YJ (1986-1995), the Wrangler® TJ (1996-2006), the Wrangler® JK (2006-2018), and the all-new Wrangler® JL (2018-present). Each Jeep® Wrangler® has offered updated safety features and other technical improvements, but all create the same basic

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commercial impression, sharing the familiar boxy body-on-frame design and instantly recognizable Jeep Trade Dress. Representative examples of the Jeep® Wrangler® vehicles are attached as Exhibit 13.

25. The vehicles' design and performance has been the subject of awards and recognition. For example, *Bloomberg Businessweek* named the Jeep® Wrangler® one of the "most iconic cars of the past 20 years." See Exhibit 14. Among other awards, the Jeep® Wrangler® holds the Model to Best Hold Its Value Award from *Kelly Blue Book* in 1998, 1999, 2003, 2011, and 2012. The Jeep® Wrangler® also received Best Resale Value Awards from *Kelly Blue Book* in 2009, 2012, 2013, and 2015. In 2007, 2011, and 2013, *Four Wheeler* awarded the Jeep® Wrangler® with its Four-Wheeler of the Year Award and in 2010, gave it the title of 4x4 of the Decade. Its popularity and recognition is also demonstrated by its incorporation into popular culture, such as being featured in movies and television shows like *Jurassic Park*, *Sahara*, and *Back to the Future*, as well as video games like *Lara Croft Tomb Raider* and *Call of Duty*.

26. Building on the success of the Jeep® Wrangler®, FCA continues to use and promote the Jeep Trade Dress on a variety of merchandise and products available through its own website, at its authorized motor dealership locations, and through third party retailers of licensed products. Representative examples of FCA's authorized merchandise are attached as Exhibit 15.

27. Over the decades, FCA has sold millions of vehicles bearing and displaying the Jeep Trade Dress and Jeep Design Marks, [REDACTED]. Each vehicle functions as a rolling billboard, continuously promoting the Jeep Trade Dress and Jeep Design Marks to the general consuming public throughout the United States. See Exhibit 16.

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28. Over the decades, FCA has spent hundreds of millions of dollars on television, radio, internet, and print advertising and sponsorship events that prominently feature the Jeep Trade Dress and Jeep Design Marks, and that promote the quality and reliability of goods provided in connection with the Jeep Trade Dress and Jeep Design Marks. In addition, FCA has expended tremendous time, money, and effort managing the brand to create consumer recognition and increase consumer perception of the Jeep Trade Dress and the Jeep Design Marks as distinctive indicators to ensure that the public, not only in the United States but throughout the world, associates the Jeep Trade Dress and Jeep Design Marks with quality vehicles emanating exclusively from FCA.

29. Because of their exclusive and continuous longstanding use, the Jeep Trade Dress and Jeep Design Marks both identify FCA's vehicles and function as a direct link to the Jeep® Wrangler®'s history, conveying to the public that a vehicle bearing the Jeep Trade Dress and sold in connection with the Jeep Design Marks is the reliable "original." Further, because of the exclusive and continuous use and extensive sales and marketing of the Jeep Trade Dress and Jeep Design Marks in connection with FCA's vehicles, the Jeep Trade Dress and Jeep Design Marks have become distinctive, exclusively associated with the Jeep® brand and FCA, and indeed famous among the general consuming public in the United States, recognized as trademarks and as signature symbols of corporate identification that distinguish FCA and its vehicles from the business and vehicles of others. The Jeep Trade Dress and Jeep Design Marks are thus of tremendous value to FCA, immediately communicating a host of positive attributes associated with the Jeep® Wrangler® vehicle.

C. Respondents' Accused Product

30. In early March 2018, Respondents revealed the Accused Product, a new motor vehicle called the Roxor, which Respondents designed to copy the Jeep IP. The Accused Products

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are manufactured in India and imported into the United States as knocked down (“KD”) kits. The KD kits are then assembled at Respondents’ manufacturing plant in Michigan for sale by dealers throughout the United States.

31. Respondents have already started to market, promote, and sell the Accused Products throughout the United States. Respondents have also promoted the Accused Products during events where potential customers and the media were permitted to test drive them as detailed in a recent product review article published by *Jalopnik*. See Exhibit 17.

32. According to a Mahindra NA press release, the company had a meeting scheduled in late March 2018 to discuss the roll-out strategy and future product offerings. See Exhibit 37. Upon information and belief, the Accused Products were made available for sale to the public through dealerships in April 2018. And while currently designated as an off-road only vehicle, media reports suggest that Respondents intend to pursue a street-legal version of the Accused Products. See Exhibit 18.

33. Representative examples of the Accused Products from Mahindra NA’s website, depicted in Exhibit 19, show that they are a nearly identical copy of the iconic Jeep® design and incorporate the Jeep Trade Dress and Jeep Design Marks. In fact, the Accused Product was “[m]odeled after the original Willys Jeep” and copied down to the undercarriage of the historic Jeep® CJ. See Exhibit 20.

