

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

LIMITED EXCLUSION ORDER

The United States International Trade Commission (“Commission”) has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”), in the unlawful importation, sale for importation, or sale within the United States after importation by Respondents Eko Brands of Woodinville, Washington (“Eko Brands”); Evermuch Technology Co., Ltd. of Hong Kong (“Evermuch Technology”); and Ever Much Company Ltd. of Shenzhen, China (“Evermuch Company”) (collectively, “Respondents”). The Commission has found Respondents in default pursuant to subsection (g)(1) of section 337, 19 U.S.C. § 1337(g)(1), and section 210.16 of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.16), for failing to respond to a Notice of Investigation and a Complaint that alleged a violation of section 337 with respect to the unlawful importation, sale for importation, and sale after importation of certain beverage brewing capsules, components thereof, and products containing same that infringe one or more of claims 8 and 19 of U.S. Patent No. 8,720,320 (“the ’320 patent”).

Having reviewed the record of this investigation, including the written submissions of the parties, the Commission has made its determination 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 beverage brewing capsules, components thereof, and products containing the same manufactured by or on behalf of, or imported by or on behalf of Respondents, or any of their affiliated companies, parents, subsidiaries, licensees, 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. During the Presidential review period, the Commission has further determined to set a bond of *100 percent* of the entered value of the infringing beverage brewing capsules, components thereof, and products containing the same that are manufactured by, or, on behalf of Respondents.

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

1. Beverage brewing capsules, components thereof, and products containing the same that infringe one or more of claims 8 or 19, and that are manufactured abroad by or on behalf of, or imported by or on behalf of Respondents, or any of their affiliated companies, parents, subsidiaries, licensees 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, for the remaining term of the patents, except under license of the patent owner or as provided by law.

2. Notwithstanding paragraph 1 of this Order, the aforesaid beverage brewing capsules, components thereof, and products containing the same 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 a bond in the amount of *100 percent (100%)* of the entered value of such articles manufactured by, for, or on behalf of Respondents, pursuant to subsection (j) of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. §1337(j)), and the

Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), 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 date of receipt of this Order.

3. At the discretion of CBP and pursuant to procedures that it establishes, persons seeking to import beverage brewing capsules, components thereof, and products containing the same that are potentially subject to this Order 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 to substantiate the certification.

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to beverage brewing capsules, components thereof, and products containing the same that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

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

6. The Secretary shall serve copies of this Order upon each party of record in this investigation.

7. 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 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: March 17, 2016

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

Inv. No. 337-TA-929

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served by hand upon the Commission Investigative Attorney, Jeffrey Hsu, Esq., and the following parties as indicated, on **March 17, 2016**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

**On Behalf of Complainants Adrian Rivera and ARM
Enterprises, Inc.:**

Sudip Kundu, Esq.
KUNDU PLLC
1300 I Street NW, Suite 400E
Washington, DC 20005

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**On Behalf of Respondents Solofill. LLC and DongGuan Hai
Rui Precision Mould Co.. Ltd.:**

Lei Mei, Esq.
MEI & MARK LLP
818 18th Street NW, Suite 410
Washington, DC 20006

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Respondents:

Eko Brands, LLC
6029 238th Street SE, Suite 130
Woodinville, WA 98072

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Evermuch Technology Co., Ltd.
Room 515-516, 5/F, Technology Park, 18
On Lai Street, Shatin, New Territories
Hong Kong

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

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

Inv. No. 337-TA-929

Certificate of Service – Page 2

Ever Much Company, Ltd.
East No. 1, Pak Shek Ha Village
Fu Yong, BaoAn
Shenzhen, China 5180100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC**

In the Matter of

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

Investigation No. 337-TA-929

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Eko Brands, LLC, of 6029 238th St. SE. Suite 130, Woodinville, WA 98072, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for certain beverage brewing capsules, components thereof, and products containing the same that infringe claims 8 or 19 of U.S. Patent No. 8,720,320 (“the ’320 patent”), in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

DEFINITIONS

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainants” shall mean Adrian Rivera of Whittier, California, and Adrian Rivera Maynez Enterprises, Inc., of Santa Fe Springs, California.
- (C) “Respondent” shall mean Eko Brands, LLC, of Woodinville, WA.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.

- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean beverage brewing capsules, components thereof, and products containing the same that infringe claims 8 or 19 of the ’320 Patent.

II.

APPLICABILITY

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

CONDUCT PROHIBITED

The following conduct of the Respondent in the United States is prohibited by the Order.

For the remaining term of the ’320 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or

- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

CONDUCT PERMITTED

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '320 patent licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

REPORTING

For purposes of this reporting requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. However, the first report required under this section shall cover the period from the day after issuance of this Order through December 31, 2016. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-929") in a prominent place on the cover page and/or the first page. *See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf. Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI.

RECORD-KEEPING AND INSPECTION

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

¹ Complainants must file a letter with the Secretary identifying the attorney to receive the reports or bond information associated with this Order. The designated attorney must have signed on to the protective order entered in the investigation.

- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

SERVICE OF CEASE AND DESIST ORDER

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII (A) and VII (B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII (B) and VII (C) shall remain in effect until the date of expiration of the '320 patent.

VIII.

