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7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-929 (Rescission)]

Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same; Notice of Commission Determination to Institute a Rescission Proceeding; Rescission of a Limited Exclusion Order and Three Cease and Desist Orders; Termination of the Rescission Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a rescission proceeding and to rescind a limited exclusion order ("LEO") three cease and desist orders ("CDOs") issued in the underlying investigation. The rescission proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5468. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On September 9, 2014, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") based a complaint filed by complainants Adrian Rivera and Adrian Rivera Maynez Enterprises, Inc. (together, "ARM") alleging a violation of section 337 by reason of infringement of claims 5-8 and 18-20 of U.S. Patent No. 8,720,320 ("the '320 patent"). 79 FR

53445-46 (Sept. 9, 2014). The notice of institution of the investigation named the following entities as respondents: Solofill, Inc. ("Solofill"); DongGuan Hai Rui Precision Mould Co., Inc. ("DongGuan"); Eko Brands, Inc. ("Eko Brands"); Evermuch Technology Co., Ltd. ("Evermuch Technology"); Ever Much Company Ltd. ("Evermuch Company"); Melitta USA, Inc. ("Melitta"); Spark Innovators Corp. ("Spark"); LBP Manufacturing Inc. and LBP Packaging (Shenzhen) Co. Ltd. (together, "LBP"); B. Marlboros International Ltd. (HK) ("B. Marlboros"); and Amazon.com, Inc. ("Amazon"). 79 FR 53445. 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. Order No. 10 (Nov. 19, 2014), *unreviewed by* Notice (Dec. 18, 2014); Order No. 12 (Dec. 16, 2014), *unreviewed by* Notice (Jan. 13, 2015); Order No. 14 (Feb. 26, 2015), *unreviewed by* Notice (Mar. 27, 2015); Order No. 16 (Mar. 18, 2015), *unreviewed by* Notice (Apr. 13, 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. Order No. 19 (Apr. 22, 2015), *unreviewed by* Notice (May 18, 2015). ARM later withdrew its allegations with respect to claims 8 and 19 of the '320 patent. *See* Order No. 18 (Mar. 24, 2015), *unreviewed by* Notice (Apr. 21, 2015). Accordingly, the only allegations remaining against active respondents were that Solofill and DongGuan violated section 337 with respect to claims 5-7, 18, and 20 of the '320 patent.

On March 17, 2016, the Commission issued a final determination of no violation by Solofill and DongGuan based on its finding that claims 5-7, 18, and 20 of the '320 patent are invalid. 81 FR 15742-43 (Mar. 24, 2016). The Commission, however, found that ARM satisfied the requirements of section 337(g)(1) (19 U.S.C. 1337(g)(1)) with respect to Eko Brands, Evermuch Technology, and Evermuch Company regarding claims 8 and 19 of the '320 patent, and issued an LEO and three CDOs against those entities based on those patent claims.

Id. Espresso Supply, Inc. purchased Eko Brands in November of 2015 and became subject to the orders against Eko Brands.

On June 14, 2018, in litigation between Eko Brands and ARM, the U.S. District Court for the Western District of Washington entered an order finding that claims 5, 8, and 18-19 of the '320 patent are invalid as obvious. *Eko Brands, LLC v. Adrian Rivera Maynez Enterprises, Inc.*, Case No. 2:15-cv-00522-JPD, 2018 WL 2984691 (W.D. Was. Jun. 14, 2018). On July 30, 2018, the Commission temporarily rescinded the LEO and CDOs regarding claims 8 and 19 pending the resolution of any appeal of the district court decision. 83 FR 38178-79 (Aug. 3, 2018). The U.S. Court of Appeals for the Federal Circuit affirmed the district court findings of invalidity of claims 5, 8, and 18-19 of the '320 patent on January 13, 2020, and issued its mandate on February 19, 2020. *Eko Brands, LLC v. Adrian Rivera Maynez Enterprises, Inc.*, 946 F.3d 1367 (Fed. Cir. 2020).

On July 26, 2022, Eko Brands and Espresso Supply, Inc. filed an unopposed petition pursuant to Commission Rule 210.76(a) (19 CFR 210.76(a)) to permanently rescind the LEO and CDO issued against them. They state that, as claims 8 and 19 of the '320 patent have been found invalid by the Federal Circuit and the time for further appeal has passed, the Commission should permanently rescind the LEO and CDO. No party responded to the petition.

Having reviewed the petition seeking to rescind the LEO and CDO based on a subsequent finding that claims 8 and 19 of the '320 patent are invalid, the Commission finds that the conditions which led to the issuance of the LEO and CDO no longer exist, and therefore, granting the petition to rescind is warranted under section 337(k) (19 U.S.C. 1337(k)) and the requirements of Commission Rule 210.76(a) are satisfied. The Commission issued the orders under the presumption that those claims were valid (35 USC 282), which is a condition that no longer exists in light of the district court and Federal Circuit rulings. That changed condition also applies with respect to Evermuch Technology and Evermuch Company. Accordingly, the Commission has determined to institute a rescission proceeding, and to rescind the LEO and three CDOs issued against Eko Brands, Evermuch Technology, and Evermuch Company. The rescission proceeding is terminated.

The Commission vote for this determination took place on August 25, 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.

Issued: August 25, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

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