

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
(Request for Rescission Proceeding)**

**NOTICE OF COMMISSION DETERMINATION TO DENY A PETITION
REQUESTING THE RESCISSION OF REMEDIAL ORDERS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined to deny a petition requesting the rescission of remedial orders issued in the above-captioned investigation.

FOR FURTHER INFORMATION, CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-3427. 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 SW., Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <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, telephone 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, 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, 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 Eko Brands, LLC (“Eko”); Solofill, LLC (“Solofill”); and several other respondents.

The Office of Unfair Import Investigations (“OUII”) was also named as a party to the investigation. Only Solofill fully participated in the investigation as a respondent.

Respondent Eko was found to be in default by the Commission. *See* Notice of Commission Decision Not to Review an Initial Determination Finding Three Respondents in Default (May 18, 2015). The Commission issued a limited exclusion order (“LEO”) prohibiting Eko from importing certain beverage brewing capsules, components thereof, and products containing the same that infringed claims 8 or 19. *See* 81 FR 15742-43 (Mar. 24, 2016) (Final Determination Notice). The Commission also issued a cease and desist order (“CDO”) against Eko 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 a formal enforcement proceeding, which the Commission instituted pursuant to Commission Rule 210.75(b). Thereafter, Eko filed a first petition requesting that the Commission rescind the LEO and CDO. The petition alleged, *inter alia*, that a district court had adjudicated that the accused products do not infringe claims 8 and 19 of the ‘320 patent. On November 25, 2016, the Commission instituted a rescission proceeding and consolidated it with the ongoing enforcement proceeding. 81 FR 85264 (Nov. 25, 2016).

On January 31, 2017, Eko filed a second rescission petition requesting that the Commission rescind the LEO and CDO on the basis of an alleged absence of a domestic industry. On February 10, 2017, ARM and OUII filed responses in opposition to the petition. Having considered the petition and the responses thereto, the Commission has determined to deny Eko’s petition.

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', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: June 8, 2017