34. Media coverage following the introduction of the Accused Products consistently highlights the vehicle’s unmistakable resemblance to Jeep® brand vehicles. For example, when describing the Accused Products’ design, a recent *Wall Street Journal* article noted that “[t]he Roxor is an unusual vehicle, looking much like [the] iconic Jeep Wrangler....” See Exhibit 21. An article in *Car & Driver* explained how “the sight of an open-top steel body with an upright grille

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and flattop fenders on a boxed ladder frame with four-by-four capability makes Jeep comparisons inevitable.” See Exhibit 22. *The Detroit News* states that the Accused Products’ design will herald “inevitable comparisons to Jeeps past and present,” and erroneously suggests that Mahindra must have an agreement with FCA, because few “would need more than a glance to see Jeep in Roxor’s four-and-a-half bar grille, its stubby nose and muscular stance.” See Exhibit 23. Likewise, a *Jalopnik* article discusses the Accused Products’ use of the Jeep IP as well, and further erroneously reports that Mahindra has rights in the design. See Exhibit 24.

35. Mahindra has no right to use the Jeep IP. FCA owns and retains full rights in the Jeep IP and has not granted a license to Mahindra to use the Jeep IP in any country, including the United States. FCA’s predecessors did have prior dealings with Mahindra India, granting Mahindra India limited contractual rights to manufacture and/or sell Jeep®-branded components and products in India beginning in the 1940s. [REDACTED]. And none of those contracts at any time granted Mahindra India (or any other Mahindra entity) ownership rights over Jeep® brand-related intellectual property. Nor did any of these past agreements grant any rights to manufacture, sell, or advertise vehicles, such as the Accused Products, incorporating the Jeep IP in the United States.

36. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IV. THE ASSERTED MARKS

A. The Jeep Trade Dress

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37. FCA owns rights and protectable interests in the Jeep Trade Dress, depicted in representative vehicles in Exhibit 25. FCA's Jeep® CJ and Jeep® Wrangler® vehicles have certain key design features that constitute the Jeep Trade Dress and that distinguish them from other commercially available vehicles, consisting of the overall exterior appearance and styling of the vehicle design, including:

- (i) A boxy body shape with flat appearing vertical side and rear body panels ending at about the same height as the hood;
- (ii) Substantially flat hood with curved side edges that tapers to be narrower at the front;
- (iii) Trapezoidal front wheel wells with front fenders or fender flares that extend beyond the front of the grille;
- (iv) Flat appearing grille with vertical elongated grille slots and a trapezoidal outline that curves around round headlamps positioned on the upper part of the grille;
- (v) Exterior hood latches; and
- (vi) Door cutouts above a bottom portion of the side body panels.

38. An exemplar image of a Jeep® CJ vehicle bearing the Jeep Trade Dress is shown below in Figure 1 and in other images attached to the Complaint.

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FIGURE 1 –View of FCA’s Jeep Trade Dress

39. FCA’s Jeep Trade Dress is distinctive and has acquired secondary meaning through, *inter alia*, decades of use, extensive sales, advertising and promotion, awards, and unsolicited media attention. The Jeep Trade Dress has achieved an iconic level of recognition in the motor vehicle industry and among consumers. FCA, and its predecessors, have continuously manufactured, promoted, and sold its Jeep Trade Dress for decades. Based on decades of exclusive use in the United States, the extensive marketing, and the resultant voluminous sales and industry recognition of the Jeep® vehicle, the Jeep Trade Dress has acquired secondary meaning and distinctiveness, and has become famous among consumers. Consumers have come to rely upon the appearance of the Jeep Trade Dress as an indicator of the source and quality of the product.

40. FCA’s Jeep Trade Dress is non-functional in its entirety, visually distinctive, and unique in the motor vehicle industry. Numerous other non-infringing, non-dilutive designs are available that are equally feasible and efficient, none of which necessitate copying the Jeep Trade Dress. Indeed, multiple other vehicle manufacturers compete successfully without copying the unique Jeep Trade Dress.

41. Pursuant to 19 C.F.R. § 210.12(e), FCA states that it has not attempted to register a trademark for the Jeep Trade Dress in the United States. FCA has previously registered

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trademarks for various grille and headlamp designs, as well as the profile of a Jeep® vehicle as set forth below.

B. The Jeep Design Marks

42. FCA filed an application to register the Jeep® vehicle profile design as a mark for use on and in connection with motor vehicles on May 12, 2011. The United States Patent & Trademark Office issued Trademark Registration No. 4,272,873 covering the mark on January 8, 2013. A certified copy of the '873 Mark is attached as Exhibit 1. Certified copies of the abstract of title are attached as Exhibit 26. Certified copies of the recorded assignments are included in their entirety as Appendix F. Figure 2 below depicts the '873 Mark as it appears in its registration.

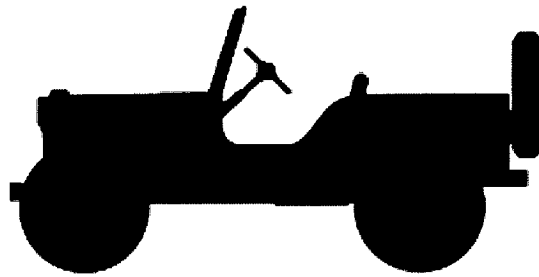


FIGURE 2 – Jeep® '873 Mark

43. FCA also owns multiple trademark registrations for its distinctive grille design as used on the Jeep® CJ and Jeep® Wrangler® vehicles, each registration protecting the current updated design that creates the same commercial impression.

