

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436**

In the Matter of:

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

Investigation
No. 337-TA-929
Complaint for Enforcement Proceeding

COMPLAINT FOR ENFORCEMENT PROCEEDING PURSUANT TO RULE 210.75

Complainants:

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("ARM Enterprises, Inc.")
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Proposed Respondents:

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I. INTRODUCTION

1. This enforcement complaint involves certain beverage brewing capsules, components thereof, and products containing the same. On August 4, 2014, Complainants Adrian Rivera and his company Adrian Rivera Maynez Enterprises, Inc. (“ARM Enterprises, Inc.”)¹ filed a complaint with the International Trade Commission alleging violations of Section 337 of the Tariff Act of 1930 for the importation into the United States and sale after importation of certain beverage brewing capsules, components thereof, and products containing the same that infringe U.S. Patent No. 8,720,320 (the “320 patent”). Exhibit 1. ARM requested that the ITC issue a limited exclusion and cease and desist orders against Respondent Eko Brands, LLC, among other Respondents. Based on the complaint filed by ARM, the Commission instituted the 929 investigation on September 9, 2014.

2. Eko Brands did not participate in the investigation. On October 10, 2014, ARM moved for the ALJ to direct Eko Brands to show cause why it should not be held in default for failing to respond to the amended complaint, notice of the investigation, and discovery requests. On October 28, 2014, the ALJ granted the motion and ordered Eko Brands to show cause why they should not be held in default. Exhibit 2, Order No. 9. The ALJ required that any response to the show cause order be filed no later than November 18, 2014. *Id.*

3. On March 24, 2015, ARM moved for the ALJ to find Eko Brands in default because it did not respond to the ALJ’s show cause order. Exhibit 3, Order No. 19 at 1. On April 22, 2015, the ALJ issued an initial determination finding Eko Brands in default. *Id.* at 3. No petitions for review of the initial determination were filed. The Commission determined not

¹ Collectively Complainants are referred to herein as “ARM.”

to review the ID finding Eko Brands in default. *See* Exhibit 4, May 18, 2015 Comm’n Notice at 2.

4. In November 2015, Eko Brands was purchased by Espresso Supply, Inc. Exhibit 5. Subsequently, on March 17, 2016 the Commission, in its final Final Determination, issued a limited exclusion order (“LEO”) and cease and desist orders against the defaulted parties, including Eko Brands “based on their infringement of claim 8 and 19.” Final Determination at 83; *see* Exhibit 6 (LEO) and Exhibit 7 (Cease and Desist Order). The Commission further stated that “[w]e do not find that claims 8 and 19 are invalid, and presume that ARM’s allegations in its complaint against these parties are true.” *Id.* (citing 19 U.S.C. § 1337(g)(1); 19 C.F.R. § 210.16(c)(1)).

5. Since March 17, 2016 when the Commission issued the LEO and cease and desist orders,² Eko Brands and Espresso Supply, Inc. (collectively “Respondents”) have continued to import, market, distribute, sell, and advertise certain beverage brewing capsules, components thereof, and products containing the same in violation of these remedial orders.

6. Upon information and belief, Respondents’ violation of these orders has been in bad faith. For example, product manufactured in China have been repackaged using packing that is silent on country of origin. And product marked “Made in the USA” all contain claimed components that are imported. The allegations and supporting evidence in this complaint show that Eko Brands has intentionally engaged in these activities to avoid any enforcement of the LEO and cease and desist orders. The Respondents’ unlawful activities evidence a disregard for

² The limited exclusion order and cease and desist orders are referred to herein as the “remedial orders.”

the Commission and its rules, a disregard that began when Eko Brands refused to participate in the underlying 929 investigation.

7. More specifically, Eko Brands' activities giving rise to violations of the LEO and cease and desist orders are at least as follows:

- a. offering for sale, selling, advertising, and aiding and abetting the sale and use of the Eko Brands' Brew & Save reusable capsules—a product made in China;
- b. offering for sale, selling, advertising and aiding and abetting the sale and use of the Eko Brands' Ekobrew Elite—a product that is made in China;
- c. offering for sale, selling, advertising, and aiding and abetting the sale and use of the Ekobrew paper filters—a product made in China;
- d. offering for sale, selling, advertising, and aiding and abetting the sale and use of the Eko Brands' Ekobrew—a product that has at a minimum, imported claimed components, including an O-ring and metal mesh filter; and

8. On information and belief, Respondents, to avoid enforcement of the remedial orders issued against it, have marketed its Ekobrew and Brew & Save products under different names, such as Fill N Save and ReadyKup. Exhibit 8.

