

PUBLIC VERSION

**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)**

COMMISSION ENFORCEMENT OPINION

TABLE OF CONTENTS

I. INTRODUCTION.....	2
II. BACKGROUND.....	3
A. Procedural History.....	3
B. The ID	7
C. The Parties' Arguments	9
1. Meenaxi	9
2. OUII.....	10
III. STANDARD ON REVIEW	10
IV. ANALYSIS	11
V. REMEDY, PUBLIC INTEREST, AND BONDING.....	14
A. Cease and Desist Orders	14
B. The Public Interest.....	16
C. Bonding.....	18
VI. CONCLUSION	19

PUBLIC VERSION

I. INTRODUCTION

On November 15, 2022, following an investigation on violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, the Commission issued a general exclusion order (“GEO”) prohibiting the unlicensed importation of chocolate milk powder and packaging thereof that infringe U.S. Trademark Registration No. 4,206,026 (“the ’026 mark”). *See* 87 Fed. Reg. 70864-66 (Nov. 21, 2022). On November 16, 2023, after the filing of an enforcement complaint (the “Enforcement Complaint”) on behalf of the complainant in the underlying investigation, Meenaxi Enterprise Inc. (“Meenaxi” or complainant), the Commission instituted an enforcement proceeding under Commission Rule 210.75, 19 C.F.R. § 210.75, to investigate alleged violations of the GEO issued in the underlying investigation by four respondents: (1) Organic Ingredients Inc. d/b/a Namaste Plaza Indian Super Market (“Organic Ingredients”); (2) New India Bazar Inc. d/b/a New India Bazar (“New India”); (3) Bharat Bazar Inc. (“Bharat Bazaar”); and (4) Coconut Hill Inc. d/b/a Coconut Hill (“Coconut Hill”) (collectively, the “Enforcement Respondents”). *See* Comm’n Notice, EDIS Doc. ID 808258 (Nov. 9, 2023); 88 Fed. Reg. 78786-87 (Nov. 16, 2023); 89 Fed. Reg. 15220 (Mar. 1, 2024). On August 16, 2024, the presiding administrative law judge (“ALJ”) issued Order No. 9, an initial determination (“ID”) granting complainant Meenaxi’s Motion for Summary Determination of Violation of the General Exclusion Order (“MSD”) against the Enforcement Respondents and a recommended determination on enforcement measures. On October 2, 2024, the Commission determined to review the ID’s findings that there have been violations of the GEO and requested written submissions from the parties on the issues under review and on remedy, the public interest, and bond. *See* 89 Fed. Reg. 81547-49 (Oct. 8, 2024).

PUBLIC VERSION

Having examined the record of this investigation, including the parties' submissions, the Commission has determined that section 337(g)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(g)(1), applies to enforcement investigations and that the conditions set forth in section 337(g)(1)(A)-(E) have been satisfied as to each of the four Enforcement Respondents. The Commission has also determined that the appropriate enforcement measure is to issue a cease and desist order ("CDO") against each Enforcement Respondent and that the public interest will not be adversely affected by issuance of the CDOs. Finally, the Commission has determined to set a bond during the period of Presidential review of one hundred percent (100%) of the entered value.

II. BACKGROUND

A. Procedural History

The Commission instituted the original investigation on December 1, 2020, based on a complaint filed on behalf of Meenaxi of Edison, New Jersey. 85 Fed. Reg. 77237-38 (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 the '026 mark. The Commission's notice of investigation named several respondents, including but not limited to Bharat Bazar of Union City, California; Coconut Hill of Sunnyvale, California; New India of San Jose, California; and Organic Food Inc. d/b/a Namaste Plaza Indian Super Market ("Organic Food") of Fremont, California. *Id.* at 77237. The Office of Unfair Import Investigations ("OUII") was also named as 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),

PUBLIC VERSION

unreviewed by Comm'n Notice (Jun. 14, 2022). On May 24, 2021, Meenaxi moved for summary determination of violations 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 (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 former 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 Order No. 15 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 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 Fed. Reg. 22940-41 (Apr. 18, 2022). Meenaxi also 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." *See* Order No. 18 at 4.