44. FCA filed an application to register the design for use in connection with grilles on June 25, 2002. The United States Patent & Trademark Office issued Trademark Registration No. 2,862,487 covering the mark on July 13, 2004. A certified copy of the '487 Mark is attached as Exhibit 2. Certified copies of the abstract of title are attached as Exhibit 27. Certified copies of the recorded assignments are included in their entirety as Appendix F. Figure 3 below depicts the '487 Mark as it appears in its registration.

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FIGURE 3 – Jeep® ‘487 Mark

45. FCA filed another application to register the grille design for use in connection with sport utility vehicles on April 15, 1997. The United States Patent & Trademark Office issued Trademark Registration No. 2,161,779 covering the mark on June 2, 1998. A certified copy of the ‘779 Mark is attached as Exhibit 3. Certified copies of the abstract of title are attached as Exhibit 28. Certified copies of the recorded assignments are included in their entirety as Appendix F. Figure 4 below depicts the ‘779 Mark as it appears in its registration.

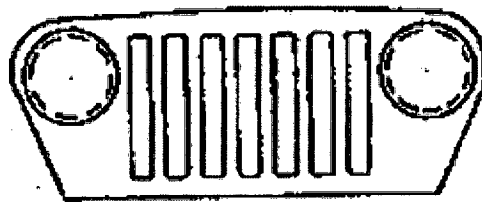


FIGURE 4 – Jeep® ‘779 Mark

46. In addition, FCA filed an application to register the grille design for use in connection with grilles and grille appliques on October 17, 2001. The United States Patent & Trademark Office issued Trademark Registration No. 2,794,553 covering the mark on December 16, 2003. A certified copy of the ‘553 Mark is attached as Exhibit 4. Certified copies of the abstract of title are attached as Exhibit 29. Certified copies of the recorded assignments are

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included in their entirety as Appendix F. Figure 5 below depicts the '553 Mark as it appears in its registration.

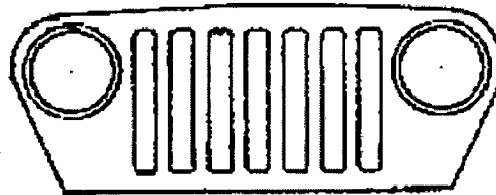


FIGURE 5 – Jeep® '553 Mark

47. Furthermore, FCA filed an application to register the grille design for use in connection with headlamps on August 25, 2010. The United States Patent & Trademark Office issued Trademark Registration No. 4,043,984 covering the mark on October 25, 2011. A certified copy of the '984 Mark is attached as Exhibit 5. Certified copies of the abstract of title are attached as Exhibit 30. Certified copies of the recorded assignments are included in their entirety as Appendix F. Figure 6 below depicts the '984 Mark as it appears in its registration.

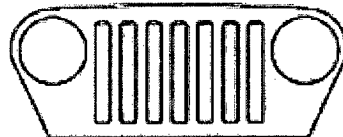


FIGURE 6 – Jeep® '984 Mark

48. Each of the foregoing Jeep Design Mark registrations is incontestable and subsisting. Each, therefore, constitutes conclusive evidence of the validity of the mark and FCA's exclusive ownership of it. The Jeep Design Marks are symbols of the Jeep® vehicle's origin, quality, reputation, and enormous goodwill and have never been abandoned.

49. The Jeep Design Marks are now, and ever since their first use, have been conspicuously incorporated in and displayed on and in connection with the vehicles manufactured

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and sold by FCA. Such vehicles so marked have been widely and extensively sold and distributed in the United States since long prior to Respondents' Accused Products.

50. Pursuant to Commission Rule 210.12(d), an original copy and three additional copies of the Jeep Design Marks and their prosecution histories are attached as Appendices A through E, respectively. A list of third party entities licensed to sell products incorporating the Jeep IP or elements thereof in the United States is attached as Confidential Exhibit 31.

V. RESPONDENTS' UNLAWFUL AND UNFAIR ACTS

A. Trade Dress Infringement 15 U.S.C. § 1125(a)

51. FCA owns all right, title, and interest in the Jeep Trade Dress and has standing to bring an action for trade dress infringement under the United States Lanham Act, 15 U.S.C. § 1051 *et seq.* and common law.

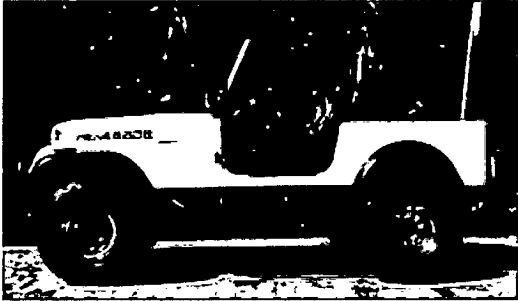
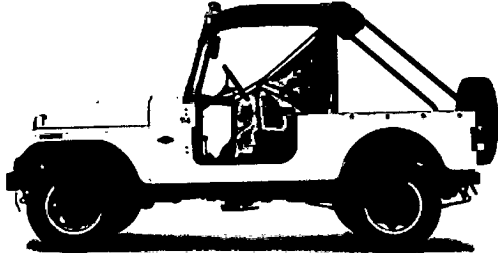




52. While the Jeep[®] CJ and Jeep[®] Wrangler[®] vehicles included some product variations over the years, all share the same overall exterior appearance and styling of the vehicle design reflected in the Jeep Trade Dress.

