



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1232 (Enforcement II)]

Certain Chocolate Milk Powder and Packaging Thereof; Notice of Institution of Formal Enforcement 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 formal enforcement proceeding relating to the general exclusion order (“GEO”) issued on November 15, 2022 and cease and desist orders (“CDOs”) issued on November 18, 2024, in the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: Paul Lall, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2043. 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: The Commission instituted the original investigation on December 1, 2020, based on a complaint filed on behalf of Meenaxi Enterprise Inc. (“Meenaxi”) of Edison, New Jersey. 85 FR 77237-38 (Dec. 1, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain chocolate milk powder and packaging thereof by reason of infringement of U.S. Trademark Registration No. 4,206,026 (“the ’026 mark”). The Commission’s notice of investigation named several respondents, including but not limited to Bharat Bazar of Union

City, California; Coconut Hill of Sunnyvale, California; Organic Food d/b/a Namaste Plaza Indian Super Market (“Organic Food”) of Fremont, California; and New India Bazar of San Jose, California. *Id.* at 77237. The Office of Unfair Import Investigations (“OUII”) was also a party to the investigation. *Id.*

In the underlying investigation, all respondents were found in default. *See* Order No. 6 (Feb. 10, 2021), *unreviewed by* Comm’n Notice (Mar. 2, 2021); Order No. 23 (May 19, 2022), *unreviewed by* Comm’n Notice (Jun. 14, 2022). On May 24, 2021, Meenaxi moved for summary determination of violations of section 337 by the respondents found in default by Order No. 6 and requested a GEO. On December 1, 2021, the former chief administrative law judge (“former CALJ”) granted the motion as an initial determination (Order No. 15), but 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 former 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. No petitions for review of Order No. 15 were filed. 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. *See* Comm’n Notice at 3 (Jan. 18, 2022). The Commission remanded the investigation to an ALJ for further proceedings. *Id.*

On remand, the current chief administrative law judge (“CALJ”) 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 of San Diego, California; (ii) correct the address of respondent New India; (iii) correct the address of respondent 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 (Apr. 12, 2022); *see also* 87 Fed. Reg. 22940-41 (Apr. 18, 2022). Meenaxi also 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." *See* Order No. 18 at 4.

The CALJ conducted remand proceedings as to Organic Ingredients and New India with respect to service of the amended complaint and notice of investigation, and upon the failure of these respondents to respond to the amended complaint and notice of investigation, the CALJ ordered them to respond to an order to show cause why they should not be found in default. *See* Order No. 19 (Mar. 11, 2022); Order No. 21 at 2-3 (May 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* Comm'n Notice (June 14, 2022). Accordingly, the Commission found all respondents in default (collectively with the respondents previously found in default, the "Defaulting Respondents").

On June 13, 2022, Meenaxi again moved for summary determination of violations by the Defaulting Respondents and requested a GEO. On July 6, 2022, OUII filed a response supporting the motion.

On August 3, 2022, the CALJ issued a remand ID ("RID") (Order No. 27), granting the second motion for summary determination and finding a violation of section 337 with respect to the '026 mark. The RID found that all Defaulting Respondents met the importation requirement and that Meenaxi satisfied the domestic industry requirement. *See* 19 U.S.C. 1337(a)(2)-(3). No party petitioned for review of the RID.

On September 19, 2022, the Commission determined not to review the RID. *See* 87 Fed. Reg. 58130-32 (Sept. 23, 2022). On November 15, 2022, the Commission issued a final determination finding a violation, issuing a GEO prohibiting the unlicensed importation of chocolate milk powder and packaging thereof that infringe the '026 mark, and terminating the investigation. *See* 87 Fed. Reg. 70864-66 (Nov. 21, 2022). The GEO is currently in effect and prohibits the unlicensed importation of "chocolate milk powder in consumer-sized container with the Bournvita label." *Id.*; GEO at 2 (Nov. 15, 2022). On the same day, the Commission issued

an opinion explaining the basis for its final determination. *See* Comm’n Op. (Nov. 15, 2022) (Conf. Ver.); Comm’n Op. (Dec. 9, 2022) (Pub. Ver.).

Approximately ten (10) months later, the Enforcement Complaint was filed with the Commission on behalf of Meenaxi to enforce the GEO entered in the original investigation, seeking, *inter alia*, issuance of CDOs for alleged violations of the GEO. On November 9, 2023, upon consideration of Meenaxi’s Enforcement Complaint, the Commission issued a notice of its determination to institute an enforcement proceeding under Commission Rule 210.75 to investigate alleged violations of the GEO by the four Enforcement Respondents. *See* Comm’n Notice, EDIS Doc. ID 808258 (Nov. 9, 2023). This enforcement proceeding was instituted by publication in the *Federal Register* on November 16, 2023. *See* 88 Fed. Reg. 78786-87 (Nov. 16, 2023) (“NOI”). OUII is also named as a party. *Id.* at 78787. On the same day the Commission determined to institute, the Commission issued an order (the “Commission Order”) certifying the enforcement proceeding to the CALJ for designation of a presiding Administrative Law Judge to conduct any necessary proceedings, issue an Enforcement Initial Determination, and make a recommendation on appropriate enforcement measures. *See* Comm’n Order (Nov. 9, 2023), EDIS Doc. ID 808290. Meenaxi filed proof that the Enforcement Complaint and Exhibits, the Commission’s November 9th notice, and the Commission Order were served on each of the four Enforcement Respondents. *See* Nov. 14, 2023 Letter from Anil Gandhi to Secretary Barton, Ex. A, EDIS Doc. ID 808539. No responses to the Enforcement Complaint and NOI were filed.