9. Eko Brands was on notice of the alleged infringement since at least as early as August 4, 2014 when the complaint leading to the underlying 929 investigation was filed. Eko Brands was further on notice that its Ekobrew paper filters constituted claimed components as early as September 17, 2015, when ARM submitted its infringement contentions to Eko Brands in a litigation before the Western District of Washington. That litigation was initiated by Eko Brands in a case styled, *Eko Brands v. Adrian Rivera Enterprises, Inc.*, Case No. 2:15-cv-00522-RSL (W.D. Wash.) ("District Court Litigation"). Eko Brands was further put on notice that the

paper filters constituted claimed components on April 18, 2016, when ARM submitted its expert report on infringement to Eko Brands in the District Court Litigation.

10. ARM sells product in competition with Respondents. Because of Respondents unlawful acts in violation of the remedial orders, ARM is, and will continue to be, injured as a result of the violations of the LEO and cease and desist orders.

11. Neither Eko Brands, nor Espresso Supply, nor any parties acting in concert with these companies have received consent or a license from ARM to engage in activities that are prohibited by the remedial orders. As such, Eko Brands and Espresso Supply are in direct violation of the remedial orders, causing significant damage to ARM's business in the United States. The violation of the remedial orders has continued to date since March 17, 2016 and will continue unless action is taken.

II. THE PARTIES

A. Complainants

1. Complainant Adrian Rivera

12. Adrian Rivera, the named inventor of the '320 patent, is an entrepreneur residing in Whittier, California. Mr. Rivera is the founder and president of Adrian Rivera Maynez Enterprises, Inc., which also does business under the abbreviated form of its name ARM Enterprises Inc. Mr. Rivera is 100% owner of Adrian Rivera Maynez Enterprises, Inc.

2. Complainant ARM Enterprises, Inc.

13. Complainant ARM Enterprises, Inc. is a United States corporation currently located at 16141 Heron Avenue, La Mirada, California 90638. ARM is involved in the design, research and development, manufacturing, marketing, and distribution of coffee products including beverage brewing capsules that practice the '320 patent. ARM's focus is to develop

quality products that are easy to use, environmentally friendly, and provide economical solutions to traditional coffee systems that can cause significant expense to consumers.

B. Respondents

1. Eko Brands

14. On information and belief, respondent Eko Brands, LLC is headquartered at 6029 238th St. SE Suite 130, Woodinville, WA 98072 (“Eko Brands”). On information and belief Eko Brands sells infringing beverage brewing capsules under the brand Ekobrew, Ekobrew 2.0, Ekobrew Elite 2.0, Brew & Save, Brew & Save 2.0, ReadyKup, and Fill N Save.

2. Espresso Supply, Inc.

15. On information and belief, respondent Espresso Supply, Inc. is headquartered at 1123 NW 51st Street, Seattle, Washington 98107. In November 2015 Espresso Supply purchased Eko Brands. On information and belief Espresso Supply, after acquiring Eko Brands, sells Eko Brands’ products as part of Espresso Supply’s product portfolio.

III. JURISDICTION

16. The Commission has jurisdiction over this matter and the proposed Respondents pursuant to Section 333 and 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §§ 1333 and 1337.

17. The Commission has personal jurisdiction over the proposed Respondents by virtue of the limited exclusion order (Exhibit 6) and the cease and desist orders (Exhibit 7) directed to them.

IV. DESCRIPTION OF THE RELEVANT INDUSTRY

18. The past decade has seen an increase in the popularity of single-serve coffee brewers typified by Keurig’s K-Cup. Different than a traditional drip brewer, single-serve coffee

machines typically receive a disposable capsule containing coffee from which a single serving of coffee is produced.

19. With respect to the Keurig single-serve machine, there is a brewing chamber in which a user can insert a disposable capsule called a “K-cup.” K-cups generally are not recyclable and have become environmental disasters as they lay in landfills by the billions.

Exhibit 9.

20. The ‘320 patent provided a solution to this problem by providing a capsule that could go into a Keurig machine, just like a K-cup, only that the capsule could be reusable. With a reusable capsule, consumers can use their own coffee or other brewing material. This also saves money since K-cups can cost anywhere from 50 cents to one dollar each.

21. Since the ‘320 patent application was filed, the industry in reusable capsules proliferated. For a variety of reasons, to be competitive in this industry in the United States, companies need their reusable capsules, or at a minimum, components of these capsules to be manufactured outside the United States. One reason is that retailers selling reusable capsules, such as Wal-Mart, drive down the price of reusable capsules, which places pressure on companies to lower their manufacturing costs. Exhibit 10 at ¶ 3. And because reusable capsules are mechanical products that can be manufactured overseas at a lower price, companies in this industry have turned to China to manufacture capsules or components of capsules. *Id.* at ¶¶ 3-4.