53. FCA's Jeep Trade Dress is non-functional, visually distinctive, and unique in the motor vehicle industry.

54. For decades, the Jeep Trade Dress has been (and continues to be) recognized by consumers as a source identifier for the Jeep[®] CJ and Jeep[®] Wrangler[®] vehicles.

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55. Respondents have offered for sale and, upon information and belief, are selling a vehicle that infringes FCA's Jeep Trade Dress. The infringement is illustrated in the representative examples below.

<u>Jeep Trade Dress</u>	<u>Respondents' Accused Product</u>
	
	
	

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56. Respondents' unauthorized use of the Jeep Trade Dress and confusingly similar imitations thereof in connection with the Accused Products is likely to cause confusion and mistake and to deceive potential consumers and the public as to the source, origin, sponsorship or approval of Respondents' non-Jeep® brand vehicle or as to affiliation, connection, or association between Respondents or their vehicles and FCA or its vehicles. Respondents' marketing promotes the Accused Product as being "modeled" on the "Willys Jeep®" and FCA's predecessor vehicles, making it more likely that consumers will draw a false association between the Accused Products and FCA.

57. Upon information and belief, Respondents' infringement is willful in that Respondents know that they do not have the right to use the Jeep Trade Dress in the United States. Respondents are further capitalizing on the goodwill and reputation associated with the Jeep Trade Dress.

58. Respondents' actions constitute trade dress infringement in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a) *et seq.*

59. Respondents' unauthorized use of the Jeep Trade Dress has caused and, unless stopped through an exclusion order, will continue to cause great and irreparable substantial injury to FCA, the Jeep® brand, the Jeep Trade Dress, and to the business and goodwill represented and protected by them.

B. Federal Trademark Infringement of Registered Marks 15 U.S.C. § 1114

60. FCA owns all right, title, and interest in the Jeep Design Marks and has standing to bring an action for trademark infringement under the United States Lanham Act, 15 U.S.C. § 1051 *et seq.* and common law.

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61. Without authorization, Respondents are using FCA's Jeep Design Marks or confusingly similar imitations thereof in connection with the marketing and sale of Accused Products.

62. Respondents' unauthorized use of the Jeep Design Marks and confusingly similar imitations thereof in connection with the Accused Products is likely to cause confusion and mistake and to deceive potential consumers and the public as to the source, origin, sponsorship or approval of Respondents' non-Jeep® brand vehicle or as to affiliation, connection, or association between Respondents or their vehicles and FCA or its vehicles.

63. Respondents' actions constitute trademark infringement of registered marks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114(1).

64. Respondents' unauthorized use of FCA's Jeep Design Marks has caused and, unless stopped through an exclusion order, will continue to cause substantial injury to FCA, the Jeep® brand, the Jeep Design Marks, and to the business and goodwill represented thereby.

C. Federal Trademark Dilution 15 U.S.C. § 1125(c)

65. As previously stated, FCA owns all right, title, and interest in the Jeep Design Marks and Jeep Trade Dress and has standing to bring an action for trademark dilution under the United States Lanham Act, 15 U.S.C. § 1051 *et seq.* and common law.

66. The Jeep Design Marks and Jeep Trade Dress are distinctive and famous.

67. FCA has extensively used and promoted the Jeep Design Marks and Jeep Trade Dress for decades. FCA has expended substantial sums in marketing in connection with the marks, sold millions of products in connection with them, and obtained multiple trademark registrations for them. The Jeep Design Marks and Jeep Trade Dress are widely recognized as FCA's source identifiers, exclusively associated with FCA by the general consuming public throughout the United States.

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68. Respondents' use of the Jeep Design Marks and Jeep Trade Dress and confusingly similar imitations thereof in connection with non-Jeep® brand vehicles is likely to lessen the distinctiveness of, and to dilute, FCA's famous marks.

69. Respondents' use of the Jeep Design Marks and Jeep Trade Dress and confusingly similar imitations thereof in connection with non-Jeep® brand vehicles is likely to tarnish FCA's famous marks.

70. Respondents' actions therefore constitute trademark dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

D. Federal Unfair Competition and Infringement of Common Law Rights 15 U.S.C. § 1125(a)

71. In addition to its registered trademark rights, FCA owns strong rights in its Jeep Design Marks based on use and recognition of them, under Section 43(a) of the United States Lanham Act, 15 U.S.C. § 1125(a).

72. Respondents' unauthorized use of the Jeep Design Marks or confusingly similar imitations of them is likely to cause confusion or mistake, or to deceive as to the affiliation, connection, or association of Respondents and their non-Jeep® brand vehicle with FCA or its vehicles, or as to the origin, sponsorship, or approval of Respondents and their non-Jeep® brand vehicle by FCA.