PUBLIC VERSION

The CALJ conducted remand proceedings as to Organic Ingredients and New India with respect to service of the amended complaint and notice of investigation, and upon the failure of these respondents to respond to the amended complaint and notice of investigation, the CALJ 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 initial determination 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").

On June 13, 2022, Meenaxi again moved for summary determination of violations 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)(2)-(3). No party petitioned for review of the RID.

On September 19, 2022, the Commission determined not to review the RID. *See* 87 Fed. Reg. 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 Fed. Reg. 70864-66 (Nov. 21, 2022). The GEO is currently in effect and prohibits the unlicensed importation of "chocolate milk powder in consumer-sized container with

PUBLIC VERSION

the Bournvita label.” *Id.*; GEO at 2 (Nov. 15, 2022). On the same day, the Commission issued an opinion explaining the basis for its final determination. *See* Comm’n Op. (Nov. 15, 2022) (Conf. Ver.); Comm’n Op. (Dec. 9, 2022) (Pub. Ver.).

Approximately ten (10) months later, the Enforcement Complaint was filed with the Commission on behalf of Meenaxi to enforce the GEO entered in the original investigation, seeking, *inter alia*, issuance of CDOs for alleged violations of the GEO.¹ On November 9, 2023, upon consideration of Meenaxi’s Enforcement Complaint, the Commission issued a notice of its determination to institute an enforcement proceeding under Commission Rule 210.75 to investigate alleged violations of the GEO by the four Enforcement Respondents. *See* Comm’n Notice, EDIS Doc. ID 808258 (Nov. 9, 2023). This enforcement proceeding was instituted by publication in the *Federal Register* on November 16, 2023. *See* 88 Fed. Reg. 78786-87 (Nov. 16, 2023) (“NOI”). OUII is also named as a party. *Id.* at 78787. On the same day the Commission determined to institute, the Commission issued an order (the “Commission Order”) certifying the 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. *See* Comm’n Order (Nov. 9, 2023), EDIS Doc. ID 808290. Meenaxi filed proof that the Enforcement Complaint and Exhibits, the Commission’s November 9th notice, and the Commission Order were served on each of the four Enforcement Respondents. *See* Nov. 14, 2023 Letter from Anil Gandhi to Secretary Barton, Ex. A, EDIS Doc. ID 808539. No responses to the Enforcement Complaint and NOI were filed.

¹ The Enforcement Complaint was submitted to the Commission on October 9, 2023, a Federal holiday. Accordingly, the official date for that filing is October 10, 2023.

PUBLIC VERSION

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 NOI. *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. Meenaxi filed proof that Order No. 6 was served on each of the four Enforcement Respondents. *See* Jan. 16, 2024 Letter from Llofel Rogolifo to Secretary Barton, Ex. A, EDIS Doc. ID 812042. 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. 15, 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* Order No. 9 at 5 (Aug. 16, 2024).

B. The ID

On August 16, 2024, the presiding ALJ issued the subject ID granting Meenaxi's motion for summary determination and recommending issuance of the requested CDOs. The ALJ concluded that "the un rebutted evidence [] 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 16-17. The ID noted that Meenaxi alleged that the Enforcement Respondents have violated the GEO by offering for sale, selling, advertising, and aiding and abetting the sale of 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. The ID applied the same trademark

PUBLIC VERSION

infringement analysis to the products accused of violating the GEO in Meenaxi's Enforcement Complaint. *See id.* at 19-26. Meenaxi filed proof that the ID was served on each of the four Enforcement Respondents. *See* Aug. 30, 2024 Letter from Llofel Rogolifo to Secretary Barton, Ex. A, EDIS Doc. ID 831085. 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. *See* 89 Fed. Reg. 68203-04 (Aug. 23, 2024). No comments were received in response to the notice.

