

***In the Matter of***

**CERTAIN SOFT DRINKS  
AND THEIR CONTAINERS**

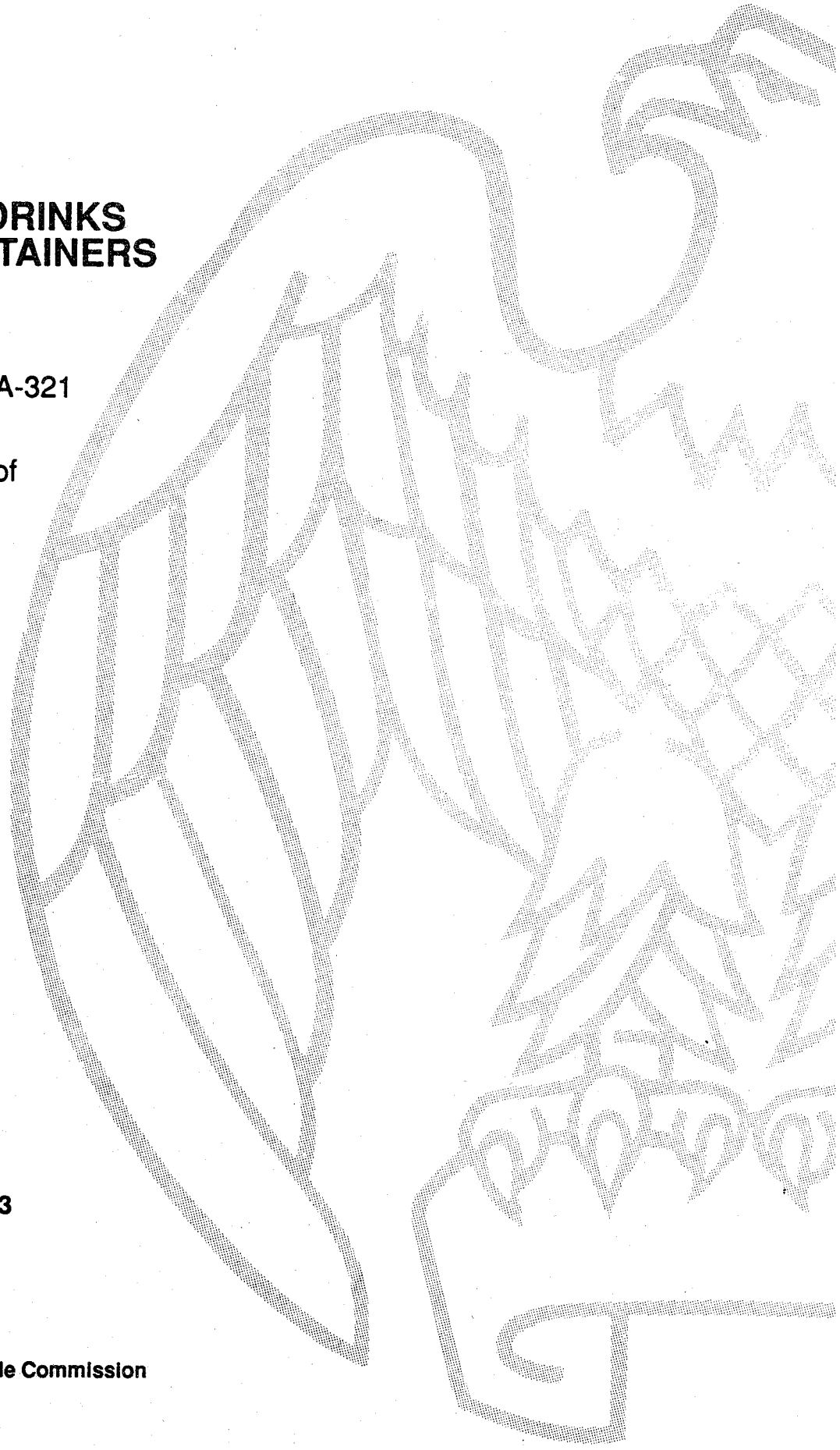
Investigation No. 337-TA-321

(Commission Decision of  
December 27, 1991)