73. Consumers are likely to be confused that Respondents' Accused Products are associated with the Jeep® brand or authorized by FCA not only because of Respondents' use of the Jeep Design Marks, but also because of Respondents' marketing. Most significantly, Respondents exacerbate likely confusion by promoting their vehicle as bearing the Jeep-IP that FCA owns, touting their vehicle as being "modeled" on the "Willys Jeep®". Respondents are thus

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promoting their vehicle as being associated with FCA's predecessor and the Jeep IP to which FCA owns exclusive rights as successor.

74. Respondents' actions constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

75. Respondents' unauthorized use of the Jeep Design Marks has caused and, unless stopped through an exclusion order, will continue to cause substantial injury to FCA, the Jeep® brand, the Jeep IP, and to the business and goodwill represented thereby.

VI. SPECIFIC INSTANCES OF IMPORTATION AND SALE

76. Upon information and belief, Respondents import, sell for importation, and/or sell within the United States after importation the Accused Products.

77. Upon information and belief, the Accused Products are currently being sold in dealerships across the United States. *See Exhibits 32 and 33.* At present, FCA is unable to quantify the volume of imports, of sales for importation, and of sales after importation of the Accused Products in the United States. FCA is aware that the number of dealerships in the United States that sell the Accused Products has increased.

78. FCA has not purchased an Accused Product, but news reports state that the Accused Products are manufactured in India by Respondent Mahindra India and are then imported into the United States as KD kits and assembled into a final product in Michigan by Respondent Mahindra NA. *See Exhibit 34.*

79. The circumstantial evidence of importation of Accused Products by Respondents includes at least the following:

- (i) As reported in *Jalopnik* on March 3, 2018, Respondents have stated that the Accused Products are imported into the United States as KD kits from India. *See Exhibit 24.*

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- (ii) Media reports published in early March 2018 show that the Accused Product will be assembled in the United States using KD kits imported from India. *See Exhibit 35.*
- (iii) Respondent Mahindra NA allows consumers to customize and shop for Accused Products on, at least, their own website called www.roxoroffroad.com/build-vehicle.com. *See Exhibit 36.* Respondent Mahindra NA's website then directs consumers to local dealerships where they can purchase the customized product.
- (iv) On March, 2, 2018, Respondent Mahindra NA published a press release showing that Respondents have established contracts for sale of the Accused Products across over 200 dealerships in the United States. *See Exhibit 37.*
- (v) Respondents have shown the Accused Product at an official unveiling and release event in the United States on March 2, 2018. *See Exhibit 37.*
- (vi) Respondent Mahindra NA is currently selling the Accused Product in dealerships across the United States. For example, the Accused Products are currently available to be purchased from Coleman PowerSports, a dealership located in Virginia, *see Exhibit 32*, and from Ball Equipment, a dealership located in Michigan. *See Exhibit 33.*
- (vii) Respondents have made the Accused Product available for media reviews and test drives in the United States. For instance, the Accused Products were offered for test drives and reported about in an article published by *CarToq* on March 20, 2018. *See Exhibit 38.*

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80. Figure 7 below shows representative examples of the Accused Products assembled in Respondent Mahindra NA's facility in the United States.



FIGURE 7 – Respondents' Accused Products in U.S. Facility

VII. THE DOMESTIC INDUSTRY

81. A domestic industry exists in the United States in accordance with 19 U.S.C. § 1337 (a)(1)(A) with respect to the articles protected by the Jeep Trade Dress.

82. A domestic industry, as defined by 19 U.S.C. § 1337(a)(2), exists with respect to FCA's activities in the United States related to articles protected by the Jeep Design Marks by reasons of FCA's (a) significant investment in plant and equipment, (b) significant employment of labor and capital, and (c) substantial investment in the exploitation of engineering activities, research and development activities, licensing, design quality control, and product support.

A. Complainant's Investments in the Domestic Industry

1. Complainant's Domestic Investments In the Production of the Jeep® Wrangler® Vehicles Since 2006

83. Each of the registrations for the Jeep Design Marks protects the Jeep® Wrangler® vehicles because the designs that appear on the vehicles create the same commercial impression as the designs in the registrations.

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84. Production of the Jeep® Wrangler® takes place in the Toledo Assembly Complex owned and operated by FCA.

85. The Toledo Assembly Complex includes two facilities: Toledo South and Toledo North.

86. FCA has made significant domestic investments in plant and equipment in the Toledo North and Toledo South facilities for the production of the Wrangler® vehicles.

87. FCA has made a significant domestic employment of labor in the Toledo North and Toledo South facilities for the production of the Wrangler® vehicles.

88. The domestic activities and investments described above are explained in detail in the Declaration of Michael DiMambro, attached as Confidential Exhibit 39, which also contains information relevant to 19 C.F.R. § 210.12(8).

2. Complainant's Domestic Investments In the Production of the CJ66 Concept Vehicle and Exploitation of the Jeep Trade Dress and Jeep Design Marks Embodied in the CJ66

89. FCA has made significant domestic investments in a concept vehicle called the Jeep® CJ66. Figure 8 below is an image of the Jeep® CJ66 concept vehicle that embodies and is therefore protected by the Jeep Trade Dress and Jeep Design Marks.