22. Based on the research ARM has conducted, it is economically unfeasible to manufacture reusable capsules and/or their components in the United States. For example, on information and belief, an O-ring that is used to seal the lids of reusable capsules can be manufactured in China for approximately 2 cents. Exhibit 10 at ¶ 5. Compare that with the United States, where an O-ring can be manufactured at an average price of about 40 cents. *Id.*

23. Another example are metal mesh filters used in reusable capsules. On information and belief, such metal mesh is not manufactured in the United States. Exhibit 10 at ¶ 6. Rather, the metal mesh is manufactured in China. *Id.* On information and belief, there are companies in the United States that will take imported metal mesh and stamp or form it. For this service, the price is about 45 to 75 cents per product. *Id.* In China, stamping or forming the metal mesh costs about 13 cents per filter. *Id.*

24. On information and belief, notwithstanding the metal mesh filter, which is made in China, the cost to manufacture and source the entirety of a reusable beverage brewing capsule in the United States costs approximately \$1.75 to over \$2.00 per unit. Exhibit 10 at ¶ 7. This cost would price out any company that attempted to manufacture the entirety of its product in the United States—assuming such a feat was even possible. *Id.*

25. After the Commission issued the remedial orders against Eko Brands, it continued to unlawfully sell product that was made in China. Eko Brands also marked certain product as “Made in the USA,” but as shown in this complaint and consistent with the manufacturing reality of these products, all of Eko Brands products contain at a minimum claimed components that are imported. As such, sales of these “Made in the USA” products were a violation of the remedial orders.

V. U.S. PATENT NO. 8,720,320

A. Identification of the Patent and Ownership by Mr. Rivera

26. The ‘320 Patent is entitled “Pod Adaptor System for Single Service Beverage Brewers.” The ‘320 Patent issued from U.S. Application No. 11/777,831, which was filed on July 13, 2007. Exhibit 1.

27. Mr. Rivera is the named inventor of the '320 patent. All rights, title and interest in the '320 Patent are owned by Mr. Rivera. Claims 8 and 19 of the '320 patent are valid, enforceable, and currently is in full force and effect. The '320 patent erroneously identifies Mr. Rivera's company, ARM Enterprises, Inc. as the assignee but no formal assignment has been perfected. ARM Enterprises operated as a sole proprietorship owned by Mr. Rivera, until it incorporated in 2013. Mr. Rivera remains 100% owner of ARM. Confidential Exhibit 11C is a confirmatory license agreement between Mr. Rivera and ARM confirming Mr. Rivera's ownership of the '320 patent and that ARM has been and is authorized by Mr. Rivera to use the '320 patent.

B. Nontechnical Description of the Patented Invention³

28. The '320 patent relates to accessories for single serve beverage brewers, and more particularly, relates to an adaptor assembly configured to effect operative compatibility between a single serve beverage brewer and beverage pods.

29. Single serve beverage brewers inherently limit the use of the machine to cup-shaped cartridges. Additionally, conventional automated pod brewers typically include a brewing chamber adapted to receive an individual pod. During the brewing process, hot water is injected into the brewing chamber across the surface of the pod while brewed beverage is directed to flow out of an outlet into a cup. Some coffee connoisseurs believe that coffee brewed using pod brewers do not have as good flavor extraction as coffee brewed by baristas who usually tamp or compact the coffee prior to brewing. The '320 patent is directed to ameliorating one or both of these shortcomings.

³ The content of this Complaint, including this section (i.e., "Nontechnical Description of the Patented Invention"), does not, and is not intended to, construe either the specification or claims of the '320 patent).

30. For example, in one embodiment a container is provided for use in combination with a single serve beverage brewer designed with upper and lower puncturing devices for piercing cup-shaped cartridges. The container comprises a receptacle and a cover adapted to sealingly engage with the receptacle. The receptacle preferably comprises a base having an interior surface and an exterior surface. The container avoids the lower needle and the cover includes an opening that allows the upper needle to inject fluid into the container.

31. The remedial orders apply to claims 8 and 19 of the '320 patent. Claims 8 and 19 depend from claims 5 and 18 respectively. Claims 5, 8, 18 and 19 are as follows:

Claim 5. A beverage brewer, comprising:

a brewing chamber;

a container, disposed within the brewing chamber and adapted to hold brewing material while brewed by a beverage brewer, the container comprising:

a receptacle configured to receive the brewing material; and

a cover;

wherein the receptacle includes

a base, having an interior surface and an exterior surface, wherein at least a portion of the base is disposed a predetermined distance above a bottom surface of the brewing chamber, and

at least one sidewall extending upwardly from the interior surface of the base,

wherein the receptacle has at least one passageway that provides fluid flow from an interior of the receptacle to an exterior of the receptacle;

wherein the cover is adapted to sealingly engage with a top edge of the at least one sidewall, the cover including an opening, and

wherein the container is adapted to accept input fluid through the opening and to provide a corresponding outflow of fluid through the passageway;

an inlet port, adapted to provide the input fluid to the container;
and

a needle-like structure, disposed below the base;

wherein the predetermined distance is selected such that a tip of the needle-like structure does not penetrate the exterior surface of the base.