On October 2, 2024, the Commission determined to review the ID's findings that the Enforcement Respondents have violated the GEO. *See* 89 Fed. Reg. 81547-49 (Oct. 8, 2024). In connection with its review, the Commission requested responses from the parties on 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; 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, and whether such evidence was presented here; and whether 19 U.S.C. § 1337(g)(1) applies to allegations of a violation of a GEO in an enforcement proceeding involving defaulting Enforcement Respondents. *See* 89 Fed. Reg. at 81548. The Commission also requested parties to the investigation, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding. *Id.* at 81548-49.

PUBLIC VERSION

On October 16, 2024, Meenaxi filed a response to the Commission’s October 2, 2024 notice.² On the same day, OUII filed a response to the same notice.³

C. The Parties’ Arguments

1. Meenaxi

In response to the Commission’s October 2, 2024 notice, Meenaxi reiterates that after the issuance of the GEO, the Enforcement Respondents “have continued to import, sell for importation, advertise, market, distribute, offer to sell ‘Bournvita’ products that infringe the ‘026 mark in violation of the GEO.” Meenaxi Resp. at 3 (citing Exs. 1 and 2 of Enforcement MSD, Exs. 6-8, 11-13, 15-17, 18-20 of the Enforcement Compl., Exs. 1-7 of Meenaxi Resp.). In addition to relying upon evidence in its Enforcement Complaint, Meenaxi submitted new circumstantial evidence, not submitted in its motion for summary determination in the proceeding before the ALJ, purportedly showing that the Enforcement Respondents’ products were imported after the GEO issued. *Id.* at 10-17.

Meenaxi further argues that under Commission Rule 210.75 (19 C.F.R. § 210.75(a)(2)), which applies to enforcement proceedings, the Commission should “find the facts alleged in the complaint to be true.” *Id.* at 18. According to Meenaxi, “[t]his is similar to the rules governing defaults in the violation phase of an investigation.” *Id.* (citing 19 U.S.C. § 1337(g)(1) and 19 C.F.R. §§ 210.16(a)(1), (b)(1)). Meenaxi also claims Rules 210.16 and 210.75 “have been applied in enforcement proceedings to find parties in default.” *Id.* (citing *Certain Ground Fault*

² Complainant’s Response to the Commission’s October 2, 2024 Request for Written Submissions on the Issues Under Review and on Remedy, the Public Interest and Bonding (Oct. 16, 2024) (“Meenaxi Resp.”).

³ Response of OUII to the Commission’s Request for Written Submissions on the Issues Under Review and on Remedy, the Public Interest and Bonding (Oct. 16, 2024) (“OUII Resp.”).

PUBLIC VERSION

Circuit Interrupters and Products Containing Same, Inv. No. 337-TA-739 (Enforcement), Order No. 75 at 2-3 (Jan. 25, 2013); *Certain Digital Televisions and Certain Products Containing Same and Methods of Using Same*, Inv. No. 337-TA-617 (Enforcement), Order No. 27 at 3-4 (February 26, 2010); *Certain Ink Cartridges and Components Thereof*, Inv. No. 337-TA-565 (Consolidated Enforcement Proceeding and Enforcement Proceeding II), Notice of a Comm'n Determination Not To Review An Initial Determination Finding a Respondent in Default. (Feb. 10, 2009)).

