UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of	
CERTAIN CHOCOLATE MILK POWDER AND PACKAGING THEREOF	**Investigation No. 337-TA-1232 (Remand)**

NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL DETERMINATION (ORDER NO. 27) GRANTING COMPLAINANT'S MOTION FOR SUMMARY DETERMINATION OF A VIOLATION OF SECTION 337; SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON REMEDY, THE PUBLIC INTEREST, AND BONDING

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined not to review an initial determination ("ID") (Order No. 27) of the presiding chief administrative law judge ("CALJ"), granting summary determination on violation of section 337 and including a recommended determination ("RD") on remedy and bonding. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. 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, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On December 1, 2020, the Commission instituted this investigation based on a complaint filed by Meenaxi Enterprise Inc. of Edison, New Jersey ("Meenaxi"). 85 FR 77237 (Dec. 1, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, due to the importation into the United States, sale for importation, or sale in the United States after importation of certain chocolate milk powder and packaging thereof that purportedly infringe U.S. Trademark Registration No. 4,206,026 ("the '026 mark"). *Id.* The complaint also alleges the existence of a domestic industry. *Id.* The notice of investigation names twenty-one respondents: Bharat Bazar Inc. of Union City, California ("Bharat Bazar"); Madras Group Inc. d/b/a Madras Groceries of Sunnyvale, California; Organic Food d/b/a Namaste Plaza Indian Super Market of Fremont,

California ("Organic Food"); India Cash & Carry of Sunnyvale California; New India Bazar Inc. d/b/a New India Bazar of San Jose, California ("New India"); 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 Investigation ("OUII") was named as a party. *Id.*

On February 10, 2021, the CALJ issued an ID (Order No. 6) finding all respondents in default. OUII supported the motion. On March 2, 2021, the Commission issued a notice determining not to review Order No. 6.

On May 24, 2021, Meenaxi moved for a summary determination of violation by all of the respondents, each of whom had previously been found in default. On June 16, 2021, OUII responded in support of the motion. On December 1, 2021, the CALJ granted the motion as an 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 the CALJ for further proceedings. *Id.*

On remand, the CALJ assigned this investigation to himself. He later 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 of San Diego, California ("Organic Ingredients"); (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. of Union City, California ("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, 87 Fed. Reg. 22, 940 (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 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 initial determination finding Organic Ingredients and New India in default. Order No. 23 (May 19, 2022), unreviewed by Notice at 2 (June 14, 2022).

On June 15, 2022, Meenaxi filed a second motion for summary determination of violation of section 337 as to the defaulting respondents, and requesting the issuance of a general exclusion order. On July 6, 2022, OUII responded in support of Meenaxi.

On August 23, 2022, the CALJ issued the subject ID (Order No. 27) granting Meenaxi's motion. The ID adopts substantially all of the findings from Order No. 15. In particular, the ID finds, *inter alia*, that Meenaxi owns the '026 Mark, that the '026 Mark is valid, that the respondents import or sell after importation products that bear the '026 Mark, that the respondents infringe the '026 Mark, and that the technical prong and economic prong of the domestic industry requirement have been satisfied.[1] Order No. 27 at 4 (citing Order No. 15 at 12-29). The ID also finds that Organic Ingredients and New India have sold the infringing products after importation into the United States and that these respondents infringe the '026 Mark by selling these products. ID at 9-10. As to remedy, the RD finds that there is a widespread pattern of unauthorized use of the asserted patents and that a general exclusion order is necessary to prevent circumvention. Order No. 27 at 18 (citing Order No. 15 at 29-33). The RD recommends a bond rate of one hundred (100%) because complete pricing information and royalty information is not available. Order No. 27 at 19 (citing Order No. 15 at 34-35).

No petitions for review of the ID were filed.

The Commission has determined not to review the ID.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) one or more cease and desist orders ("CDOs") that could result in the defaulting respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or CDO would have on: (1) the public health and welfare; (2)

[1] To the extent the ID finds that quality control investments as a category can never be counted for the economic prong of the domestic industry requirement, *see* Order No. 15 at 27, Commissioners Schmidtlein and Karpel do not join that finding. Any such disagreement, however, is not outcome determinative in this investigation.

competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to this investigation, interested government agencies, and any other interested parties are invited to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should include views on the RD by the CALJ on remedy and bonding.

In its initial written submissions, Meenaxi is also requested to identify the remedy sought and Meenaxi and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Meenaxi is further requested to provide the HTSUS subheadings under which the subject articles are imported and to supply identification information for all known importers of the subject articles.

Initial written submissions, including proposed remedial orders, must be filed no later than close of business on October 3, 2022. Reply submissions must be filed no later than the close of business on October 10, 2022. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1232) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202-205-2000).

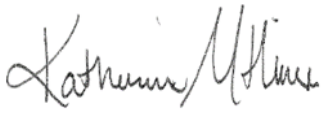
Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and

Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission vote for these determinations took place on September 19, 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).

By order of the Commission.



Katherine M. Hiner
Acting Secretary to the Commission

Issued: September 19, 2022