

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN CHOCOLATE MILK
POWDER AND PACKAGING
THEREOF**

**Investigation No. 337-TA-1232
(Enforcement)**

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW AN INITIAL
DETERMINATION GRANTING A MOTION FOR SUMMARY DETERMINATION
OF VIOLATION OF THE GENERAL EXCLUSION ORDER; REQUEST FOR
BRIEFING ON THE ISSUES UNDER REVIEW AND ON REMEDY, PUBLIC
INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review an initial determination (“ID”) (Order No. 9) of the presiding administrative law judge (“ALJ”) granting a motion for summary determination of violation of the General Exclusion Order (“GEO”). The Commission has determined to review the ID’s findings that there have been violations of the GEO. The Commission requests written submissions from the parties on the issues under review and from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding as to the asserted trademark, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Paul Lall, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2043. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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 December 1, 2020, based on a complaint filed on behalf of Meenaxi Enterprise Inc. (“Meenaxi”) of Edison, New Jersey. 85 FR 77237-38 (Dec. 1, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain chocolate milk powder and packaging thereof by reason of infringement of U.S. Trademark Registration No. 4,206,026 (“the ’026 mark”). The Commission’s notice of

investigation named several respondents, including but not limited to Bharat Bazar Inc. of Union City, California (“Bharat Bazaar”); Coconut Hill Inc. d/b/a Coconut Hill of Sunnyvale, California (“Coconut Hill”); Organic Food d/b/a Namaste Plaza Indian Super Market (“Organic Food”) of Fremont, California; and New India Bazar Inc. d/b/a New India Bazar of San Jose, California (“New India”). *Id.* at 77237. The Office of Unfair Import Investigations (“OUII”) was also a party to the investigation. *Id.*

In the underlying investigation, all respondents were found in default. *See* Order No. 6 (Feb. 10, 2021), *unreviewed by* Comm’n Notice (Mar. 2, 2021); Order No. 23 (May 19, 2022), *unreviewed by* Comm’n Notice (Jun. 14, 2022). On May 24, 2021, Meenaxi moved for summary determination of violation of section 337 by the respondents found in default by Order No. 6 and requested a GEO. On December 1, 2021, the former chief administrative law judge (“former CALJ”) granted the motion as an initial determination (“ID”) (Order No. 15), but noted discrepancies with respect to respondent Organic Food, calling into question whether that respondent was ever properly served with the complaint and notice of investigation and with the CALJ’s order to show cause why the respondents should not be found in default, Order No. 5 (Jan. 13, 2021). *See* Order No. 15 at 1, n.1. No petitions for review of the ID were filed. The Commission determined *sua sponte* to review Order No. 15 and ordered reconsideration of Order No. 6 as to Organic Food and/or any other respondents who may not have been properly served with documents in the underlying investigation. *See* Comm’n Notice at 3 (Jan. 18, 2022). The Commission remanded the investigation to an ALJ for further proceedings. *Id.*

On remand, the current chief administrative law judge (“CALJ”) issued Order No. 18, granting Meenaxi’s unopposed motion for leave to amend the complaint and notice of investigation to (i) substitute Organic Food with proposed respondent Organic Ingredients Inc. d/b/a Namaste Plaza Indian Super Market (“Organic Ingredients”) of San Diego, California; (ii) correct the address of respondent New India; (iii) correct the address of respondent Bharat Bazar; and (iv) supplement the complaint with Exhibits 9-a, 9-b, and 9-c, concerning Organic Food and/or Organic Ingredients. Order No. 18 at 1-5 (Mar. 11, 2022), *unreviewed by* Comm’n Notice (Apr. 12, 2022); *see also* 87 FR 22940-41 (Apr. 18, 2022). Meenaxi also demonstrated that Bharat Bazar actually had been served with all of the documents in the investigation (prior to remand) despite incorrectly spelling Bharat Bazar’s address as being on “Niled Road” instead of “Niles Road.” *See* Order No. 18 at 4.

The CALJ conducted remand proceedings as to Organic Ingredients and New India to respond to the amended complaint and notice of investigation, and then ordered them to respond to an order to show cause why they should not be found in default. *See* Order No. 19 (Mar. 11, 2022); Order No. 21 at 2-3 (May 3, 2022). On May 19, 2022, the CALJ issued an ID finding Organic Ingredients and New India in default. Order No. 23 (May 19, 2022), *unreviewed by* Comm’n Notice (June 14, 2022). Accordingly, the Commission found all respondents in default (collectively with the respondents previously found in default, the “Defaulting Respondents”).

Subsequently, on June 15, 2022, following the remand determination of default, Meenaxi again moved for summary determination of violation by the Defaulting Respondents and requested a GEO. On July 6, 2022, OUII filed a response supporting the motion.