2. OUII

In its response to the Commission's notice, OUII argues that, with respect to the applicability of 19 U.S.C. § 1337(g)(1), "the Commission's authority to conduct an enforcement proceeding is found generally in section 337(b) [19 U.S.C. § 1337(b)]" — the same authority that serves as the basis for the Commission to institute investigations. OUII Resp. at 9 (citing *VastFrame Camera, Ltd. v. Int'l Trade Comm'n*, 386 F.3d 1108, 1113 (Fed. Cir. 2004)). According to OUII, "[g]iven that the Commission's authority to conduct enforcement proceedings is the same as that for an investigation, it can be argued that § 1337(g)(1) also applies to enforcement proceedings." *Id.* at 9-10. OUII concludes that "[s]ection 1337(g)(1) applies to defaulters in an enforcement proceeding and, as a result, the facts alleged in the complaint should be presumed to be true." *Id.* at 13. However, according to OUII, "[e]ven if Section 1337(g)(1) is not found to apply, Commission Rules 210.75(a)(2) and 210.16 provide separate bases for the Commission to make the same presumption." *Id.*

III. STANDARD ON REVIEW

When the Commission reviews an initial determination, in whole or in part, it reviews the determination *de novo*. See *Certain Soft-Edged Trampolines and Components Thereof*, Inv. No.

PUBLIC VERSION

337- TA-908, Comm’n Op. at 4 (May 1, 2015). Upon review, the “Commission has ‘all the powers which it would have in making the initial determination,’ except where the issues are limited on notice or by rule.” *Certain Flash Memory Circuits & Prods. Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm’n Op. at 9–10 (July 1997) (quoting *Certain Acid-Washed Denim Garments & Accessories*, Inv. No. 337-TA-324, Comm’n Op. at 5 (Nov. 1992)). With respect to the issues under review, “the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge.” 19 C.F.R. § 210.45(c). In addition, the Commission also “may make any findings or conclusions that in its judgment are proper based on the record in the proceeding.” *Id.*

IV. ANALYSIS

Commission enforcement investigations are instituted and conducted under the same statutory authority as original investigations, 19 U.S.C. § 1337(b), which states that “[t]he Commission shall investigate any alleged violation of this section on complaint under oath or upon its initiative.” *VastFrame Camera, Ltd. v. Int’l Trade Comm’n*, 386 F.3d 1108, 1113 (Fed. Cir. 2004).

Section 337(g)(1), 19 U.S.C. § 1337(g)(1), provides the Commission statutory authority to find the Enforcement Respondents in default and, upon finding the specified statutory criteria met, to issue cease and desist orders against them upon Complainant Meenaxi’s request. Section 337(g)(1) states:

- (1) If—
 - (A) a complaint is filed against a person under this section;
 - (B) the complaint and a notice of investigation are served on the person;
 - (C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;
 - (D) the person fails to show good cause why the person should not be found in

PUBLIC VERSION

- default; and
(E) the complainant seeks relief limited solely to that person;

the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, limited to that person unless, after considering the effect of such exclusion or order upon the [public interest factors], the Commission finds that such exclusion or order should not be issued.

19 U.S.C. § 1337(g)(1). Neither section 337(b) nor section 337(g)(1) limits the term “complaint” to an original complaint, but rather, the plain language covers the Enforcement Complaint here. Accordingly, the Commission finds that section 337(g)(1) applies equally to both investigations based on original complaints and those based on enforcement complaints.

In addition, the Commission implemented Commission Rule 210.75(a)(2) over thirty years ago, specifically indicating that the Commission may presume the facts alleged in an enforcement complaint to be true. It states:

Upon the failure of a respondent to file and serve a response within the time and in the manner prescribed herein *the Commission, in its discretion, may find the facts alleged in the complaint to be true and take such action as may be appropriate* without notice or hearing, or, in its discretion, proceed without notice to take evidence on the allegations set forth in the complaint....

Commission Rule 210.75(a)(2) (19 C.F.R. § 210.75(a)(2)) (emphasis added).⁴ This rule is consistent with section 337(g)(1).

