

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ELECTROLYTE CONTAINING
BEVERAGES AND LABELING AND
PACKAGING THEREOF**

Investigation No. 337-TA-1269

**NOTICE OF COMMISSION FINAL DETERMINATION TO ISSUE A
LIMITED EXCLUSION ORDER; TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue a limited exclusion order (“LEO”) barring entry of certain electrolyte containing beverages and labeling and packaging thereof that are imported by or on behalf of the following defaulting respondents (all of Mexico): Carbonera Los Asadores de C.V.; Comercial Treviño de Reynosa, S.A. de C.V.; Distribuidora Mercatto S.A. de C.V.; H & F Tech International S.A. de C.V.; Leticia Angélica Saenz Fernandez; Yoselen Susana Martinez Tirado; Grupo Comercial Lux del Norte S.A. de C.V.; and Caribe Agencia Express, S.A. de C.V. (collectively, the “Defaulting Respondents”). The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-4716. 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: On July 6, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by CAB Enterprises, Inc. of Houston, Texas and Sueros y Bebidas Rehidratantes, S.A. de C.V. of Mexico (collectively, “Complainants”). *See* 86 FR 35532-33 (July 6, 2021). The complaint, as supplemented, alleges a violation 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 electrolyte containing beverages and labeling and packaging thereof by reason of infringement of U.S. Trademark Registrations Nos. 4,222,726; 4,833,885; 4,717,350; and 4,717,232 (collectively, “the Asserted Trademarks”). *See id.* In addition to the Defaulting Respondents, the notice of investigation (“NOI”) names the following respondents (all of Mexico): Flexicompuestos S.A. de C.V. (“Flexicompuestos”);

Comercializadora Degu S.A. de C.V.; MPC Foods S.A. de C.V.; Myrna Guadalupe Perez Martinez; Comercializadora Embers S.A. de C.V.; and Manuel Bautista Nogales (“Nogales”) (collectively, “the Terminated Respondents”). *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

The Commission previously found the Defaulting Respondents in default pursuant to Commission Rule 210.16 (19 CFR 210.16) for failure to respond to the complaint and notice of investigation and to orders to show cause why they should not be found in default for failing to respond to the complaint and NOI issued by the presiding administrative law judge (“ALJ”). *See* Order No. 8 (Sept. 14, 2021), *unreviewed by* Comm’n Notice (Oct. 6, 2021); Order No. 19 (Apr. 7, 2022), *unreviewed by* Comm’n Notice (Apr. 26, 2022).

On April 18, 2022, Complainants filed a declaration under Commission Rule 210.16 (19 CFR 210.16) requesting the immediate entry of a limited exclusion order against the Defaulting Respondents. Complainants also indicated pursuant to 19 CFR 210.16(c)(2) that they are not seeking issuance of a general exclusion order or cease and desist orders.

On May 27, 2022, the Commission issued a notice seeking written submissions from the parties, the public, and interested government agencies on the issues of remedy, the public interest, and bonding. *See* 87 FR 33831-32 (June 3, 2022) (“Remedy Notice”). On June 10, 2022 (and as corrected on June 23, 2022), Complainants filed a submission in response to the Commission’s Remedy Notice. On the same day, respondents Flexicompuestos and Nogales also filed a submission in response to the Commission’s Remedy Notice. OUII filed a submission in response to the Commission’s Remedy Notice on June 10, 2022, and a response to the parties’ submissions on June 17, 2022.

On June 28, 2022, the Commission terminated the investigation as to the Terminated Respondents, including Flexicompuestos and Nogales, based on Complainant’s withdrawal of the complaint as to those respondents. *See* Order No. 21 (June 1, 2022), *unreviewed by* Comm’n Notice (June 28, 2022). Accordingly, only the Defaulting Respondents remain in the investigation.

When the conditions in Section 337(g)(1)(A)-(E) (19 U.S.C. 1337(g)(1)(A)-(E)) have been satisfied, Section 337(g)(1) and Commission Rule 210.16(c) (19 CFR 210.16(c)) direct the Commission, upon request, to issue a limited exclusion order or a cease and desist order or both against a respondent found in default, based on the allegations regarding a violation of section 337 in the Complaint, which are presumed to be true, unless after consideration of the public interest factors in section 337(g)(1), it finds that such relief should not issue.

Having examined the record of this investigation, including the parties’ submissions in response to the Remedy Notice, the Commission has determined pursuant to subsection 337(g)(1) that the appropriate remedy in this investigation is an LEO prohibiting the unlicensed entry of certain electrolyte containing beverages and labeling and packaging thereof that infringe Complainants’ Asserted Trademarks and that are imported by or on behalf of the Defaulting Respondents. The Commission has determined that the public interest factors enumerated in subsection 337(g)(1) do not preclude the issuance of the LEO. The Commission has further

determined that the bond during the period of Presidential review pursuant to section 337(j) (19 U.S.C. 1337(j)) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the LEO. The investigation is terminated.

The Commission's vote for this determination took place on November 2, 2022.

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).

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.



Katherine M. Hiner
Acting Secretary to the Commission

Issued: November 2, 2022