CONFIDENTIALITY

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

ENFORCEMENT

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

MODIFICATION

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

BONDING

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as

delegated by the President, 70 *Fed. Reg.* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 100 percent of the entered value for the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the Respondent must serve a copy of the bond and any accompanying documentation on Complainants' counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not

² *See* Footnote 1.

disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

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: March 17, 2016

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC**

In the Matter of

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

Investigation No. 337-TA-929

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Evermuch Technology Co., Ltd., Room 515-516, 5/F, Technology Park, 18, On Lai Street, Shatin, New Territories, Hong Kong, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for certain beverage brewing capsules, components thereof, and products containing the same that infringe claims 8 or 19 of U.S. Patent No. 8,720,320 (“the ’320 patent”), in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

DEFINITIONS

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainants” shall mean Adrian Rivera of Whittier, California, and Adrian Rivera Maynez Enterprises, Inc., of Santa Fe Springs, California.
- (C) “Respondent” shall mean Evermuch Technology Co., Ltd., of Hong Kong.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.

- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean beverage brewing capsules, components thereof, and products containing the same that infringe claims 8 or 19 of the ’320 Patent.

II.

APPLICABILITY

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

CONDUCT PROHIBITED

The following conduct of the Respondent in the United States is prohibited by the Order.

For the remaining term of the ’320 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or

- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

CONDUCT PERMITTED

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '320 patent licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

REPORTING

For purposes of this reporting requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. However, the first report required under this section shall cover the period from the day after issuance of this Order through December 31, 2016. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-929") in a prominent place on the cover page and/or the first page. *See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf. Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI.

RECORD-KEEPING AND INSPECTION

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

¹ Complainants must file a letter with the Secretary identifying the attorney to receive the reports or bond information associated with this Order. The designated attorney must have signed on to the protective order entered in the investigation.

- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

SERVICE OF CEASE AND DESIST ORDER

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII (A) and VII (B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII (B) and VII (C) shall remain in effect until the date of expiration of the '320 patent.

VIII.

CONFIDENTIALITY

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

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Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

MODIFICATION

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

BONDING

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as

delegated by the President, 70 *Fed. Reg.* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 100 percent of the entered value for the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the Respondent must serve a copy of the bond and any accompanying documentation on Complainants' counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not

² *See* Footnote 1.

disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

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Lisa R. Barton
Secretary to the Commission

Issued: March 17, 2016

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC**

In the Matter of

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

Investigation No. 337-TA-929

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Ever Much Company Ltd. of East No. 1, Pak Shek Ha Village, Fu Yong, BaoAn, Shenzhen, China 5181000, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for certain beverage brewing capsules, components thereof, and products containing the same that infringe claims 8 or 19 of U.S. Patent No. 8,720,320 (“the ’320 patent”), in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

DEFINITIONS

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainants” shall mean Adrian Rivera of Whittier, California, and Adrian Rivera Maynez Enterprises, Inc., of Santa Fe Springs, California.
- (C) “Respondent” shall mean Ever Much Company Ltd. of Shenzhen, China.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.

- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean beverage brewing capsules, components thereof, and products containing the same that infringe claims 8 or 19 of the ’320 Patent.

II.

APPLICABILITY

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

CONDUCT PROHIBITED

The following conduct of the Respondent in the United States is prohibited by the Order.

For the remaining term of the ’320 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or

- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

CONDUCT PERMITTED

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '320 patent licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

REPORTING

For purposes of this reporting requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. However, the first report required under this section shall cover the period from the day after issuance of this Order through December 31, 2016. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-929") in a prominent place on the cover page and/or the first page. *See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf. Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI.

RECORD-KEEPING AND INSPECTION

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

¹ Complainants must file a letter with the Secretary identifying the attorney to receive the reports or bond information associated with this Order. The designated attorney must have signed on to the protective order entered in the investigation.

- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

SERVICE OF CEASE AND DESIST ORDER

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII (A) and VII (B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII (B) and VII (C) shall remain in effect until the date of expiration of the '320 patent.

VIII.

CONFIDENTIALITY

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

ENFORCEMENT

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

MODIFICATION

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

BONDING

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as

delegated by the President, 70 *Fed. Reg.* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 100 percent of the entered value for the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the Respondent must serve a copy of the bond and any accompanying documentation on Complainants' counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not

² *See* Footnote 1.

disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

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: March 17, 2016

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

Inv. No. 337-TA-929

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDERS** have been served by hand upon the Commission Investigative Attorney, Jeffrey Hsu, Esq., and the following parties as indicated, on **March 17, 2016**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

**On Behalf of Complainants Adrian Rivera and ARM
Enterprises, Inc.:**

Sudip Kundu, Esq.
KUNDU PLLC
1300 I Street NW, Suite 400E
Washington, DC 20005

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**On Behalf of Respondents Solofill. LLC and DongGuan Hai
Rui Precision Mould Co.. Ltd.:**

Lei Mei, Esq.
MEI & MARK LLP
818 18th Street NW, Suite 410
Washington, DC 20006

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Respondents:

Eko Brands, LLC
6029 238th Street SE, Suite 130
Woodinville, WA 98072

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

Evermuch Technology Co., Ltd.
Room 515-516, 5/F, Technology Park, 18
On Lai Street, Shatin, New Territories
Hong Kong

- Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

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

Inv. No. 337-TA-929

Certificate of Service – Page 2

Ever Much Company, Ltd.
East No. 1, Pak Shek Ha Village
Fu Yong, BaoAn
Shenzhen, China 5180100

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____