In this enforcement investigation, the conditions set forth in section 337(g)(1)(A)-(E) (19 U.S.C. § 1337(g)(1)(A)-(E)) have been satisfied. Specifically, Meenaxi filed its Enforcement Complaint alleging that the Enforcement Respondents “continue to import, sell for importation, advertise, market, distribute, offer to sell, and sell the infringing Bournvita products found to infringe the ’026 Mark.” *See* Enforcement Complaint, ¶ 13. As noted above, each Enforcement Respondent was served with the Enforcement Complaint, the Commission’s November 9th

⁴ The Commission promulgated Commission Rule 210.75 pursuant to 19 U.S.C. § 1337 in 1994. *See* 59 Fed. Reg. 39039, 39067-68 (Aug. 1, 1994).

PUBLIC VERSION

notice, the ALJ's Order to Show Cause, and the ALJ's ID granting Meenaxi's MSD. *See supra* Part III.A. The Enforcement Respondents were provided numerous opportunities to respond to Meenaxi's allegations in the Enforcement Complaint, but each Enforcement Respondent failed to respond to the Enforcement Complaint and NOI and failed to show good cause why they should not be found in default. Finally, Meenaxi made a request for CDOs limited to each defaulting Enforcement Respondent. Accordingly, the Commission finds that the conditions set forth in section 337(g)(1)(A)-(E) (19 U.S.C. § 1337(g)(1)(A)-(E)) have been satisfied and the Commission shall presume the facts alleged in the Enforcement Complaint to be true. *See* section 337(g)(1); *see also* Commission Rule 210.75(a)(2) (19 C.F.R. § 210.75(a)(2)).

The language of the GEO orders that:

Chocolate Milk Powder and Packaging Thereof (as defined in paragraph 2 below) that infringe the Asserted Trademark 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 trademark has been abandoned, canceled, or rendered invalid or unenforceable.

GEO, ¶ 1. In other words, the GEO prohibits the importation of covered articles that infringe the Asserted Trademark. The GEO does not cover sales after importation, sales for importation, advertising, marketing, distributing, or offering to sell as alleged by Complainant.

The Enforcement Complaint contains factual allegations that after the GEO issued, the Enforcement Respondents "continue to import...the infringing Bournvita products found to infringe the '026 Mark." *See* Enforcement Complaint, ¶¶ 13, 19-20, 23-25, 27-28, 30-31, and 36-37. These allegations in the Enforcement Complaint were supported by evidence of importation of the products into the United States after the GEO issued. As OUII notes: "All of this evidence [that accompanied the Enforcement

PUBLIC VERSION

Complaint] post-dates issuance of the GEO and provides circumstantial evidence that the infringing product was still being imported after November 2022 in contravention of the GEO.” OUII Resp. at 8. The Enforcement Complaint further alleges the facts that those importations of each of the Enforcement Respondents were of products that were found to infringe the ’026 Mark in the original investigation. *See* Enforcement Complaint, ¶¶ 3, 5, 8. The Commission presumes these allegations to be true, and finds these facts establish that the Enforcement Respondents violated the GEO.⁵

V. REMEDY, PUBLIC INTEREST, AND BONDING

A. Cease and Desist Orders

Section 337(g)(1) states that, once the statutory prerequisites of subsections (A) through (E) are satisfied, upon the complainant’s request, the Commission “shall issue an exclusion from entry or a cease and desist order, or both, limited to [a defaulting respondent] unless, after considering the effect of such exclusion or order 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 or order should not be issued.” *See* 19 U.S.C. § 1337(g)(1); *see also Laerdal*, 910 F.3d at 1212-13.

The RD recommended issuance of CDOs against each of the Enforcement Respondents. RD at 28. It found that because the Enforcement Respondents are domestic respondents, “it is reasonable to infer that they each maintain commercially significant inventory in the United States.” *Id.* It also found that “the evidence shows that each of the Enforcement Respondents

⁵ Given the Commission’s finding under section 337(g)(1), the Commission need not reach the issue of whether Complainant provided reliable, probative, and substantial evidence of importation of infringing products after the GEO issued to establish a violation of the GEO under the summary determination standard. *See* 19 C.F.R. § 210.18. Therefore, the Commission, on review, determines to deny Meenaxi’s motion for summary determination as moot.

