

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1269]

### Certain Electrolyte Containing Beverages and Labeling and Packaging Thereof; 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 May 6, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of CAB Enterprises, Inc. of Houston, Texas and Sueros y Bebidas Rehidratantes, S.A. de C.V. of Mexico. Supplements were filed on May 12, 2021, May 24, 2021, and May 25, 2021. The complaint, as supplemented, 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 electrolyte containing beverages and labeling and packaging thereof by reason of infringement of U.S. Trademark Registration No. 4,222,726 (“the ‘726 mark”); U.S. Trademark Registration No. 4,833,885 (“the ‘885 mark”); U.S. Trademark Registration No. 4,717,350 (“the ‘350 mark”); and U.S. Trademark Registration No. 4,717,232 (“the ‘232 mark”) (collectively, “Asserted Trademarks”). The complaint, as supplemented, further alleges that an industry in the United States exists and is in the process of being established, as required by the applicable Federal Statute. The complainants request 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](mailto: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.

#### 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 (2020).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on June 29, 2021, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine 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 Asserted Trademarks, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(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 “electrolyte beverages and associated packaging and labels that bear the Electrolit® Asserted Trademarks”;

(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 complainants are:

CAB Enterprises, Inc., 2700 Post Oak Blvd., Suite 22–111, Houston, Texas 77056

Sueros y Bebidas Rehidratantes S.A. de C.V., Av. Espana No. 1840, Colonia Moderna, C.P. 44190, Guadalajara, Jalisco, Mexico

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Flexicompuestos S.A. de C.V., Avenida Kristal 619, Juarez, Nuevo Leon 67280, Mexico

Grupo Comercial Lux del Norte S.A. de C.V., Emiliano Zapata 229, Centro Miguel Aleman, Septima y Octava, Miguel Aleman, Tamaulipas 88300, Mexico

Carbonera Los Asadores S.A. de C.V., Carr. Nacional KM 85, No. 1413, Col. Centro, C.P. 67350, Allende, Nuevo Leon, Mexico

Caribe Agencia Express, S.A. de C.V., Avenida Tulum 269, Manzana 3 Lote 2 y 3 Local 02 y Sm 15 A, Avenida Acanceh y Avenida Tulum, Benito Juarez, Quintana Roo 77500, Mexico

Comercializadora Degu S.A. de C.V., Calle Anguila 106, Matamoros, Tamaulipas, C.P. 87398, Mexico

Comercial Treviño de Reynosa, S.A. de C.V., Lib Mty Matamoros, Km. 7, S/N, Jacinto Lopez Ampliacion Av, San Rafael y Av Talleres, Reynosa, Tamaulipas 88756, Mexico

H & F Tech International S.A. de C.V., Bernardo Reyes PTE 313, San Nicolas de los Garza Centro, Mariano Matamoros y Calle Anastacio Bustamante, San Nicolás de los Garza, Nuevo León 66400, Mexico

MPC Foods S.A. de C.V., Profesor Jose Flores 41, Manzanillo, Colima 28869, Mexico

Myrna Guadalupe Perez Martinez, Blvd. Luis Donaldo Colosio, Col. Nuevo Amanecer 1003, Reynosa, Tamaulipas 88790, Mexico

Leticia Angélica Saenz Fernandez, Segunda 517, Centro Miguel Aleman a Obregon e Insurgentes, Miguel Alemán, Tamaulipas 88300, Mexico

Yoselen Susana Martinez Tirado, Montreal 114, La Cañada 2 Brasilia y Munich, Reynosa, Tamaulipas 88700, Mexico

Distribuidora Mercatto S.A. de C.V., Jordan 2211, Monterrey, Nuevo León, 64460, Mexico

Comercializadora Embers S.A. de C.V., Camino a la Paz 200, Allende, Nuevo León 67353, Mexico

Manuel Bautista Nogales, Prol. Constitucion 2219–6 Bodega 6, Luis Echeverria Alvarez Calle d y Esquina con 1RA Avenida, Santa Catarina, Nuevo León 66358, Mexico

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, 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.

The Commission notes that issues regarding whether the domestic industry requirement of section 337 is met may be present here. In instituting this investigation, the Commission has not made any determination as to whether complainants have satisfied this requirement. The presiding Administrative Law Judge may wish to consider this issue at an early date,

including through use of the interim initial determination (ID) pilot program, [https://www.usitc.gov/press\\_room/featured\\_news/337pilotprogram.htm](https://www.usitc.gov/press_room/featured_news/337pilotprogram.htm). Notwithstanding any Commission Rules to the contrary, which are hereby waived, any such decision should be (i) issued in the form of an ID under Rule 210.42(c), 19 CFR 210.42(c), or (ii) if issued through use of the interim initial determination (ID) pilot program, in the form of an ID under Rule 210.42(a)(1)(i), 19 CFR 210.42(a)(1)(i). The ID will become the Commission's final determination 45 days after the date of service of the ID unless the Commission determines to review the ID. Any such review will be conducted in accordance with Commission Rules 210.43, 210.44, and 210.45, 19 CFR 210.43, 210.44, and 210.45.

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 FR 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 complainants 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: June 29, 2021.

**Lisa Barton,**

Secretary to the Commission.

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## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Light-Based Physiological Measurement Devices and Components Thereof*, DN 3554; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov).

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.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 has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Masimo Corporation and Cercacor Laboratories, Inc. on June 30, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-based physiological measurement devices and components thereof. The complainant names as a respondent: Apple Inc. of Cupertino, CA. The complainant requests that the Commission issue an exclusion order, a cease and desist order, and impose a bond upon respondent alleged infringing articles

during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document