

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

In the Matter of

**CERTAIN BEVERAGE BREWING
CAPSULES, COMPONENTS THEREOF,
AND PRODUCTS CONTAINING THE
SAME**

Investigation No. 337-TA-929

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION FINDING NO
VIOLATION OF SECTION 337 BY SOLOFILL LLC OR DONGGUAN HAI RUI
PRECISION MOULD CO., LTD.; ISSUANCE OF A LIMITED EXCLUSION
ORDER AND CEASE AND DESIST ORDERS TO DEFAULTED
RESPONDENTS; 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 found no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337") by Solofill LLC and DongGuan Hai Rui Precision Mould Co., Ltd., and has issued a limited exclusion order and cease desist orders to the defaulted respondents Eko Brands, LLC, Evermuch Technology Co., Ltd., and Ever Much Company, Ltd. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be 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) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.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 September 9, 2014, based on a complaint filed by Adrian Rivera of Whittier, California, and Adrian Rivera Maynez Enterprises, Inc., of Santa Fe Springs, California (together, "ARM"). 79 *Fed. Reg.* 53445-46. The complaint alleges violations of section

337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain beverage brewing capsules, components thereof, and products containing the same that infringe claims 5-8 and 18-20 of U.S. Patent No. 8,720,320 (“the ’320 patent”). *Id.* at 53445. The Commission’s notice of investigation named as respondents Solofill LLC of Houston, Texas (“Solofill”); DongGuan Hai Rui Precision Mould Co., Ltd. of Dong Guan City, China (“DongGuan”); Eko Brands, LLC (“Eko Brands”), of Woodinville, Washington; Evermuch Technology Co., Ltd. (“Evermuch Technology”), of Hong Kong, China; Ever Much Company Ltd. (“Evermuch Company”) of Shenzhen, China; Melitta USA, Inc. (“Melitta”), of North Clearwater, Florida; LBP Mfg., Inc. of Cicero, Illinois and LBP Packaging (Shenzhen) Co. Ltd. of Shenzhen, China (together, “LBP”); Spark Innovators Corp. (“Spark”), of Fairfield, New Jersey; B. Marlboros International Ltd. (HK) (“B. Marlboros”) of Hong Kong, China; and Amazon.com, Inc. (“Amazon”) of Seattle, Washington. The Office of Unfair Import Investigations was also named as a party to the investigation. *Id.*

The Commission terminated the investigation with respect to Melitta, Spark, LBP, and B. Marlboros based on the entry of consent orders and terminated the investigation with respect to Amazon based on a settlement agreement. Notice (Dec. 18, 2014); Notice (Jan. 13, 2015); Notice (Mar. 27, 2015); Notice (Apr. 10, 2015). The Commission also found Eko Brands, Evermuch Technology, and Evermuch Company in default for failing to respond to the complaint and notice of investigation. Notice (May 18, 2015). Accordingly, Solofill and DongGuan (together, “Respondents”) are the only respondents actively participating in the investigation.

On September 4, 2015, the ALJ issued his final initial determination (“ID”) finding no violation of section 337. The ID found that ARM had established every element for finding a violation of section 337 except for infringement. The ID found that Respondents were not liable for direct infringement because direct infringement required the combination of Respondents’ products with a third-party single serve beverage brewer, and that Respondents were not liable for induced or contributory infringement because they did not have pre-suit knowledge of the ’320 patent. The ID did find that Respondents’ products directly infringed claims 5-7, 18, and 20 of the ’320 patent (“the asserted claims”) when combined with a third-party single serve coffee brewer, that the asserted claims were not shown invalid by clear and convincing evidence, and that ARM satisfied both the technical and economic prongs of the domestic industry requirement. The ALJ also issued his recommendation on remedy and bonding along with his ID.

On September 21, 2015, ARM petitioned for review of the ID’s findings that Respondents were not liable for induced and contributory infringement because of a lack of pre-suit knowledge, and Respondents petitioned for review of several of the ID’s findings. On September 29, 2015, the parties opposed each other’s petitions, and the Commission Investigative Attorney (“IA”) opposed both petitions.

On November 9, 2015, the Commission determined to review the final ID in part. Specifically the Commission determined to review the following: (1) the ID's findings on the construction, infringement, and technical prong of the domestic industry requirement for the limitation "a needle-like structure, disposed below the base"; (2) the ID's findings on induced and contributory infringement; (3) the ID's findings that the asserted claims are not invalid for a lack of written description, as anticipated by Beaulieu and the APA, or as obvious; and (4) the ID's findings on the economic prong of the domestic industry requirement. The Commission determined not to review the remaining findings in the ID. The Commission also requested briefing from the parties on the issue of pre-suit knowledge, and briefing from the parties and the public on the issues of remedy, the public interest, and bonding. The Commission received initial written submissions from ARM, Respondents, and the IA on November 20, 2015, and responsive written submissions from ARM, Respondents, and the IA on December 1, 2015. No submissions were received from the public.

Having examined the record of this investigation, including the ALJ's final ID, the petitions, responses, and other submissions from the parties, the Commission has determined that ARM has not proven a violation of section 337 by Solofill and DongGuan. Specifically, the Commission has determined to modify the ID's construction of "a needle-like structure, disposed below the base," and, under the modified construction, affirms under modified reasoning the ID's findings on infringement and the technical prong of the domestic industry requirement. The Commission has also determined to reverse the ID's finding that Respondents are not liable for contributory and induced infringement. The Commission has further determined that that claims 5 and 6 of the '320 patent are invalid as anticipated by Beaulieu and that claims 5-7, 18, and 20 of the '320 patent are invalid for a lack of written description (Commissioner Kieff dissenting on written description). Additionally, the Commission has determined that Respondents have not shown that claims 7, 18, and 20 are invalid as anticipated or that claims 5-7, 18, and 20 are invalid as obvious. Finally, the Commission has determined to affirm the ID's findings on the economic prong. All other findings in the ID that are consistent with the Commission's determinations are affirmed.

The Commission also previously found the statutory requirements of section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission Rule 210.16(a)(1) (19 C.F.R. § 210.16(a)(1)) met with respect to Eko Brands, Evermuch Technology, and Evermuch Company, and found these respondents in default. *See* ALJ Order No. 19, *unreviewed* Notice (May 18, 2015).

The Commission has determined that the appropriate form of relief in this investigation is: (1) a limited exclusion order prohibiting the unlicensed entry of beverage brewing capsules, components thereof, and products containing same that are manufactured abroad by or on behalf of, or imported by or on behalf of, Eko Brands, Evermuch Technology, or Evermuch Company, that infringe one or more of claims 8 and 19 of the '320 patent; (2) cease and desist orders prohibiting Eko Brands, Evermuch Technology, and Evermuch Company from importing, selling, marketing, advertising,

distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of beverage brewing capsules, components thereof, and products containing same that infringe one or more of claims 8 and 19 of the '320 patent. The Commission has further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. § 1337(g)(1)) do not preclude the issuance of the remedial orders. Finally, the Commission has determined that the bond during the period of Presidential review shall be in the amount of 100 percent of the entered value of the imported subject articles of Eko Brands, Evermuch Technology, and Evermuch Company. The Commission's orders were delivered to the President and the United States Trade Representative on the day of their issuance. A Commission Opinion concerning the Commission's finding of no violation by Solofill or DongGuan will issue shortly.

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 C.F.R. 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: March 17, 2016