**USITC PUBLICATION 2483**

**FEBRUARY 1992**

**United States International Trade Commission  
Washington, DC 20436**



**UNITED STATES INTERNATIONAL TRADE COMMISSION**

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United States International Trade Commission  
Washington, DC 20436**

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436

OFFICE OF THE  
SECRETARY  
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In the Matter of ) )  
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CERTAIN SOFT DRINKS AND ) Investigation No. 357-TA-321  
THEIR CONTAINERS ) )  
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NOTICE OF DECISION TO ISSUE A LIMITED EXCLUSION ORDER AND A  
CEASE AND DESIST ORDER AS TO RESPONDENT COBROS FOOD CORP.;  
TERMINATION OF INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order and has terminated the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3095.

SUPPLEMENTARY INFORMATION: The authority for the Commission's actions is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), as amended, and in sections 210.25(c) and 210.58 of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. §§ 210.25(c) and 210.58.)

On November 23, 1990, Kola Colombiana (Kola) filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 as amended (19 U.S.C. § 1337) in the importation and sale of certain soft drinks and their containers. In its complaint, Kola asserted violations of section 337 based upon false representation or designation of origin, common law trademark infringement, and misappropriation of trade dress.

The Commission instituted an investigation into the allegations of Kola's complaint on December 17, 1990, and published a notice of investigation in the Federal Register. 55 F.R. 53205 (Dec. 27, 1990). The notice named International Grain Trade, Inc. of New York, New York; Universe Trading Corp. of Miami, Florida; Colgran Ltda. of Bogota, Colombia; and Cobros Food Corp. (Cobros) of Corona, New York, as respondents. On May 28, 1991, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding respondent Cobros in default. The Commission determined not to review that ID. Subsequently, complainant Kola and the three remaining respondents jointly moved to terminate the investigation as to those respondents on the basis of a consent order. On September 3, 1991, the ALJ issued an ID granting that motion, after amendment. The Commission determined not to review that ID. 56 F.R. 50927 (Oct. 9, 1991).

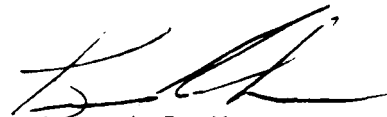
Subsequently, on September 23, 1991, complainant filed a declaration stating that it sought a limited exclusion order and cease and desist order against defaulting respondent Cobros, pursuant to section 337(g)(1) and interim rule 210.25(c).

Section 337(g)(1) of the Tariff Act of 1930 as amended, 19 U.S.C. § 1337(g)(1), provides that the Commission shall presume the facts alleged in a complaint to be true, and, upon request, issue a limited exclusion order and/or cease and desist order if: (1) a complaint is filed against a person under section 337, (2) the complaint and a notice of investigation are served on the person, (3) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice, (4) the person fails to show good cause why it should not be found in default, and (5) the complainant seeks relief limited solely to that person. Such an order shall be issued unless, after considering the effect of such relief upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion should not be issued.

The Commission determined that each of the statutory requirements for the issuance of a limited relief was satisfied with respect to defaulting respondent Cobros. The Commission also determined that the public interest factors enumerated in section 337(g)(1) do not preclude the issuance of such relief. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of one hundred (100) percent of the entered value of the imported articles.

Copies of the limited exclusion order, the cease and desist order, and all other nonconfidential documents filed in connection with this investigation are 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 202-252-1000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

  
Kenneth R. Mason  
Secretary

Issued: December 27, 1991

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436

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Investigation No. 337-TA-321

**ORDER**

On November 23, 1990, Kola Colombiana (Kola) filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 as amended (19 U.S.C. § 1337) in the importation and sale of certain soft drinks and their containers. In its complaint, Kola asserted violations of section 337 based upon false representation or designation of origin, common law trademark infringement, and misappropriation of trade dress.