On January 10, 2024, the presiding ALJ issued an order directing the Enforcement Respondents to show cause why they should not be found in default and why judgment should not be rendered against them for failing to respond to the Enforcement Complaint and NOI. *See* Order No. 6 (Jan. 10, 2024). Order No. 6 directed the Enforcement Respondents to make any showing of good cause by no later than February 2, 2024. *Id.* at 3. Meenaxi filed proof that Order No. 6 was served on each of the four Enforcement Respondents. *See* Jan. 16, 2024 Letter

from Llofel Rogolifoi to Secretary Barton, Ex. A, EDIS Doc. ID 812042. No party responded to Order No. 6. *See* Order No. 8 at 1 (Feb. 13, 2024).

On March 14, 2024, the Commission determined that the four Enforcement Respondents were in default. *See* Order No. 8 (Feb. 13, 2024), *unreviewed by* Comm'n Notice (Mar. 15, 2024). On March 15, 2024, Meenaxi filed a motion requesting summary determination of violation of the GEO and the issuance of CDOs against the four Enforcement Respondents. *See* Order No. 9 at 5 (Aug. 16, 2024).

On August 16, 2024, the presiding ALJ issued the subject ID granting Meenaxi's motion for summary determination and recommending issuance of the requested CDOs. The ALJ concluded that "the un rebutted evidence [] demonstrates that the Enforcement Respondents have imported and/or sold after importation chocolate milk powder products bearing the 'Bournvita' label" in violation of the GEO. ID at 16-17. The ID noted that Meenaxi alleged that the Enforcement Respondents have violated the GEO by offering for sale, selling, advertising, and aiding and abetting the sale of Cadbury's "BOURNVITA" products. *Id.* at 17-18. The ID explained that "[t]hese (or similar) products were found to infringe the '026 Mark during the violation phase" of this investigation. *Id.* at 18. The ID applied the same trademark infringement analysis to the products accused of violating the GEO in Meenaxi's Enforcement Complaint. *See id.* at 19-26. Meenaxi filed proof that the ID was served on each of the four Enforcement Respondents. *See* Aug. 30, 2024 Letter from Llofel Rogolifoi to Secretary Barton, Ex. A, EDIS Doc. ID 831085. No party filed a petition seeking review of the ID.

On August 19, 2024, the Commission issued a notice soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation of the GEO, specifically, CDOs against the four Enforcement Respondents. *See* 89 Fed. Reg. 68203-04 (Aug. 23, 2024). No comments were received in response to the notice.

On October 28, 2024, the Commission determined to review the ID's findings that the Enforcement Respondents have violated the GEO. *See* 89 FR 81547-49 (Oct. 8, 2024). In

connection with these findings, the Commission requested responses from the parties to the issues under review. See 89 FR at 81548. The Commission also requested parties to the investigation, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding. Id. at 81549.

On November 18, 2024, the Commission issued a final determination finding that all four enforcement respondents violated the GEO, issuing a CDO order against each of them, and terminating the investigation. 89 FR 92722-23. On the same day, the Commission issued an opinion explaining the basis for its final determination.

On February 24, 2025, Meenaxi filed a second enforcement complaint requesting that the Commission institute an enforcement proceeding under Commission Rule 210.75 to investigate alleged violations of the GEO and the CDOs by the same four enforcement respondents: (1) Organic Ingredients; (2) New India; (3) Bharat Bazar; and (4) Coconut Hill Inc. Meenaxi asserts that the four proposed enforcement respondents continue to import, sell for importation, advertise, market, distribute, and offer to sell “Bournvita” products that infringe the ‘026 mark despite the GEO and CDOs. Meenaxi also alleges that the four proposed enforcement respondents are in continuing violation of the GEO and CDOs and as a result, it is sustaining “immediate and irreparable harm.” None of the respondents answered Meenaxi’s enforcement complaint.

Having examined the enforcement complaint and the supporting documents, the Commission has determined to institute a formal enforcement proceeding, pursuant to Commission Rule 210.75(a) (19 CFR 210.75(a)), to determine whether violations of the GEO, issued on November 15, 2022, and CDOs, issued on November 18, 2024, in the above-referenced investigation, have occurred and to determine what, if any, enforcement measures are appropriate. The named respondents are: (1) Organic Ingredients Inc. d/b/a Namaste Plaza Indian Super Market; (2) New India Bazar Inc.; (3) Bharat Bazar Inc.; and (4) Coconut Hill Inc. d/b/a Coconut Hill. OUII is also named as a party.

In the Order issued concurrently herewith, the Commission has delegated this enforcement proceeding to the CALJ for designation of a presiding Administrative Law Judge to conduct any necessary proceedings, issue an Enforcement Initial Determination, and make a recommendation on appropriate enforcement measures, if any.

The Commission's vote on this determination took place on March 26, 2025.

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: March 26, 2025.

Lisa Barton,

Secretary to the Commission.

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