PUBLIC VERSION

have domestic operations that are undercutting the remedy provided by the GEO.” *Id.* In addition, both Meenaxi and OUII argue that permanent CDOs are warranted against each of the Enforcement Respondents. *See* Meenaxi Resp. at 21-23; OUII Resp. at 13-14.

As discussed below, the Commissioners have different bases for finding that CDOs are warranted against the defaulting Enforcement Respondents, but there is unanimous agreement that CDOs should issue. Chair Karpel and Commissioner Schmidlein find that section 337(g)(1) compels the issuance of CDOs as to the defaulting Enforcement Respondents where, as here, the criteria under subsection 337(g)(1)(A)-(E) are met. As discussed above, the Enforcement Respondents have been found in default and Meenaxi’s requested CDOs are limited to each of the Enforcement Respondents. As such, Chair Karpel and Commissioner Schmidlein find the requirements of subsections 337(g)(1)(A)-(E) are satisfied and the statute directs the Commission to issue the requested CDOs, subject to consideration of the public interest. The public interest factors as detailed below do not support a finding that the remedial orders in this investigation would be contrary to the public interest. Accordingly, Chair Karpel and Commissioner Schmidlein would issue CDOs against the defaulting Enforcement Respondents per the statutory directive of section 337(g)(1). *See Certain Compact Wallets and Components Thereof*, Inv. No. 337-TA-1355 (“*Certain Compact Wallets*”), Comm’n Op. at 28 (Aug. 13, 2024) (“Chair Karpel and Commissioner Schmidlein . . . consider section 337(g)(1) as the appropriate authority for the issuance of the CDOs as to defaulting respondents when the criteria under subsection 337(g)(1)(A)-(E) are met.”); *Certain Blood Flow Restriction Devices with Rotatable Windlasses and Components Thereof*, Inv. No. 337-TA-1364, Comm’n Op. at 32 (Oct. 23, 2024) (“Given, *inter alia*, that all Defaulting Respondents have been found in default and that Complainants’ requested CDOs are limited to each of the Defaulting Respondents, Chair Karpel

PUBLIC VERSION

and Commissioner Schmidlein find the requirements of subsections 337(g)(1)(A)-(E) are satisfied and the statute directs the Commission to issue the requested CDOs upon request with respect to the Defaulting Respondents subject to consideration of the public interest.”).

Commissioner Johanson and Commissioner Kearns note that under Commission precedent, “[CDOs] are generally issued when, with respect to the imported infringing products, respondents maintain commercially significant inventories in the United States or have significant domestic operations that could undercut the remedy provided by an exclusion order.” *Certain Air Mattress Sys., Components Thereof, & Methods of Using the Same*, 337-TA-971, Comm’n Op. at 49 (June 20, 2017) (citation omitted). In addition, in investigations in which a domestic respondent is found in default, as is the case for all four Enforcement Respondents here, Commissioners Johanson and Kearns presume the presence of commercially significant inventories in the United States or significant domestic operations with respect to the infringing articles to warrant a cease and desist order. *See Certain Compact Wallets*, Comm’n Op. at 27 (July 29, 2024); *see also Certain Vaporizer Cartridges and Components Thereof*, Inv. No. 337-TA-1211, Comm’n Op. at 14-15 (Mar. 1, 2022); *Certain Arrowheads with Deploying Blades & Components Thereof & Packaging Therefor*, Inv. No. 337-TA-977, Comm’n Op. at 21 (May 1, 2017).

Accordingly, the Commission has determined to issue CDOs against each of the Enforcement Respondents.