The Commission instituted an investigation into the allegations of Kola's complaint on December 17, 1990, and published a notice of investigation in the Federal Register. 55 F.R. 53205 (Dec. 27, 1990). The notice named International Grain Trade, Inc. of New York, New York; Universe Trading Corp. of Miami, Florida; Colgran Ltda. of Bogota, Colombia; and Cobros Food Corp. of Corona, New York, as respondents. On May 28, 1991, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding respondent Cobros Food Corp. (Cobros), in default. The Commission determined not to review that ID. Subsequently, complainant Kola and the three remaining respondents jointly moved to terminate the investigation as to those respondents on the basis of a consent order. On September 3, 1991, the ALJ issued an ID granting that motion, after amendment. The Commission determined not to review that ID. 56 F.R. 30595 (July 3, 1991). Subsequently, on September 23, 1991, complainant filed a declaration stating that it sought a limited exclusion order and a cease and desist order against the defaulting

respondent, pursuant to section 337(g)(1) and interim rule 210.25(c).

Section 337(g)(1) of the Tariff Act of 1930 as amended (19 U.S.C. § 1337(g)(1)) provides that the Commission shall presume the facts alleged in a complaint to be true, and, upon request, issue a limited exclusion order and/or cease and desist order if: (1) a complaint is filed against a person under section 337, (2) the complaint and a notice of investigation are served on the person, (3) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice, (4) the person fails to show good cause why it should not be found in default, and (5) the complainant seeks relief limited solely to that person. Such an order shall be issued unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such relief should not be issued.

Each of the statutory requirements for the issuance of a limited exclusion order and a cease and desist order have been met with respect to defaulting respondent Cobros. Moreover, the record contains no evidence indicating that the public interest would be adversely affected by the issuance of the requested relief. Accordingly, the Commission has determined that the appropriate form of relief is a cease and desist order directed to Cobros and a limited exclusion order excluding from entry into the United States soft drink products and their containers that are imported by Cobros, directly or indirectly, and that are covered by federally-registered U.S. trademarks "Postobon" (Reg. No. 1,341,330); "Bretana" (Reg. No. 1,490,415); and/or "Colombiana" (Reg. No. 1,420,354). The Commission has further

written instrument, Complainant licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of certain soft drinks and their containers by or for the United States.

V

(Reporting)

For purposes of this reporting requirement, the reporting period shall commence on the first day of January, and shall end on the following last day of December. The first report required under this section shall cover the period January 1, 1992, through December 31, 1992. This reporting requirement shall continue in force, unless, pursuant to subsection (j)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this Order, that he disapproves this Order.

Any failure to report shall constitute a violation of this Order.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the unit and dollar quantities of imports and sales of soft drinks and their containers covered by this Order imported into or sold in the United States during the period.

VI

(Recordkeeping and Inspection)

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of imported soft drinks and their containers covered by this Order made and received in the usual and ordinary course of business, whether in detail or in summary form, for a

period of two (2) years from the close of the fiscal year to which they pertain.

(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 shall, upon reasonable written notice by the Commission or its staff, 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, financial reports, and other records and documents, both in detail and in summary form for the purpose of verifying any matter or statement contained in the reports required to be retained under subparagraph VI(A) of this Order.

## VII

### (Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within thirty (30) 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 marketing, distribution, or sale of imported soft drinks and their containers in the United States;

(B) Serve, within thirty (30) 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





other than the above Respondent or its majority owned and/or controlled subsidiaries, their successors, or assigns.

(E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

## II

### (Applicability)

The provisions of this Cease and Desist Order shall apply to Respondent and to its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and to each of them, in accordance with Section VII hereof.

