

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN ELECTROLYTE CONTAINING
BEVERAGES AND LABELING AND
PACKAGING THEREOF**

Investigation No. 337-TA-1269

LIMITED EXCLUSION ORDER

The United States International Trade Commission (“Commission”) has found in default the following respondents (all of Mexico): Carbonera Los Asadores de C.V., Comercial Treviño de Reynosa, S.A. de C.V., Distribuidora Mercatto S.A. de C.V., H & F Tech International S.A. de C.V., Leticia Angélica Saenz Fernandez, Yoselen Susana Martinez Tirado, Grupo Comercial Lux del Norte S.A. de C.V., and Caribe Agencia Express, S.A. de C.V. (collectively, “the Defaulting Respondents”). *See* Order No. 8 (Sept. 14, 2021), *unreviewed by* Comm’n Notice (Oct. 6, 2021); Order No. 19 (Apr. 7, 2022), *unreviewed by* Comm’n Notice (Apr. 26, 2022).

The complaint, as supplemented, alleged a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), based upon the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electrolyte containing beverages and labeling and packaging thereof by reason of infringement of U.S. Trademark Registration Nos. 4,222,726; 4,833,885; 4,717,350; and 4,717,232 (collectively, “the Electrolit® Asserted Trademarks”). *See* 86 Fed. Reg. 35532-33 (July 6, 2021). Because the conditions in 19 U.S.C. § 1337(g)(1)(A)-(E) have been satisfied, the Commission, upon the request of complainants CAB Enterprises, Inc. of Houston, Texas and Sueros y Bebidas Rehidratantes, S.A. de C.V. of Mexico (collectively, “Complainants”), issues this limited

exclusion order, based on the allegations regarding a violation of section 337 in the complaint, which are presumed to be true as to the Defaulting Respondents.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of infringing electrolyte containing beverages and labeling and packaging thereof manufactured abroad by or on behalf of, or imported by or on behalf of the Defaulting Respondents or any of their affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(g)(1) do not preclude the issuance of the limited exclusion order, and that the bond during the period of Presidential review shall be in the amount of 100 percent (100%) of the entered value of the articles subject to this Order.

Accordingly, the Commission hereby **ORDERS** that:

1. Certain electrolyte containing beverages and labeling and packaging thereof that infringe one or more of the Electrolit® Asserted Trademarks and that are manufactured abroad by or on behalf of, or imported by or on behalf of the Defaulting Respondents or any of their affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, except under license of the trademark owner or as provided by law until such date as the trademarks have been abandoned, canceled, or rendered invalid or unenforceable.

2. The electrolyte containing beverages and labeling and packaging thereof subject to this exclusion order (*i.e.*, “covered articles”) are gray market or counterfeit electrolyte beverages and associated packaging and labels that bear the Electrolit® Asserted Trademarks and that are unlawfully imported into the United States by or on behalf of the Defaulting Respondents.

3. For the purpose of assisting U.S. Customs and Border Protection (“CBP”) in the enforcement of this Order, and without in any way limiting the scope of this Order, the Commission has attached to this Order a copy of the relevant trademark registrations as Exhibits 1-4.

4. Notwithstanding paragraph 1 of this Order, covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of one hundred percent (100 %) of their entered value, pursuant to subsection (j) of section 337 (19 U.S.C. § 1337(j)) and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 Fed. Reg. 43,251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to U.S. Customs and Border Protection (“CBP”), in advance of the date of the entry, pursuant to procedures CBP establishes.

5. This Order does not exempt infringing articles from seizures under trademark laws enforced by CBP, most notably 19 U.S.C. § 1526(e) and 19 U.S.C. § 1595a(c)(2)(C) in connection with 15 U.S.C. § 1124.

6. At the discretion of CBP and pursuant to the procedures it establishes, persons seeking to import articles may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

7. Complainants shall file a written statement with the Commission, made under oath, each year on the anniversary of the issuance of this Order stating whether Complainants continue to use each of the Electrolit® Asserted Trademarks in commerce in the United States in connection with the products at issue and whether any of the Electrolit® Asserted Trademarks have been abandoned, canceled, or rendered invalid or unenforceable.

8. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

9. The Secretary shall serve copies of this Order upon each party of record in this investigation that has retained counsel or otherwise provided a point of contact for electronic service and upon CBP. While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR §§ 201.16(a), 210.7(a)(1)), the Commission orders that the Complainants complete service of this Order for any party without a

method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

10. Notice of this Order shall be published in the Federal Register.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Katherine M. Hiner". The signature is written in a cursive style with a large initial "K".

Katherine M. Hiner
Acting Secretary to the Commission

Issued: November 2, 2022