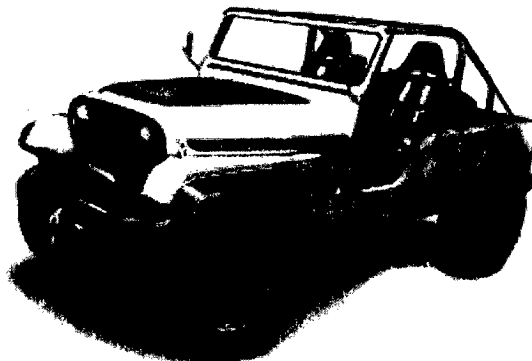


FIGURE 8 – FCA's Jeep® CJ66 Concept Vehicle

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90. FCA built the Jeep® CJ66 concept vehicle to promote the Jeep® Wrangler® line of vehicles using the Jeep IP. FCA uses and invests in the Jeep® CJ66 concept vehicle domestically by transporting it to tradeshow and events throughout the United States, including the following events:

- SEMA (Specialty Equipment Manufacturers Association)
- North American International Auto Show
- Autorama
- The Chicago Auto Show
- Moab Easter Jeep Safari
- 2017 Midwest Mopar
- Carlisle Mopar
- PDO (Product Design Office) Cars & Coffee
- 2018 PDO Dome Show

91. The Jeep® CJ66 concept vehicle was built domestically [REDACTED] and revealed at the 2016 SEMA show in Las Vegas. Information detailing the investment in the Jeep® CJ66 concept vehicle is provided in Confidential Exhibit 40.

3. Complainant's Licensees' Domestic Investments In the Production of Jeep® CJ Replacement Components

92. FCA has authorized third parties to produce replacement components for the Jeep® CJ. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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B. Complainant's Current Use of the Jeep IP

93. FCA's Jeep[®] Wrangler[®] and FCA's CJ66 vehicles incorporate and display the designs covered by the Jeep IP. Replacement components produced by FCA's licensees Classic Enterprises and Omix-ADA incorporate and display, or are incorporated onto vehicles that incorporate and display, the designs covered by the Jeep IP. FCA uses the Jeep IP in commerce in connection with the marketing and sale of its vehicles. *See* Exhibit 41. FCA also uses the Jeep IP in commerce in connection with licensed merchandise, for example, radio-controlled and die-cast toy vehicle replicas, videogames, apparel, tumblers, and mugs.

VIII. INJURY TO DOMESTIC INDUSTRY

94. Respondents' unlawful importation and sale of the Accused Products has the threat or effect of causing substantial injury to the domestic industry, at least by reason of: (a) Respondents' foreign cost advantages and production capabilities, (b) the ability of the Accused Products to undersell the Jeep[®] Wrangler[®], (c) Respondents' substantial foreign manufacturing capacity combined with its demonstrated intention to penetrate the United States market, and (d) harm to FCA's goodwill and business reputation.

95. Respondents have foreign cost advantages and production capabilities. Respondent Mahindra India manufactures the Accused Products in India with significant foreign cost advantages as compared to the domestic market, and ships KD kits to Respondent Mahindra NA for final assembly. In addition, Respondent Mahindra India, part of a \$19 billion company that claims to be "India's largest utility vehicle manufacturer," *see* Exhibit 42, has substantial capacity to produce the Accused Products (either in KD kits or final assembled products). *See* Exhibit 43.

96. The Accused Products have the ability to undersell the Jeep[®] vehicles. The Accused Products are offered for sale at a lower price point than a Jeep[®] Wrangler[®]. And because FCA's vehicles and the Accused Products are both used for off-road activities, consumers who

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associate the Accused Products with the Jeep® brand may choose to purchase the less expensive alternative presented by the Accused Products, thereby depriving FCA of sales.

97. Respondents have substantial foreign manufacturing capacity and have demonstrated an intention to penetrate the United States market. As stated above, Respondent Mahindra India has substantial capacity to produce the Accused Products. In preparation for the launch of the Accused Products in the United States market, Respondents reportedly made significant investments in the United States, including a 150,000 square foot assembly plant, warehouse, and logistics operation in Michigan, as well as the development of a comprehensive dealer network. *See* Exhibit 43. According to a Mahindra NA press release from November 20, 2017, Respondents grew their presence across 400,000 square feet in three Detroit area facilities and tripled its North American workforce over the past 18 months. By 2020, Respondents plan to utilize another \$600 million to continue their penetration of the United States market. As noted by the Mahindra Group Chairman, Anand Mahindra, these investments “represents our company’s growing presence in North America.” *See* Exhibit 44. These investments demonstrate Respondents’ intent to penetrate the United States market.

98. Respondents’ importation and sale of the Accused Products is likely to harm FCA’s goodwill and business reputation. FCA has invested heavily in use of the Jeep IP to build the Jeep® brand and relies on the continued distinctiveness of the Jeep IP to identify FCA vehicles to consumers. FCA has spent hundreds of millions of dollars in marketing to cultivate its brand image. FCA, however, cannot control its brand image once the Accused Products are associated with it. Loss of control over its trade dress harms FCA’s goodwill and reputation because it permits Accused Products to be built to standards and specifications other than FCA’s.