Claim 8. The beverage brewer of claim 5, wherein the container is reusable.

Claim 18. A beverage brewer including a brewing chamber configured to receive a brewing cartridge, an inlet port adapted to provide an input fluid, and a needle-like structure fixed in a bottom of the brewing chamber and adapted to puncture a shell of the brewing cartridge to carry an outflow of brewed beverage from the brewing cartridge and arranged to avoid puncturing filtering material containing brewing material disposed inside the shell, the improvement comprising:

a container configured to replace the brewing cartridge, the container positionable within the brewing chamber and adapted to hold brewing material while brewed by the beverage brewer, the container including:

a receptacle configured to receive and support the brewing material, and a cover; wherein the receptacle includes:

a passageway providing fluid communication between an interior of the receptacle and the brewing chamber,

a base, having an interior surface and an exterior surface and configured to avoid contact with the needle-like structure, and

at least one sidewall extending upwardly from the interior surface of the base and configured to avoid contact with the needle-like structure;

wherein the cover is adapted to sealingly engage with a top edge of the at least one sidewall, the cover including an opening, and

wherein the container is adapted to accept the input fluid from the inlet port through the opening and to provide a corresponding outflow of fluid through the passageway.

Claim 19. The beverage brewer of claim 18, wherein the container is reusable.

VI. THE COMMISSION'S ISSUANCE OF THE REMEDIAL ORDERS

A. Limited Exclusion Order

32. On March 17, 2016 the Commission issued a limited exclusion order against Eko Brands. The Commission stated, in part:

Beverage brewing capsules, components thereof, and products containing the same that infringe one or more of claims 8 or 19, and that are manufactured abroad by or on behalf of, or imported by or on behalf of Respondents, or any of their affiliated companies, parents, subsidiaries, licensees or other related business entities, or their successors or assigns are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patents, except under license of the patent owner or as provided by law.

Exhibit 6, Limited Exclusion Order at 2.

33. The limited exclusion order applied not only to Eko Brands, but also to its “affiliated companies, parents, subsidiaries, licensees or other related business entities, or [its] successors or assigns.” Exhibit 6 at 2. Under this provision, Espresso Supply, which acquired Eko Brands in November 2015 is subject to this limited exclusion order.

B. Cease and Desist Order

34. On March 17, 2016 the Commission issued a cease and desist order against Eko Brands. The cease and desist order prohibited Eko Brands from the following conduct in the United States:

(A) import and sell for importation into the United States covered products;

- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

Exhibit 7 at 2-3.

35. The cease and desist order applies to:

any of [Eko Brands'] principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

Exhibit 7 at 2. Under this provision, Espresso Supply, which acquired Eko Brands in November 2015 is also subject to the provisions of the cease and desist order.

VII. SPECIFIC INSTANCES OF VIOLATING THE LIMITED EXCLUSION AND CEASE AND DESIST ORDERS

36. On information and belief, despite its obligations to comply with the limited exclusion and cease and desist orders, since March 17, 2016 and each day thereafter, Eko Brands and Espresso Supply have violated the remedial orders entered in investigation 337-TA-929. ARM identifies specific acts of violation below. On information and belief, not only are Respondents importing, selling, aiding and abetting in the sale of infringing product, they are also marketing certain accused products as "Made in the USA," which have imported claimed components in violation of the remedial orders.

37. On information and belief, one or more of the following products have been sold in violation of the remedial orders every day since March 17, 2016. Furthermore, despite an obligation to post a bond during the Presidential review period (see Exhibit 6 at 2), Respondents, on information and belief, have failed to post any bond.

A. Brew & Save (“Made in China”)

38. Brew & Save is an Eko Brands’ product. See Exhibit 31, Eko Brands’ Answer to Counterclaims in District Court Litigation at ¶ 16 (Eko Brands “admits that ‘Brew & Save’ is another brand operated by Eko Brands.”). Respondents market Brew & Save on a website called brewandsave.com. On that website, Eko Brands states “Brew & Save reusable filters can be found at many retailers in the USA or online at Amazon.com.” Exhibit 12. In accordance with these instructions, ARM purchased a Brew & Save on Amazon.com on May 17, 2016, after the Presidential review period. Exhibit 13. When it was received, the Brew & Save was marked as having been made in China. See Exhibit 14

39. On May 19, 2016 (also after the Presidential review period), ARM purchased a Brew & Save from a retailer called Fry’s Electronics. Exhibit 15. When it was received, the Brew & Save was marked as having been made in China. Exhibit 16. On May 24, 2016, ARM purchased another Brew & Save from Fry’s Electronics. Exhibit 17. When it was received, the product was marked as having been made in China. Exhibit 18.

