

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

In the Matter of

**CERTAIN CHOCOLATE MILK POWDER
AND PACKAGING THEREOF**

Investigation No. 337-TA-1232

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW
AN INITIAL DETERMINATION (ORDER NO. 15) GRANTING COMPLAINANT'S
MOTION FOR SUMMARY DETERMINATION OF A VIOLATION OF SECTION 337;
RECONSIDERING AN UNREVIEWED INITIAL DETERMINATION (ORDER NO. 6)
FINDING THE RESPONDENTS IN DEFAULT;
REMANDING TO THE CHIEF ADMINISTRATIVE LAW JUDGE
FOR FURTHER PROCEEDINGS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined to review an initial determination ("ID") (Order No. 15) of the presiding administrative law judge ("ALJ"), granting summary determination on violation of section 337 and including a recommended determination ("RD") on remedy and bonding. The Commission has also determined on its own initiative to order reconsideration of an unreviewed ID (Order No. 6) finding the respondents in default. The Commission has determined to remand the investigation to the presiding ALJ for further proceedings consistent with the Commission's determinations.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On December 1, 2020, the Commission instituted this investigation based on a complaint filed by Meenaxi Enterprise Inc. of Edison, New Jersey ("Meenaxi"). 85 FR 77237 (Dec. 1, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, due to the importation into the United States, sale for importation, or sale in the United States after importation of certain chocolate milk powder and packaging thereof that purportedly infringe U.S. Trademark

Registration No. 4,206,026. *Id.* The complaint also alleges the existence of a domestic industry. *Id.* The notice of investigation names 21 respondents: Bharat Bazar Inc. of Union City, California; Madras Group Inc. d/b/a Madras Groceries of Sunnyvale, California; Organic Food d/b/a Namaste Plaza Indian Super Market of Fremont, California (“Organic Food”); India Cash & Carry of Sunnyvale California; New India Bazar Inc. d/b/a New India Bazar of San Jose, California; Aapka Big Bazar of Jersey City, New Jersey; Siya Cash & Carry Inc. d/b/a Siya Cash & Carry of Newark, New Jersey; JFK Indian Grocery LLC d/b/a D-Mart Super Market of Jersey City, New Jersey; Trinethra Indian Super Markets of Newark, California; Apna Bazar Cash & Carry Inc. d/b/a Apna Bazar Cash & Carry of Edison, New Jersey; Subzi Mandi Cash & Carry Inc. d/b/a Mandi Cash & Carry of Piscataway, New Jersey; Patidar Cash & Carry Inc. d/b/a Patidar Cash & Carry of South Plainfield, New Jersey; Keemat Grocers of Sugarland, Texas; KGF World Food Warehouse Inc. d/b/a World Food Mart of Houston, Texas; Telfair Spices of Sugarland Texas; Indian Groceries and Spices Inc. d/b/a iShopIndia.com of Milwaukee, Wisconsin; Rani Foods LP d/b/a Rani's World Foods of Houston, Texas; Tathastu Trading LLC of South Plainfield, New Jersey; and Choice Trading LLC of Guttenberg, New Jersey. *Id.* The Office of Unfair Import Investigation (“OUII”) was named as a party. *Id.*

On February 10, 2021, the presiding administrative law judge (“ALJ”) (Chief Judge Bullock) issued an initial determination (“ID”) (Order No. 6) finding all respondents in default. OUII supported the motion. On March 2, 2021, the Commission issued a notice determining not to review Order No. 6.

On May 24, 2021, Meenaxi moved for a summary determination of a section 337 violation by all of the respondents, each of whom had previously been found in default. On June 16, 2021, OUII responded in support of the motion. On December 1, 2021, the CALJ granted the motion as the subject ID (Order No. 15). No petitions for review of the ID were filed.

The ID, however, notes discrepancies with respect to one respondent, calling into question whether that respondent was properly served with the complaint and notice of investigation and with the CALJ’s order to show cause why the respondents should not be found in default, Order No. 5 (Jan. 13, 2021). The relevant footnote in Order No. 15 reads in full:

While the Notice of Investigation lists Organic Food Inc. d/b/a Namaste Plaza Indian Super Market as a named entity, the Complaint refers to this entity as Organic Ingredients Inc. d/b/a Namaste Plaza Indian Super Market. *Compare* 85 FR 77,237-38, with Compl. at ¶ 15; *see also* Compl. Ex. 8. There does not appear to be a dispute that the entity in the NOI and the entity named in the Complaint are one and the same.

Order No. 15, at 1 n.1. The discrepancy arises from the Complaint, which alleges Organic Ingredients Inc. is a corporation with a registered address in San Diego, California (“Organic Ingredients”). Compl. Ex. 8 (California Secretary of State record). All references in the complaint are to Organic Ingredients, except for the list of respondents on the face of the complaint, which instead lists “Organic Food Ind. d/b/a Namaste Plaza Indian Super Market,” with an address of 3269 Walnut Ave., Fremont, California 94538. The body of the complaint

explains how Organic Ingredients owns a supermarket on Walnut Avenue, though the body of the complaint uses a Sunnyvale city address (instead of Fremont, or, for that matter, San Diego). *See* Compl. ¶ 15. The Commission's Notice of Investigation used the respondents' names and addresses from the face of the Complaint. 85 FR 77237-38.

In view of the discrepancy identified in footnote 1 of Order No. 15, it is unclear whether the respondent at issue (whether properly called Organic Ingredients or Organic Food) was properly served with the complaint and notice of investigation, as well as the Order to Show Cause, and thereby was properly found in default in Order No. 6. Accordingly, the Commission has determined on its own initiative to review Order No. 15 and on its own initiative to order reconsideration of unreviewed Order No. 6 finding the respondents in default. *See* 19 CFR 210.44, 210.47, 210.48.

The Commission has determined to remand the investigation to the Chief ALJ for assignment to a presiding ALJ for further proceedings. On remand, the ALJ is to consider whether a default finding is appropriate in view of the manner of service of documents on Organic Ingredients/Organic Food. If default is not appropriate, the ALJ should consider whether amendment of the notice of investigation and/or complaint is necessary and what additional service or process is required. Although the Commission is not aware of any deficiencies concerning any other defaulting respondents, the scope of the remand is broad enough for the ALJ to consider, and potentially cure, any defects regarding other respondents previously found in default.¹ In view of the Commission's determination to review Order No. 15, that ID is likewise remanded to the ALJ for further proceedings consistent with the ALJ's findings concerning default.

The Commission vote for these determinations took place on January 18, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: January 18, 2022

¹ On remand, to the extent that there has been a service defect, the Commission encourages Meenaxi and the presiding ALJ to redress the issue by serving or re-serving whichever relevant formal papers are necessary to cure the defect (such as, for example, the complaint, notice of investigation, and motions or orders concerning default), and by amending the complaint and notice of investigation, if appropriate.