

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

In the Matter of

**CERTAIN BEVERAGE BREWING
CAPSULES, COMPONENTS THEREOF,
AND PRODUCTS CONTAINING THE
SAME**

**Investigation No. 337-TA-929
(Rescission Proceeding)**

**COMMISSION ORDER TEMPORARILY RESCINDING
THE REMEDIAL ORDERS**

The Commission instituted the original investigation on September 9, 2014, based on a complaint filed by Adrian Rivera and Adrian Rivera Maynez Enterprises, Inc. (collectively, “ARM”). 79 FR 53445-46. The complaint alleged that several respondents, including Eko Brands, LLC (“Eko”) Evermuch Technology Co., Ltd. and Ever Much Company Ltd. (together, “Evermuch”), violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by infringing certain claims of U.S. Patent No. 8,720,320 (“the ’320 patent”). *Id.* Eko Brands and Evermuch did not respond to the complaint and notice of investigation, and were found in default. Notice (May 18, 2015). On March 17, 2016, the Commission issued remedial orders: a limited exclusion order prohibiting Eko and Evermuch from importing certain beverage brewing capsules, components thereof, and products containing same that infringed claims 8 or 19 of the ’320 patent, and three cease-and-desist orders against Eko and the two Evermuch entities prohibiting the sale and distribution within the United States of articles that infringe claims 8 or 19. 81 FR 15742-43.

On April 2, 2015, Eko filed in district court for declaratory relief stating, *inter alia*, that Eko does not infringe certain claims of the ’320 patent and that certain claims of

the '320 patent are invalid. *Eko Brands v. Adrian Rivera Maynez Enterprises Inc. et al.*, Case No. 2:15-cv-00522, Dkt. #1 (W.D. Wash.). On June 14, 2018, the district court issued an order finding that claims 5, 8, 18, and 19 of the '320 patent are invalid as obvious. *Id.* at Dkt. #251.

On June 28, 2018, Eko petitioned the Commission to rescind the March 17, 2016 remedial orders based on the district court's invalidity judgment. On July 9, 2018, ARM filed a response that did not dispute Eko's petition, but argued that any rescission be temporary pending the resolution of ARM's appeal of the district court invalidity judgment.

Having considered the petition and response, the Commission has determined that the circumstances warrant temporarily rescinding the remedial orders pending the appeal of the district court invalidity judgment. Pursuant to 19 U.S.C. § 1337(k)(1) and 19 C.F.R. § 210.76, the Commission may rescind a remedial order if the conditions that led to the remedial orders no longer exist, such as by a changed condition of fact, law, or the public interest. The Commission finds that the district court invalidity judgment is a changed condition that merits temporary rescission.

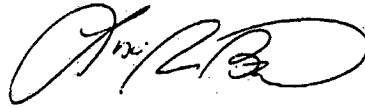
The Commission finds that the facts here are analogous to those in *Composite Wear Components and Products Containing the Same*, Inv. No. 337-TA-644 ("*Composite Wear Components*"). There, after the Commission found a violation of section 337 and issued relief, a district court issued a declaratory judgment that the patent claims at issue were invalid. *Composite Wear Components*, Comm'n Op. at 3-4 (Feb. 10, 2011). On petition by respondents in that investigation, the Commission determined to temporarily rescind its remedial orders pending resolution of the appeal of the district

court invalidity judgment. *Id.* at 9. The rescission was temporary to take into account the possibility that the invalidity judgment would be reversed on appeal. *Id.* Because the Commission remedial orders at issue here also involve patent claims that were subsequently found invalid by a district court, the Commission has determined that it is appropriate to temporarily rescind the remedial orders pending the resolution of any appeal of the district court invalidity judgment.

It is hereby ORDERED that:

- (1) Pursuant to 19 U.S.C. § 1337(k)(1) and 19 C.F.R. § 210.76, the remedial orders are temporarily rescinded pending the resolution of any appeal of the district court invalidity judgment; and
- (2) This Order shall be served on the parties to this investigation.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: July 30, 2018

**CERTAIN BEVERAGE BREWING CAPSULES,
COMPONENTS THEREOF, AND PRODUCTS
CONTAINING THE SAME**

**Inv. No. 337-TA-929
(Modification Proceeding)**

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served by hand upon the Commission Investigative Attorney, Jeffrey Hsu, Esq., and the following parties as indicated, on **July 31, 2018**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
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