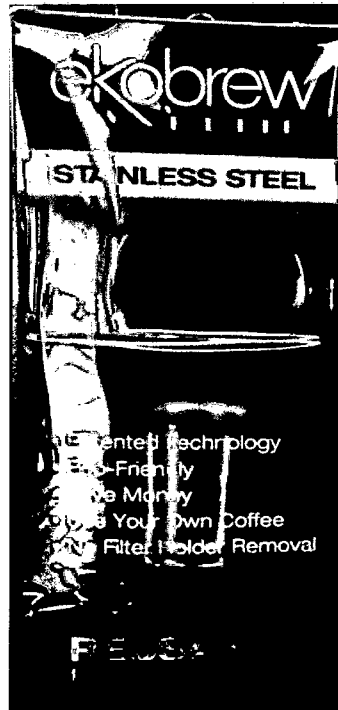
40. ARM purchase of Brew & Save products made in China violates the remedial orders. At a minimum, Respondents have and continue to aid and abet in these unlawful sales by directing consumers where to purchase these products. Furthermore, each of the Brew & Save products contain instructions on how to use the product, which if followed lead an end-user to directly infringe claims 8 and 19 of the ‘320 patent.

41. Exhibit 19 illustrates how the Brew & Save infringes claims 8 and 19 of the '320 patent. Furthermore, Respondents indirectly infringe these claims because they provide instructions on the packaging informing users to fill the Brew & Save with brewing material and insert the Brew & Save in a Keurig machine. This inducement leads to the infringement of claims 8 and 19. Furthermore, as discussed above in paragraph 9, Respondents were put on notice that their actions constitute infringement of claims 8 and 19. Respondents additionally contribute to the infringement of claims 8 and 19 by providing the claimed container (e.g., the beverage capsule) that satisfies the elements of these claims. Moreover, there are no substantial non-infringing uses of this product, and it is not a staple article or commodity of commerce suitable for substantial noninfringing use. It is designed and intended to be used in a Keurig machine. *See* Exhibit 19. Finally, the Brew & Save is structurally identical to Respondents' Ekobrew product which was identified as infringing in the Amended Complaint, which led to institution of the 929 investigation. *See* Exhibit 23, Amended Complaint at ¶¶ 18, 52-57. In the Final Determination, the Commission presumed the allegations in the Amended Complaint to be true and issued the remedial orders based on Eko Brands' "infringement of claims 8 and 19." *See* Final Determination at 83.

B. Ekobrew Elite

42. On information and belief, the Ekobrew Elite is a product made in China. After the remedial orders went into effect on March 17, 2016, to avoid detection and continue to unlawfully sell product, Respondents have changed the packaging of the Ekobrew Elite to be silent on the country of origin.

43. For example, below is a picture of an Ekobrew Elite in its packaging that was purchased after the remedial orders went into effect on March 17, 2016:



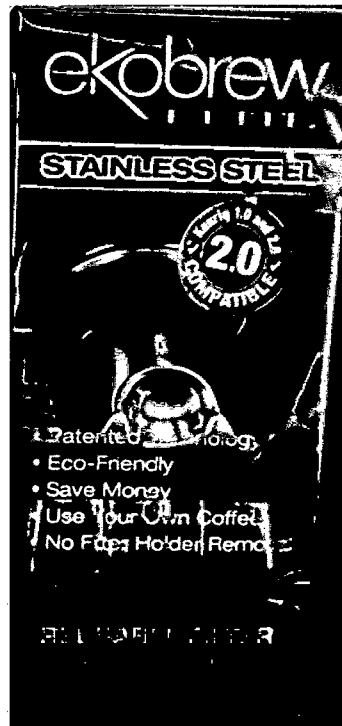
44. This Ekobrew Elite was purchased from Drugstore.com on April 15, 2016.

Exhibit 20. The bottom of the packaging stated that the Ekobrew Elite was made in China (see Exhibit 21):



45. ARM also purchased another Ekobrew Elite on April 15, 2016 from Lowes.com.

Exhibit 22. Below is a picture of that product in its packaging (see Exhibit 21):



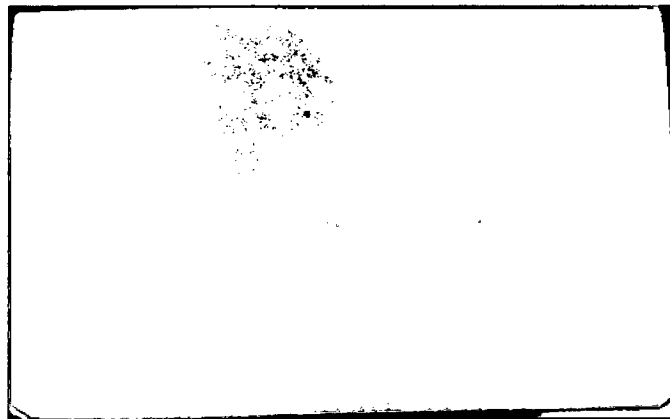
46. The bottom of this packaging, however, is silent to the country of origin:

