

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C. 20436**

**In the Matter of**

**CERTAIN ENERGY DRINK PRODUCTS**

**Investigation No. 337-TA-678**

**NOTICE OF ISSUANCE OF A GENERAL EXCLUSION;  
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 issued a general exclusion order in the above-captioned investigation and has terminated the investigation.

**FOR FURTHER INFORMATION CONTACT:** Jia Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-708-3747. Copies of all nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. 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>.

**SUPPLEMENTARY INFORMATION:** This trademark and copyright-based investigation was instituted by the Commission on June 17, 2009, based on a complaint filed by Red Bull GmbH of Fuschl am See, Austria, and Red Bull North America, Inc. of Santa Monica, California (collectively, "Red Bull"). 74 *Fed. Reg.* 28725 (Jun. 17, 2009). The respondents named in the notice of investigation were: Chicago Import Inc. of Chicago, Illinois ("Chicago Import"); Lamont Distr., Inc., a/k/a Lamont Distributors Inc., of Brooklyn, New York ("Lamont"); India Imports, Inc., a/k/a International Wholesale Club, of Metairie, Louisiana ("India Imports"); Washington Food and Supply of D.C., Inc., a/k/a Washington Cash & Carry, of Washington, D.C. ("Washington Food"); Vending Plus, Inc. d/b/a Baltimore Beverage Co., of Glen Burnie, Maryland ("Vending Plus"); Posh Nosh Imports (USA), Inc. of South Kearny, New Jersey ("Posh Nosh"); Greenwich, Inc. of Florham Park, New Jersey ("Greenwich"); Advantage Food Distributors Ltd. of Suffolk, UK ("Advantage Food"); Wheeler Trading, Inc. of Miramar, Florida

("Wheeler Trading"); Avalon International General Trading, LLC of Dubai, United Arab Emirates ("Avalon"); and Central Supply, Inc. of Brooklyn, New York ("Central Supply"). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The asserted trademarks are U.S. Trademark Reg. Nos. 3,092,197; 2,946,045; 2,994,429; and 3,479,607. The asserted copyright is U.S. Copyright Registration No. VA0001410959.

On January 5, 2010, the Commission determined not to review two initial determinations ("IDs") (Order Nos. 21 and 22) finding Lamont and Avalon in default pursuant to Commission Rule 210.16. On January 28, 2010, the Commission determined not to review two additional IDs (Order Nos. 29 and 30) finding respondents Posh Nosh, Greenwich, Advantage Food, and Chicago Imports in default pursuant to Commission Rule 210.16. On February 16, 2010, the Commission determined not to review an ID (Order No. 32) finding respondent Central Supply in default pursuant to Commission Rule 210.16.

Wheeler Trading, Washington Food, India Imports, and Vending Plus were the only respondents that responded to the complaint and notice of investigation. On January 20, 2010, the Commission determined not to review four IDs (Order Nos. 24, 25, 26, and 27) terminating the investigation as to those respondents on the basis of settlement agreements. Thus, defaulting respondents Posh Nosh, Greenwich, Advantage Food, Chicago Imports, Avalon, Central Supply, and Lamont were the only respondents remaining in the investigation.

On December 2, 2009, Red Bull moved for summary determination on the issues of domestic industry, importation, and violation of Section 337. Pursuant to Commission Rule 210.16(c)(2), 19 C.F.R. § 216(c)(2), Red Bull also stated that it was seeking a general exclusion order. On March 31, 2010, the presiding ALJ issued the subject ID, Order No. 34, granting Red Bull's motion for summary determination of violation with respect to respondents Avalon, Posh Nosh, Greenwich, Advantage Food, Central Supply, and Chicago Import, but not with respect to Lamont. He also issued his recommendations on remedy and bonding in Order No. 34. Specifically, the ALJ recommended issuance of a general exclusion order and a bond of 100 percent. No petitions for review were filed.

On May 14, 2010, the Commission issued notice of its determination not to review the ID granting summary determination of violation in part, and requesting briefing on remedy, the public interest, and bonding. On May 28, 2010, Red Bull submitted briefing on remedy, the public interest, and bonding. Specifically, Red Bull requested a general exclusion order. The IA also submitted briefing on May 28, 2010, in support of a general exclusion order. No other submissions were received.

Having reviewed the record in this investigation, including the ALJ's recommended determination, the Commission has determined that the appropriate relief is a general exclusion order prohibiting the unlicensed entry of certain 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 Red Bull's U.S. Copyright Registration No. VA0001410959 or a design confusingly similar thereto or that are otherwise misleading as to source, origin or sponsorship.

The Commission has further determined that the public interest factors listed in section 337(d)(1) do not preclude issuance of the general exclusion order. Finally, the Commission has determined that the amount of bond to permit temporary importation during the period of Presidential review shall be in the amount of 100 percent of the value of the infringing products that are subject to the general exclusion order. The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day they were issued.

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 sections 210.49-50 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.49-50.

By order of the Commission.

/s/  
Marilyn R. Abbott  
Secretary to the Commission

Issued: September 8, 2010