## III

### (Conduct Prohibited)

The following conduct of Respondent in the United States is prohibited by this Order. Respondent shall not import into the United States, directly or indirectly, any soft drink products or their containers and that are covered by federally registered U.S. trademarks "Postobon" (Reg. No. 1,341,330); "Bretana" (Reg. No. 1,490,415); and/or "Colombiana" (Reg. No. 1,420,354).

## 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

determined that the public interest factors enumerated in section 337(g)(1) do not preclude the issuance of such relief. Finally, the Commission has determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of one hundred (100) percent of the entered value of the imported articles.

Accordingly, it is hereby **ORDERED THAT** --

1. Soft drinks and their containers, to be imported, directly or indirectly, by Cobros Food Corp. of Corona, New York or any of its related companies that are covered by federally-registered U.S. trademarks "Postobon" (Reg. No. 1,341,330); "Bretana" (Reg. No. 1,490,415); and/or "Colombiana" (Reg. No. 1,420,354), are excluded from entry into the United States.
2. In accordance with 19 U.S.C. § 1337(1), the provisions of this **Order** do not apply to soft drinks and their containers imported by or for the United States.
3. The articles identified in paragraph (1) of this **Order** are entitled to entry into the United States under bond in the amount of one hundred (100) percent of their entered value from the day after this **Order** is received by the President, pursuant to 19 U.S.C. § 1337(j)(3), until such time as the President notifies the Commission that he approves or disapproves this **Order**, but, in any event, no later than 60 days after the date of receipt of this **Order** by the President.
4. The Commission may amend this **Order** in accordance with the procedure described in section 211.57 of the Commission's Interim Rules of Practice and Procedure, 19 C.F.R. § 211.57.
5. A copy of this **Order** shall be served upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, and the Federal Trade Commission.
6. Notice of this **Order** shall be published in the Federal Register.

By order of the Commission.



Kenneth R. Mason  
Secretary

Issued: December 27, 1991



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.

#### VIII

##### (Confidentiality)

Information obtained by means provided for in Sections V and VI of this Order will be made available only to the Commission and its authorized representatives, will be entitled to confidential treatment, and will not be divulged by any authorized representative of the Commission to any person other than duly authorized representatives of the Commission, except as may be required in the course of securing compliance with this Order, or as otherwise required by law. Disclosure hereunder will not be made by the Commission without ten (10) days prior notice in writing to Respondent.

#### IX

##### (Enforcement)

Violation of this Order may result in any of the actions specified in section 211.56 of the Commission's Interim Rules of Practice and Procedure, 19 C.F.R. § 211.56, 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 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 211.57 of the Commission's Interim Rules of Practice and Procedure, 19 C.F.R. § 211.57.

XI

(Bonding)

With respect to certain soft drinks and their containers imported prior to December 27, 1991, the conduct prohibited by Section III of this **Order** may be continued during the period in which this order is under review by the President pursuant to section 337(j) of the Tariff Act of 1930 (19 U.S.C. § 1337(j)), subject to Respondent posting a bond in the amount of one hundred (100) percent of the entered value of the articles in question. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this **Order**. Certain soft drinks and their containers imported on or after December 27, 1991, are subject to the entry bond as set forth in the limited exclusion order issued by the Commission on December 27, 1991, and are not subject to this bond provision.

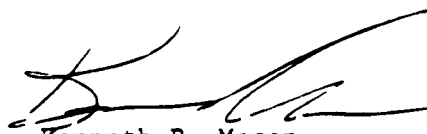
The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. See Commission Interim Rule 210.58, 19 C.F.R. § 210.58. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this **Order**.

The bond is to be forfeited in the event that the President approves, or

does not disapprove within the Presidential review period, the Commission's Orders of December 27, 1991, 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 President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an Order issued by the Commission based upon application therefor made by Respondent to the Commission.

By order of the Commission.



Kenneth R. Mason  
Secretary

Issued: December 27, 1991