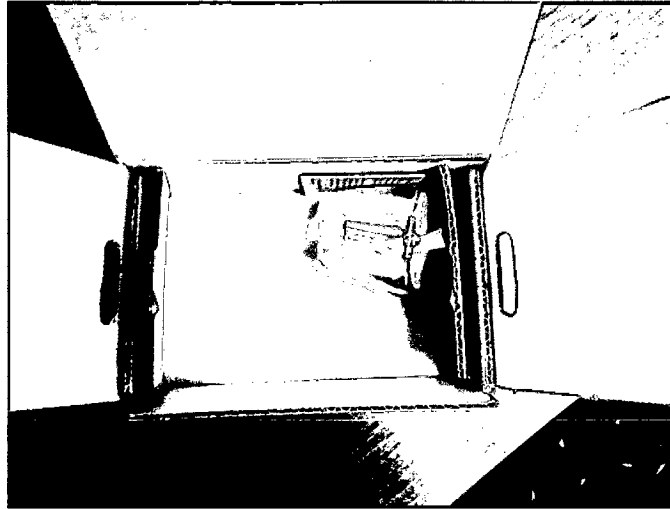


47. Below is a side by side picture of the two products starkly showing that after the issuance of the remedial orders, Respondents took steps to hide the country of origin of their products in an effort to circumvent these orders:



48. In a further effort to hide the country of origin, Eko Brands is now selling the Ekobrew Elite in plain white boxes with no labeling whatsoever. The Ekobrew Elite product in the pictures above that state “Made in China” was purchased from Drugstore.com. On May 18, 2016, ARM again purchased an Ekobrew Elite from this retailer. Exhibit 24. Rather than receiving an Ekobrew Elite in its packaging as before, the product appeared in the following box (Exhibit 25):





49. Despite that packaging for the Ekobrew Elite is silent on country of origin, the Ekobrew Elite, on information and belief, is manufactured in China as indicated on the Ekobrew Elite packaging from the April 15, 2016 Drugstore.com purchase (*see* Exhibit 21). Furthermore, ARM is not aware of any packaging or advertisement from Respondents stating or suggesting that the Ekobrew Elite, including its components, are manufactured in the United States.

50. On information and belief, each of the sales of the Ekobrew Elite—a product made in China—violate the remedial orders issued against Respondents. The Respondents still advertise the Ekobrew Elite on their website www.ekobrew.com. Exhibit 33. Thus, Respondents at a minimum aid and abet in the sales of these infringing products. Further, on information and belief, Respondents either provided the plain white box packaging to retailers and/or supplied this packaging to retailers in an effort to avoid the remedial orders.

51. The Ekobrew Elite was also accused of infringing claims 8 and 19 of the ‘320 patent in the Amended Complaint. *See* Exhibit 23 at Amended Complaint at ¶¶ 18, 52-57. The Commission presumed these allegations to be true in issuing the remedial orders against Eko Brands. *See* Final Determination at 83. Exhibit 26 contains a claim chart illustrating how the Ekobrew Elite infringes claims 8 and 19 of the ‘320 patent. Respondents indirectly infringe

these claims because they provide instructions on the packaging informing users to fill the Ekobrew Elite with brewing material and insert the Ekobrew Elite in a Keurig machine. Exhibit 26. This inducement leads to the infringement of claims 8 and 19. Furthermore, as discussed above in paragraph 9, Respondents were put on notice that their actions constitute infringement of claims 8 and 19. Respondents additionally contribute to the infringement of claims 8 and 19 by providing the claimed container (e.g., the beverage capsule) that satisfies the elements of these claims. Moreover, there are no substantial non-infringing uses of this product, and it is not a staple article or commodity of commerce suitable for substantial noninfringing use. It is designed and intended to be used in a Keurig machine. Exhibit 26.

C. Ekobrew Paper Filters

52. The Ekobrew paper filters are sold by Respondents and are made in China. On May 23, 2016, ARM purchased the Ekobrew Paper Filters. Exhibit 27. The packaging of the product indicates that it is made in China. Exhibit 28. The packaging also instructs customers to use the paper filters in connection with the Ekobrew. *Id.* Specifically, the instructions from Respondents are to place the filter in the Ekobrew and then have the user load the coffee into the filter, close the lid of the Ekobrew, and place the product in the Keurig machine for brewing. *See* Exhibit 19 at 4-6, 17-19; Exhibit 36 at 4-6, 16-18. The paper filters when used as instructed infringe claims 8 and 19 of the '320 patent. *Id.* The paper filters were sold by Eko Brands after the issuance of the remedial orders. Exhibit 27. They are specifically designed and intended to be used in connection with reusable beverage capsules such as the Ekobrew and the Brew & Save. *See* Exhibits 19 and 36. Furthermore, as discussed above in paragraph 9, Respondents were put on notice that their actions constitute infringement of claims 8 and 19. Respondents additionally contribute to the infringement of claims 8 and 19 by providing the paper that

satisfies elements of these claims. See Exhibits 19 ad 36. Moreover, there are no substantial non-infringing uses of this product, and it is not a staple article or commodity of commerce suitable for substantial noninfringing use.

