

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C. 20436**

**In the matter of**

**CERTAIN ENERGY DRINK PRODUCTS**

**Inv. No. 337-TA-678**

**CORRECTED GENERAL EXCLUSION ORDER**

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) based on the unlawful importation and sale of certain energy drink products that infringe (1) U.S. Trademark Registration Nos. 3,092,197; 2,946,045; 2,994,429; or 3,479,607 or (2) U.S. Copyright Registration No. VA0001410959.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is necessary because there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing energy drink products.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the general exclusion order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.

Accordingly, the Commission hereby **ORDERS** that:

1. Energy drink products that (i) infringe U.S. Trademark Registration Nos. 3,092,197; 2,946,045; 2,994,429; or 3,479,607 or any marks confusingly similar thereto or that are otherwise misleading as to source, origin, or sponsorship, or (ii) bear U.S. Copyright Registration No. VA0001410959 or a design substantially similar thereto are excluded from entry into the United States for consumption, entry for consumption from a foreign trade zone, or withdrawal from warehouse for consumption, except if imported by, or licensed from, or with the permission of the trademark and copyright owner or as provided by law, until such date as the trademarks and copyright are abandoned, cancelled, or rendered invalid or unenforceable.

2. For the purpose of assisting U.S. Customs and Border Protection in the enforcement of this Order, and without in any way limiting the scope of the Order, the Commission has attached to this Order a copy of the relevant trademark registrations as Exhibit 1 and a copy of the relevant copyright as Exhibit 2.

3. Notwithstanding paragraph 1 of this Order, the aforesaid energy drink products are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100 percent of the entered value of the products pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(j)), and the Presidential memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251 (Jul. 21, 2005)) from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than 60 days after the date of receipt of this Order. Note, however, this provision does not exempt infringing articles from seizures under the trademark

laws enforced by Customs and Border Protection, most notably 19 U.S.C. § 1526(e) and 19 U.S.C. § 1595a(c)(2)(C) in connection with 15 U.S.C. § 1124.

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to energy drink products that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

5. Complainants Red Bull GmbH and Red Bull North America, Inc. shall file a written statement with the Commission, made under oath, each year on the anniversary of the issuance of this Order stating whether Red Bull GmbH and Red Bull North America, Inc. continues to use each of the aforesaid trademarks and copyright in commerce in the United States in connection with energy drink products, whether any of the aforesaid trademarks or copyright has been abandoned, canceled, or rendered invalid or unenforceable, and whether Complainants continue to satisfy the economic requirements of Section 337(a)(2).

6. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

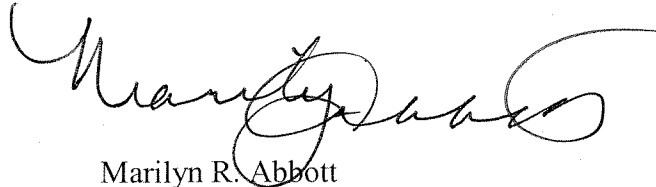
7. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs and Border Protection.

8. At the discretion of U.S. Customs and Border Protection and pursuant to procedures it establishes, persons seeking to import energy drink products that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under this Order. At its discretion, U.S. Customs and Border Protection may require persons who have provided the

certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

9. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.

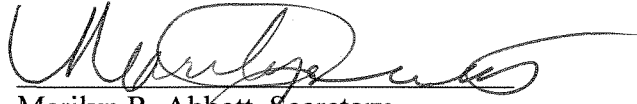
A handwritten signature in black ink, appearing to read "Marilyn R. Abbott", with a large, sweeping flourish extending to the right.

Marilyn R. Abbott  
Secretary to the Commission

Issued: October 1, 2010

**CERTIFICATE OF SERVICE**

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF ISSUANCE OF A CORRECTED GENERAL EXCLUSION ORDER** has been served by hand upon the Commission Investigative Attorney, Juan Cockburn, Esq., and the following parties as indicated, on October 1, 2010.

  
Marilyn R. Abbott, Secretary  
U.S. International Trade Commission  
500 E Street, SW  
Washington, DC 20436

**On Behalf of Complainants Red Bull GmbH and Red Bull North America, Inc.:**

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