B. The Public Interest

In determining whether to issue the requested CDOs for the violations of the previously issued GEO, the Commission must consider the effect of the remedy on certain public interest considerations: (1) the public health and welfare; (2) competitive conditions in the United States

PUBLIC VERSION

economy; (3) the production of like or directly competitive products in the United States; and (4) United States consumers. *See* 19 U.S.C. § 1337(g)(1). In this enforcement investigation, the Commission finds that the public interest does not preclude the issuance of the requested CDOs. This is consistent with the Commission’s discussion of the public interest factors in its opinion in the underlying investigation where it found that the public interest does not preclude the issuance of the requested GEO. None of the Enforcement Respondents filed public interest comments, nor is there any evidence that conditions in the United States have changed significantly since issuance of the GEO.

The Commission agrees with Meenaxi and OUII that the cease and desist orders would not adversely affect the four statutory public interest factors in 19 U.S.C. § 1337(g)(1). *See* Meenaxi Resp. at 23-24; OUII Resp. at 15-16. With respect to the first public interest factor, there is no evidence that the CDOs would be contrary to the public health and welfare. For example, the infringing products covered by the GEO (“Covered Products”) in this enforcement investigation are “chocolate milk powder in consumer-sized container with the Bournvita label.” *See* GEO at ¶ 2. There is no evidence that these products are necessary to fulfill any public health, safety, or welfare needs. *See* OUII Resp. at 15. GEO prohibits the importation of covered articles that infringe the Asserted Trademark. The GEO does not cover sales after importation, sales for importation, advertising, marketing, distributing, or offering to sell as alleged by Complainant

Further, there are alternatives to the Covered Products, including Meenaxi’s products, that could fill any supply shortages created by issuance of the CDOs prohibiting the continued marketing and sales in the United States of the Covered Products. *See* Meenaxi’s Initial Compl. at 2. Finally, there is no evidence that issuance of the CDOs would adversely affect competitive

PUBLIC VERSION

conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. *See* OUII Resp. at 15.

Accordingly, the Commission finds that the public interest factors do not preclude the issuance of the requested CDOs.

C. Bonding

Meenaxi did not request a bond in its Enforcement Complaint. In addition, Meenaxi admits in its response to the Commission's October 2, 2024, notice that "Complainant, OUII and the ALJ did not discuss the issue of a bond in the earlier briefing." Meenaxi Resp. at 24. Nonetheless, Meenaxi asserts in its remedy briefing before the Commission that "[i]f the Commission determines to allow sales under bond in this proceeding, Complainant Meenaxi recommends that the bond be the same as in the underlying investigation." *Id.* at 25 (citing Investigation No. 337-TA-1232, Comm'n Opinion at 14, (EDIS Doc. ID 786068), December 9, 2022). OUII confirms that Meenaxi "did not seek a bond in its Enforcement Complaint." OUII Resp. at 16. It further states, "OUII is of the view that since no bond was requested, there is no need for a bond." *Id.* According to OUII, however, "[t]o the extent that Complainant belatedly seeks and the Commission considers such a request, OUII is of the view that, due to a lack of evidence of price differentials or royalty rates, a bond of one hundred percent (100%) of the entered value of the Covered Products is appropriate." *Id.* (citing *Certain Flash Memory Circuits and Prods. Containing Same*, Inv. No. 337-TA-382, Comm'n Op. at 26-27, USITC Pub. No. 3046 (July 1997)).

In this proceeding, the Enforcement Respondents were found to be in default and there is no evidence of price differentials or royalty rates. As a result and consistent with the bond set in the underlying investigation, the Commission has determined to set a bond of one hundred

PUBLIC VERSION

percent (100%) of the entered value of the Covered Products during the period of Presidential review.

VI. CONCLUSION

For the foregoing reasons, the Commission has determined that a violation of the GEO has been found under section 337(g)(1) in this enforcement investigation because the conditions set forth in section 337(g)(1)(A)-(E) have been satisfied as to each of the four Enforcement Respondents here. The Commission has also determined that the appropriate enforcement measure is to issue a CDO against each Enforcement Respondent and that the public interest will not be adversely affected by the issuance of the CDOs. Finally, the Commission has determined to set a bond during the period of Presidential review of one hundred percent (100%) of the entered value.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

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