D. Brew & Save Products “Made in the USA”

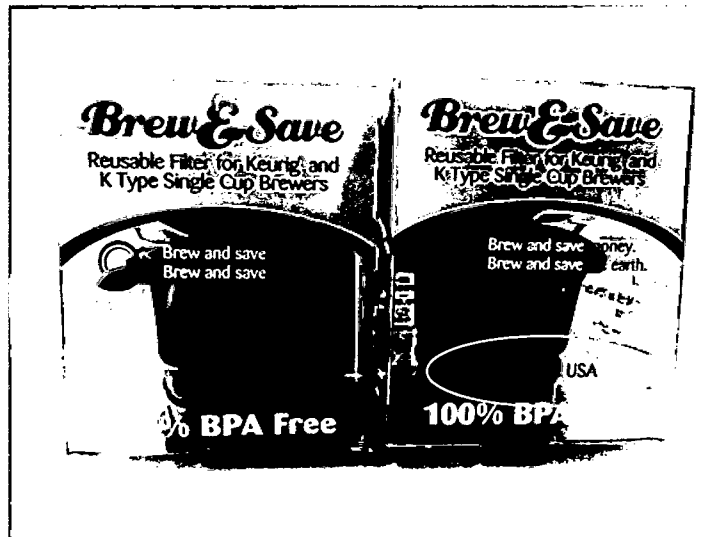
53. Upon information and belief, ARM has uncovered evidence that Respondents have repackaged Brew & Save capsules that were made in China, into packaging that states “Made in the USA.”

54. Below is a series of pictures of two Brew & Save products, one that is red and the other is brown. Exhibit 10 at ¶¶ 8-9. The red Brew & Save was purchased from Amazon.com on April 18, 2016. *Id.* at ¶ 21. The product states that it was made in China. *Id.* at 10. The brown Brew & Save was purchased from Amazon.com on April 19, 2016 and came from Respondents. *Id.* at ¶ 22. The brown Brew & Save stated that it was made in the United States. Exhibit 10 at ¶ 9. The red Brew & Save is the product on the left in the following pictures and the brown Brew & Save is on the right. What the pictures show is that the tooling used to make the product on the left (i.e., made in China) is the same tooling used to make the product on the right (i.e., made in the United States). On information and belief, the tooling used to create these products will impart unique imperfections or marks on the products. Where the unique imperfections or marks are the same among multiple products, this would demonstrate that the products were made using the same tool.

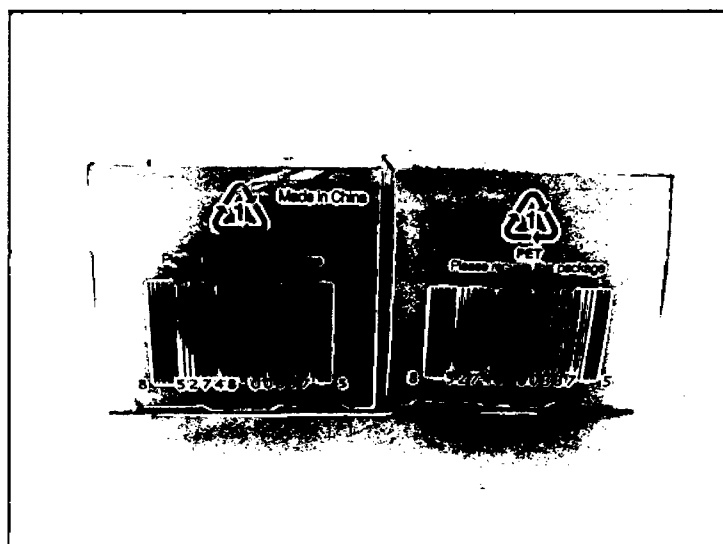
55. In the pictures below the unique marks on the made in China product and the “Made in the USA” product are the same. On information and belief, this demonstrates that the product allegedly made in the United States was actually made in China and placed in packaging stating “Made in the USA.” Since the product allegedly “Made in the USA” was actually made

in China and sold by Respondents, the sale of this product violated the remedial orders issued against the Respondents.