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99. Consumers who associate the Accused Products with the Jeep® brand will mistakenly attribute to FCA defects or negative impressions that they develop respecting the Accused Products, thereby harming FCA's reputation and the intangible goodwill associated with its brand. There is a substantial threat that consumers will perceive the Accused Products as having quality issues, as not being as durable and off-road capable as expected for Jeep® brand vehicles, or as simply not worth the price being charged for them. And although Respondents categorize them as utility vehicles ("UTVs"), the Accused Products do not look like typical UTVs. They are larger and heavier than typical 2-seat UTVs, and instead are roughly the size of one of the Jeep® CJ models. Based on its appearance and size, consumers may not exercise the standard of care required for operating the Accused Product. Because of the likelihood of consumer confusion with the Jeep® brand, reports of injuries to users of the Accused Products are likely to be associated with the Jeep® brand. These factors will result in a negative consumer impression of the Jeep® brand that can lead to lost sales and diminishment of the value of FCA's substantial investment in its plant and equipment and brand perception.

100. In addition, FCA has extended the Jeep® brand and Jeep IP to a vast array of licensed products, including Jeep® Wrangler® motorized ride-on toys and Jeep® brand battery-powered go-karts. As a result, consumers have long been accustomed to expecting that products in different categories, including vehicles that are not standard highway passenger vehicles, that include the Jeep IP to be authorized by the famous Jeep® brand. For this reason, it is highly likely that consumers will associate their negative impressions of the Accused Products with the Jeep® brand.

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IX. HARMONIZED TARIFF SCHEDULE

101. Pursuant to 19 C.F.R. § 210.12(a)(3), FCA is currently unaware of the Harmonized Tariff Schedule itemized numbers under which the Accused Products, including the KD kits, have been imported into the United States.

X. RELATED LITIGATION

102. Pursuant to 19 C.F.R. § 210.12(5), FCA states that to date, Respondents' unlawful and unfair acts as detailed herein have not been subject to any other court or agency litigation.

XI. RELIEF REQUESTED

WHEREFORE, by reason of the foregoing, Complainant FCA US LLC respectfully requests that the United States International Trade Commission:

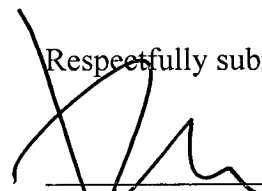
- (a) institute an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to Respondents' violations of that section based on the importation into the United States, sale for importation, and/or the sale within the United States after importation of Respondents' Accused Products that infringe or dilute the Jeep IP;
- (b) set a target date of no more than fifteen months;
- (c) schedule and conduct a hearing on permanent relief pursuant to 19 U.S.C. § 1337(c) for the purposes of receiving evidence and hearing argument concerning whether there has been a violation of Section 337, and following the hearing, to determine that there has been a violation of Section 337;
- (d) issue a limited exclusion order, pursuant to 19 U.S.C. § 1337(d) forbidding entry into the United States of Respondents' Accused Products that infringe or dilute the Jeep IP;

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- (e) issue cease and desist orders, pursuant to 19 U.S.C. § 1337(f), prohibiting Respondents and their related companies or divisions from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring, and/or soliciting U.S. agents or distributors for, Accused Products that infringe or dilute the Jeep IP; and
- (f) issue such other and further relief as the Commission deems just and proper under the law, based upon the facts determined by the investigation and the authority of the Commission.

Dated: August 1, 2018

Respectfully submitted,



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**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

In the Matter of

**CERTAIN MOTORIZED VEHICLES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-___

COMPLAINANT'S STATEMENT ON THE PUBLIC INTEREST

Pursuant to Commission Rule 210.8(b), Complainant FCA US LLC submits this Statement on the Public Interest regarding the remedial orders Complainant is seeking against the proposed Respondents identified in its concurrently-filed Complaint (collectively referred to as "Respondents"). In that Complaint, Complainant seeks exclusion orders and cease and desist orders against certain motorized vehicles and components thereof (the "Accused Products") that violate Complainant's common law and federally registered trademark and trade dress rights, including but not limited to U.S. Trademark Registration Nos. 4,272,873, 2,862,487, 2,161,779, 2,794,553, 4,043,984 (collectively, "Jeep IP"). Remedial orders directed to the Accused Products would not have an adverse effect on the public health or public welfare in the United States, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or on U.S. consumers. Rather, protecting Complainant's intellectual property rights and investments in their domestic industries via the requested remedial orders will serve the public interest while having little or no adverse effect on the public interest.

I. THE REQUESTED REMEDIAL ORDERS ARE IN ACCORD WITH THE PUBLIC INTEREST

A strong public interest in enforcing intellectual property rights has long been recognized by the Commission. *See, e.g., Certain Baseband Processor Chips and Chipsets, Transmitter*

and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets, Inv. No. 337-TA-543, USITC Pub. 4258, at 136-37 (Oct. 2011).

(1) Explanation of how the articles potentially subject to the requested remedial orders are used in the United States (Rule 210.8(b)(1))

The Accused Products at issue in the Complaint are certain motorized vehicles, kits and assemblies for motorized vehicles, and replacement and aftermarket components for such motorized vehicles. The Accused Products are being promoted to U.S. consumers as off-road vehicles equipped with a 4-cylinder turbo-diesel engine and an automotive 5-speed manual transmission. The Accused Products are manufactured in India and imported into the United States by one or more Respondents, in the form of knocked down kits. The kits are then assembled by Respondents at an assembly plant in the United States, from which they are or will be distributed to retailers or customers throughout the United States.

