

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 INSTITUTION OF RESCISSION PROCEEDING

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a rescission proceeding relating to the March 17, 2016 limited exclusion order and cease and desist order issued in the above-referenced investigation.

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 Adrian Rivera and Adrian Rivera Maynez Enterprises, Inc. (collectively, "ARM"). 79 FR 53445-46 (Sept. 9, 2016). 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 Brands"); Evermuch Technology Co., Ltd. and Ever Much Company Ltd. (together, "Evermuch"); and several additional respondents who 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 Brands 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 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 were true with respect to the remaining allegations against 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 violations of the March 17, 2016, limited exclusion order and cease and desist order by Eko Brands and Espresso Supply, Inc.. The Commission instituted a formal enforcement proceeding on July 1, 2016. 81 FR 43242-43.

On September 12, 2016, Eko Brands petitioned the Commission to rescind its limited exclusion order and cease and desist orders, and to terminate the enforcement proceeding. Eko Brands contended that changed circumstances warranted such relief. On September 22, 2016, ARM opposed the petition. On September 22, 2016, OUII filed a response supporting the institution of a rescission proceeding but opposing the termination of the enforcement proceeding.

On September 30, 2016, Eko Brands moved for leave to file a reply in support of its petition. ARM opposed the motion on October 6, 2016.

Having examined the petition and the supporting documents, the Commission has determined to institute a rescission proceeding to determine whether the March 17, 2016 limited exclusion order and cease and desist order should be rescinded. The Commission has further determined to delegate the rescission proceeding to the presiding ALJ and to consolidate that proceeding with the ongoing enforcement proceeding. Finally, the Commission has determined to delegate Eko Brands's request to terminate the enforcement proceeding to the ALJ, and to deny Eko Brands's motion for leave to file a reply.

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 section 210.76 of the Commission's Rules of Practice and Procedure (19 CFR 210.76).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized and cursive.

Lisa R. Barton
Secretary to the Commission

Issued: November 18, 2016