On August 3, 2022, the CALJ issued a remand ID (“RID”) (Order No. 27), granting the second motion for summary determination and finding a violation of section 337 with respect to the ’026 mark. The RID found that all Defaulting Respondents met the importation requirement and that Meenaxi satisfied the domestic industry requirement. *See* 19 U.S.C. 1337(a)(1-3). No party petitioned for review of the ID.

On September 19, 2022, the Commission determined not to review the RID. *See* 87 FR 58130-32 (Sept. 23, 2022). On November 15, 2022, the Commission issued a final determination finding a violation, issuing a GEO prohibiting the unlicensed importation of chocolate milk powder and packaging thereof that infringe the ’026 mark, and terminating the investigation. *See* 87 FR 70864-66 (Nov. 21, 2022). The GEO prohibits the unlicensed importation of “chocolate milk powder in consumer-sized container with the Bournvita label.” *Id.* On the same day, the Commission issued an opinion explaining the basis for its final determination.

On November 9, 2023, the Commission determined to institute an enforcement proceeding under Commission Rule 210.75 to investigate alleged violations of the GEO by four respondents: (1) Organic Ingredients; (2) New India; (3) Bharat Bazar; and (4) Coconut Hill (collectively the “Enforcement Respondents”). *See* Comm’n Notice, EDIS Doc. ID 808258 (Nov. 9, 2023); *see also* 88 FR 78786-87 (Nov. 16, 2023); 89 FR 15220 (Mar. 1, 2024). OUII is also named as a party. *Id.*

On January 10, 2024, the presiding ALJ issued an order directing the Enforcement Respondents to show cause why they should not be found in default and why judgment should not be rendered against them for failing to respond to the enforcement complaint and notice of investigation. *See* Order No. 6 (Jan. 10, 2024). Order No. 6 directed the Enforcement Respondents to make any showing of good cause by no later than February 2, 2024. *Id.* at 3. No party responded to Order No. 6. *See* Order No. 8 at 1 (Feb. 13, 2024).

On March 14, 2024, the Commission determined that the four Enforcement Respondents were in default. *See* Order No. 8 (Feb. 13, 2024), *unreviewed by* Comm’n Notice (Mar. 14, 2024). On March 15, 2024, Meenaxi filed a motion requesting summary determination of violation of the GEO and the issuance of CDOs against the four Enforcement Respondents. *See* ID at 5.

On August 16, 2024, the presiding ALJ issued the subject ID (Order No. 9), granting Meenaxi’s motion and recommending issuance of the requested CDOs. The ALJ concluded that “the un rebutted evidence summarized below demonstrates that the Enforcement Respondents have imported and/or sold after importation chocolate milk powder products bearing the ‘Bournvita’ label” in violation of the GEO. ID at 16. The ID noted that Meenaxi alleges that the Enforcement Respondents have violated the GEO by offering for sale, selling, advertising, and aiding and abetting the sale for Cadbury’s “BOURNVITA” products. *Id.* at 17-18. The ID explained that “[t]hese (or similar) products were found to infringe the ’026 Mark during the violation phase” of this investigation. *Id.* at 18. No party filed a petition seeking review of the ID.

On August 19, 2024, the Commission issued a notice soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation of the GEO, specifically, CDOs against the four Enforcement Respondents: (1) Bharat Bazaar; (2) Coconut Hill; (3) Organic Ingredients; and (4) New India. 89 FR 68203-04 (Aug. 23, 2024). No comments were received in response to the notice.

Having reviewed the record of the investigation, including the enforcement complaint, the ID, and the parties' submissions to the ALJ, the Commission has determined to review the ID's findings that the Enforcement Respondents have violated the GEO. In connection with these findings, the Commission requests responses from the parties to the following questions:

- (1) Whether the sale of infringing products imported before the issuance of a GEO but sold in the United States after the issuance of that order constitutes a violation of the GEO?
- (2) Whether a complainant must provide evidence of importation of infringing products after the date on which the GEO issued in order to establish a violation of a GEO in an enforcement proceeding under Commission Rule 210.75 (19 CFR 210.75), and whether such evidence was presented here?
- (3) Whether 19 USC 1337(g)(1) applies to allegations of a violation of a GEO in an enforcement proceeding involving defaulting Enforcement Respondents?

WRITTEN SUBMISSIONS: The parties are requested to file written submissions on the questions identified in this notice.

In connection with the final disposition of this enforcement proceeding, the statute authorizes issuance of, *inter alia*, cease and desist orders in addition to the outstanding GEO, which could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered.

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the Enforcement Respondents would be entitled to continue the activities in the CDOs under bond, except to the extent they are prohibited by the outstanding GEO, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. The initial written submissions and proposed remedial orders must be filed no later than close of business on October 16, 2024. Reply submissions must be filed no later than the close of business on October 23, 2024. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 25 pages. Reply submissions are limited to 15 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number ("Inv. No. 337-TA-1232 Enforcement") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission's vote on this determination took place on October 2, 2024.

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', enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: October 2, 2024