INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1196]

Certain In Vitro Fertilization Products, Components Thereof, and Products Containing the Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 11, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of EMD Serono, Inc. of Rockland, Massachusetts. A supplement and amendment to the complaint was filed on March 27, 2020. The complaint, as supplemented and amended, alleges violations 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 in vitro fertilization products, components thereof, and products containing same (collectively, "Gray Market IVF Products") by reason of infringement of certain U.S. Trademark Registration No. 4,689,651; U.S. Trademark Registration No. 1,772,761; U.S. Trademark Registration No. 3,777,170; U.S. Trademark Registration No. 3,389,332; U.S. Trademark Registration No. 3,816,320; U.S. Trademark Registration No. 1,972,079; U.S. Trademark Registration No. 3,604,207; and U.S. Trademark Registration No. 3,185,427 (collectively, "Registered Marks"); unfair methods of competition and unfair acts in the importation and sale of Gray Market IVF Products by reason of false designation of source, and; unfair methods of competition and unfair acts in the importation and sale of the Gray Market IVF Products by reason of false advertising. The complaint, as supplemented and amended, further alleges that an industry in the United States

exists and that alleged violations threaten to destroy or substantially injure an industry in the United States, as required by the applicable Federal Statutes. The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at https://edis.usitc.gov. For help accessing EDIS, please email EDIS3Help@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at https://www.usitc.gov.

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560 or (202) 205-1802.

SUPPLEMENTARY INFORMATION:

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on April 10, 2020, **ORDERED THAT** –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of the Registered Marks and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(b) whether there is a violation of subsection (a)(1)(A) of section 337 in the unfair methods of competition and unfair acts in the importation and sale of the Gray Market IVF Products through the false designation as to source, the threat or effect of which is to destroy or substantially injure an industry in the United States; and

(c) whether there is a violation of subsection (a)(1)(A) of section 337 in the unfair methods of competition and unfair acts in the importation and sale of the Gray Market IVF Products through false advertising, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is "prescription in vitro fertilization drugs, components thereof, and products containing the same labeled, in whole or in part, Gonal-f, Ovidrel, or Ovitrelle;"

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

EMD Serono, Inc.

One Technology Place

Rockland, MA 02370

(b) The respondents are the following entities alleged to be in violation of section 337, and is/are the parties upon which the complaint is to be served:

FastIVF c/o Domains by Proxy LLC

14455 N. Hayden Road

Scottsdale, AZ 85260

Hermes Eczanesi

Eski Büyükdere Cad.

Windowist Tower No. 26/2

Maslak-Sariyer

Istanbul, Turkey

General Plastik Drug Stores

Buyuk Hanli Konut B2

Suadiye

34740 Istanbul Suadiye

Turkey

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 Fed. Reg. 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 13, 2020.

Lisa Barton,

Secretary to the Commission.

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