(2) Identification of any public health, safety, or welfare concerns relating to the requested remedial orders (Rule 210.8(b)(2))

There are no health, safety, or welfare concerns at issue in this investigation with respect to the exclusion of Respondents' Accused Products from the United States. The Accused Products are motorized vehicles that have not previously raised concerns of the Commission concerning public health, safety, or welfare, and there are no special circumstances here that would support a different result. *See, e.g., Certain Radio Control Hobby Transmitters and Receivers and Products Containing Same*, Inv. No. 337-TA-763, Notice of Issuance of Limited Exclusion Order (Sept. 27, 2011). Nor would the issuance of the exclusion and cease and desist orders requested in this investigation adversely affect competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. Exclusion of the Accused Products would not implicate the public interest.

The Accused Products infringe the Jeep IP and are likely to cause confusion and mistake and to deceive potential consumers and the public as to the source, origin, sponsorship, or approval of the Accused Products, or as to the affiliation, connection, or association between Respondents and their vehicles on one hand, and Complainant and its vehicles on the other. Thus, the public welfare favors the protection of the Jeep IP for the sake of U.S. consumers. *See, e.g., Moseley v. V Secret Catalogue, Inc.*, 537 U.S. 418, 428 (2003) (“Infringement law protects consumers from being misled by the use of the infringing marks and also protects producers from unfair practices by an ‘imitating competitor.’”).

(3) Identification of like or directly competitive articles that Complainant, its licensees, or third parties make that would replace the subject articles if they were to be excluded (Rule 210.8(b)(3))

The Accused Products comprise a subset of the overall motorized vehicle market, as well as the motorized vehicle market for off-road use. Many like or directly competitive motorized vehicles are therefore available to replace the Accused Products, if excluded. For example, one publicly available source recently compared the Accused Products to “the competition,” which included two non-infringing alternative off-road motorized vehicles manufactured and sold throughout the United States by third parties Polaris and Can-Am, as well as a vehicle produced by Complainant. *See* <https://www.off-road.com/blog/2018/03/05/how-much-does-the-mahindra-roxor-cost/>.

(4) Identification of whether the Complainant, its licensees, and/or third parties have the capacity to replace the volume of articles subject to the requested remedial orders in a commercially reasonable time in the United States (Rule 210.8(b)(4))

As stated above, Complainant believes that many non-infringing motorized vehicles are available from various sources. Complainant is not aware of the manufacturing capacity of these third parties; however, the Accused Products have been available in the United States for a short

period of time, and it is therefore likely that the volume of articles subject to remedial orders is readily replaceable in a commercially reasonable time. Moreover, Respondents would be free to continue to import and sell their motorized vehicles if the designs were modified not to violate the Jeep IP.

(5) The requested remedial orders will not adversely impact U.S. consumers (Rule 210.8(b)(5))

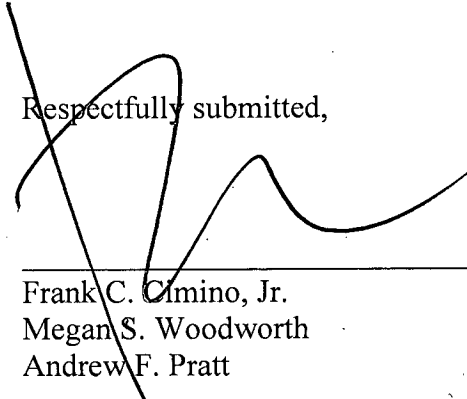
As explained above, the exclusion of the Accused Products by way of an exclusion order and/or cease and desist order, would not adversely affect U.S. consumers. Complainant is aware of no evidence that demand for the Accused Products could not be met by legitimate competitors who do not infringe the Jeep IP. In sum, U.S. consumers would continue to have available to them a wide variety of motorized vehicles, including off-road motorized vehicles, at various price points and with various options. The exclusion of the recently introduced Accused Products will not negatively impact U.S. consumers.

II. CONCLUSION

If the Commission grants the requested remedial orders, the public interest will be served. The Accused Products are not necessary to any health or welfare need, and an adequate supply of substitute vehicles is and will be available. Thus, the strong public interest in protecting Complainant's valid intellectual property rights outweighs any potential adverse impact on the public.

Dated: August 1, 2018

Respectfully submitted,



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PUBLIC VERSION

VERIFICATION OF COMPLAINT

I, Ralph Edwin Smith, declare, in accordance with 19 C.F.R. §§ 210.4 and 210.12(a), as follows:

1. I am the Assistant General Counsel – Intellectual Property of FCA US LLC, and I am duly authorized to sign this Complaint;
2. I have read the Complaint and I am aware of its contents;
3. The Complaint is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
4. To the best of my knowledge, information, and belief founded upon reasonable inquiry, the claims and legal contentions of the Complaint are warranted by existing law or a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and
5. The allegations and other factual contentions made in the Complaint have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 01, 2018



Ralph Edwin Smith
Assistant General Counsel – Intellectual Property
FCA US LLC