

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 INSTITUTION OF FORMAL ENFORCEMENT PROCEEDING

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a formal enforcement proceeding relating to the general exclusion order (“GEO”) issued on November 15, 2022, in the above-referenced investigation.

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 this investigation on December 1, 2020, based on a complaint filed on behalf of Meenaxi Enterprise Inc. (“Meenaxi”) of Edison, New Jersey. 85 FR 77237-8 (Dec. 1, 2020). The complaint alleged violations of section 337 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 as respondents Bharat Bazar Inc. of Union City, California; Madras Group Inc. d/b/a Madras Groceries of Sunnyvale, California; Organic Food d/b/a Namaste Plaza Indian Super Market (“Organic Food”) of Fremont, California; India Cash & Carry of Sunnyvale California; New India Bazar Inc. d/b/a New India Bazar of San Jose, California; Aapka Big Bazar of Jersey City, New Jersey; Siya Cash & Carry Inc. d/b/a Siya Cash & Carry of Newark, New Jersey; JFK Indian Grocery LLC d/b/a D-Mart Super Market of Jersey City, New Jersey; Trinethra Indian Super Markets of Newark, California; Apna Bazar Cash & Carry Inc. d/b/a Apna Bazar Cash & Carry of Edison, New Jersey; Subzi Mandi Cash & Carry Inc. d/b/a Mandi Cash & Carry of Piscataway, New Jersey; Patidar Cash & Carry Inc. d/b/a Patidar Cash & Carry of South Plainfield, New Jersey; Keemat Grocers of Sugarland, Texas; KGF World Food Warehouse Inc. d/b/a World Food Mart of Houston, Texas;

Telfair Spices of Sugarland Texas; Indian Groceries and Spices Inc. d/b/a iShopIndia.com of Milwaukee, Wisconsin; Rani Foods LP d/b/a Rani's World Foods of Houston, Texas; Tathastu Trading LLC of South Plainfield, New Jersey; and Choice Trading LLC of Guttenberg, New Jersey. *Id.* The Office of Unfair Import Investigations (“OUII”) was also a party to the 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 (“CALJ”) granted the motion as an initial determination (“ID”) (Order No. 15). No petitions for review of the ID were filed. The ID, however, 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. 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. Notice at 3 (Jan 18, 2022). The Commission remanded the investigation to an ALJ for further proceedings. *Id.*

On remand, the current 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 Bazar Inc. d/b/a New India Bazar (“New India”) of San Jose, California; (iii) correct the address of respondent Bharat Bazar Inc. (“Bharat Bazar”) of Union City, California; 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, 87 FR 22940 (Apr. 18, 2020). Meenaxi demonstrated that Bharat Bazar had been actually 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.” Order No. 18 at 4.

The current CALJ conducted remand proceedings as to Organic Ingredients and New India, first ordering them to respond to the amended complaint and notice of investigation, and then ordering them to respond to an order to show cause why they should not be found in default. *See* Order No. 27 at 3 (Aug. 3, 2022). On May 19, 2022, the CALJ issued an ID finding Organic Ingredients and New India in default (collectively with the respondents previously found in default, the “Defaulting Respondents”). Order No. 23 (May 19, 2022), *unreviewed by* Comm’n Notice (June 14, 2022).

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 current CALJ issued a remand ID (“RID”), 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)(B), (a)(2), and (a)(3). The RID also contained the CALJ’s recommended determination (“RD”) on remedy and bonding. The RD recommended issuance of a GEO with respect to the asserted ’026 mark. No party petitioned for review of the ID.

On September 19, 2022, the Commission determined not to review the RID. 87 FR 58130-1 (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. 87 FR 70864-65. On the same day, the Commission issued an opinion explaining the basis for its final determination.

On October 9, 2023, Meenaxi filed a complaint requesting that the Commission institute an enforcement proceeding under Commission Rule 210.75 to investigate alleged violations of the General Exclusion Order by four proposed enforcement respondents: (1) Organic Ingredients; (2) New India; (3) Bharat Bazar; and (4) Coconut Hill Inc. of Sunnyvale, California. Meenaxi asserts that the four proposed enforcement respondents continue to import, sell for importation, advertise, market, distribute, offer to sell “Bournvita” products that infringe the ’026 mark. Meenaxi also alleges that the four proposed enforcement respondents are in continuing violation of the GEO and as a result, it is sustaining “immediate and irreparable harm.” None of the respondents answered Meenaxi’s enforcement complaint.

Having examined the enforcement complaint and the supporting documents, the Commission has determined to institute a formal enforcement proceeding, pursuant to Commission Rule 210.75(a) (19 CFR 210.75(a)), to determine whether violations of the GEO, issued on November 15, 2022 in the above-referenced investigation, have occurred and to determine what, if any, enforcement measures are appropriate. The named respondents are: (1) Organic Ingredients Inc. d/b/a Namaste Plaza Indian Super Market; (2) New India Bazar Inc.; (3) Bharat Bazar Inc.; and (4) Coconut Hill Inc. d/b/a Coconut Hill. OUII is also named as a party.

In the Order issued concurrently herewith, the Commission has delegated this enforcement proceeding to the CALJ for designation of a presiding Administrative Law Judge to conduct any necessary proceedings, issue an Enforcement Initial Determination, and make a recommendation on appropriate enforcement measures, if any.

The Commission’s vote on this determination took place on November 9, 2023.

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: November 9, 2023