

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN BEVERAGE BREWING
CAPSULES, COMPONENTS THEREOF,
AND PRODUCTS CONTAINING THE
SAME**

Investigation No. 337-TA-929
(Enforcement and Rescission Proceeding)

**NOTICE OF COMMISSION DETERMINATION FINDING NO VIOLATION OF THE
REMEDIAL ORDERS; DETERMINATION NOT TO RESCIND THE REMEDIAL
ORDERS; TERMINATION OF THE CONSOLIDATED ENFORCEMENT AND
RESCISSION PROCEEDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that enforcement complainants Adrian Rivera and Adrian Rivera Maynez Enterprises, Inc. (collectively, "ARM") have not shown that respondents Eko Brands, LLC, and Espresso Supply, Inc., violated a limited exclusion order and a cease and desist order (together, "remedial orders"). The Commission has also determined not to rescind the remedial orders. The consolidated enforcement and rescission proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Robert J. Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the original investigation on September 9, 2014, based on a complaint filed by ARM. 79 FR 53445-46 (Sept. 9, 2014). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain beverage brewing capsules, components thereof, and products containing the same, by reason of infringement of claims 5-8 and 18-20 of U.S. Patent No. 8,720,320 ("the '320 patent"). *Id.* The notice of institution of the investigation named as

respondents Solofill, LLC (“Solofill”); DongGuan Hai Rui Precision Mould Co., Ltd. (“DongGuan”); Eko Brands, LLC (“Eko”); Evermuch Technology Co., Ltd. and Ever Much Company Ltd. (together, “Evermuch”); and several additional respondents that were terminated by reason of consent order or settlement. 79 FR 53445. The Office of Unfair Import Investigations (“OUII”) was also named as a party to the investigation. *Id.* The Commission found Eko and Evermuch in default for failure to respond to the complaint and notice of investigation. Notice (May 18, 2015).

On March 17, 2016, the Commission found no violation of section 337 by Solofill and DongGuan because claims 5-7, 18, and 20 of the ’320 patent were invalid for a lack of written description and claims 5 and 6 were invalid as anticipated. 81 FR 15742-43 (Mar. 24, 2016). The Commission, however, presumed that the allegations in the complaint were true with respect to the defaulted parties Eko Brands and Evermuch, and thus concluded that they violated section 337 with respect to claims 8 and 19. *Id.* at 15743. The Commission issued a limited exclusion order prohibiting Eko Brands and Evermuch from importing certain beverage brewing capsules, components thereof, and products containing the same that infringed claims 8 or 19 of the ’320 patent. *Id.* The Commission also issued cease and desist orders against Eko Brands and Evermuch prohibiting the sale and distribution within the United States of articles that infringe claims 8 or 19. *Id.*

On June 1, 2016, ARM filed a complaint requesting that the Commission institute a formal enforcement proceeding under Commission Rule 210.75(b) to investigate alleged violations of the March 17, 2016, remedial orders by Eko and its purchaser, Espresso Supply, Inc. (collectively, “Eko”). The Commission instituted a formal enforcement proceeding on July 1, 2016. 81 FR 43242-43.

On September 12, 2016, Eko file a second petition requesting the Commission to rescind its remedial orders, and to terminate the enforcement proceeding. On November 25, 2016, the Commission instituted a rescission proceeding, and consolidated it with the enforcement proceeding. 81 FR 85264-65.

On January 31, 2017, Eko petitioned the Commission to rescind the remedial orders based on a lack of a domestic industry. The Commission denied the petition on June 8, 2017, because Eko failed to show changed circumstances with respect to the domestic industry. Notice of Commission Determination to Deny a Petition Requesting the Rescission of Remedial Orders (June 8, 2017).

On March 27, 2017, the presiding ALJ issued the subject enforcement initial determination (“EID”), which found that the remedial orders cannot be enforced due to a lack of domestic industry, and issued a recommended determination that the remedial orders be rescinded due to an intervening district court summary judgment of noninfringement. OUII petitioned for review of the EID on April 6, 2017, and ARM petitioned for review on April 7, 2017. On April 13, 2017, ARM and Eko filed a response to OUII’s petition, and OUII filed a response to ARM’s petition. On April 14, 2017, Eko filed a response to ARM’s petition. On May 11, 2017, the Commission determined to review the EID.

The Commission has determined that ARM has not shown that Eko violated the remedial orders. The Commission reverses the EID's finding that the remedial orders cannot be enforced against Eko due to a lack of domestic industry, but finds that ARM has failed to show that Eko had the intent necessary to induce or contribute to the infringement of claims 8 and 19 of the '320 patent. The Commission has also determined not to rescind the remedial orders. This consolidated enforcement and rescission proceeding is hereby terminated, and a Commission opinion will issue shortly.

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.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: June 27, 2017