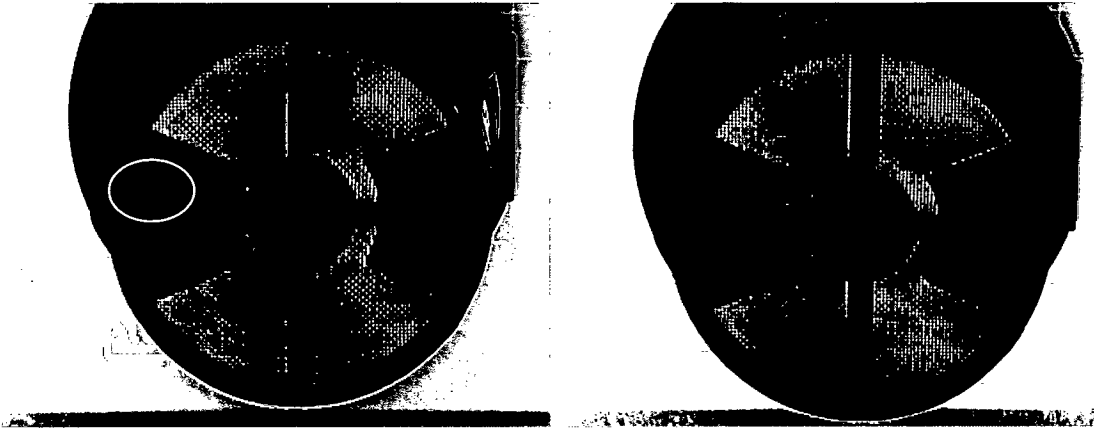
Brew & Save Made in China v. “Made in the USA” Comparison



56. The above is a picture of the product while still in their original packages. The red product is the one marked as Made in China and the brown product is marked as made in the USA. The yellow oval indicates where the packaging states “Made in the USA.” Exhibit 10 at ¶ 9.



57. The above picture shows the bottom of the packages. The package on the left is the one marked Made in China. The package on the right has no origin marking on the bottom. Exhibit 10 at ¶ 10.

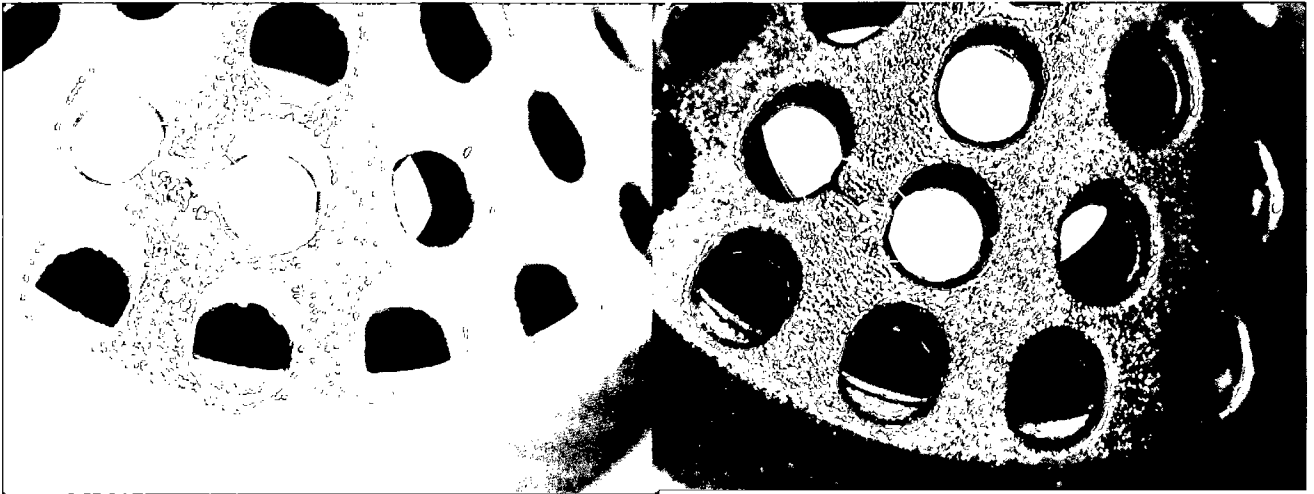


58. The photos above show the bottom of the capsules. In these photos both capsules show the same general material marking "PP" in the center and the same tool cavity marking (the number "1"). This shows that the capsules were made from the same cavity (#1). As will be shown further, it will also be apparent that not only were these products produced from the cavity, but also from the same mold. Exhibit 10 at ¶¶ 11-12.



59. The above pictures are a close up of the cavity marking on each product. In this picture one will notice that the products share the exact same scratches and other noticeable markings that can only be introduced into the product if they were made from the same mold and

cavity. Exhibit 10 at ¶¶ 11-13. The following figures will highlight other details that reinforce the proof of these products being produced from the same tool.

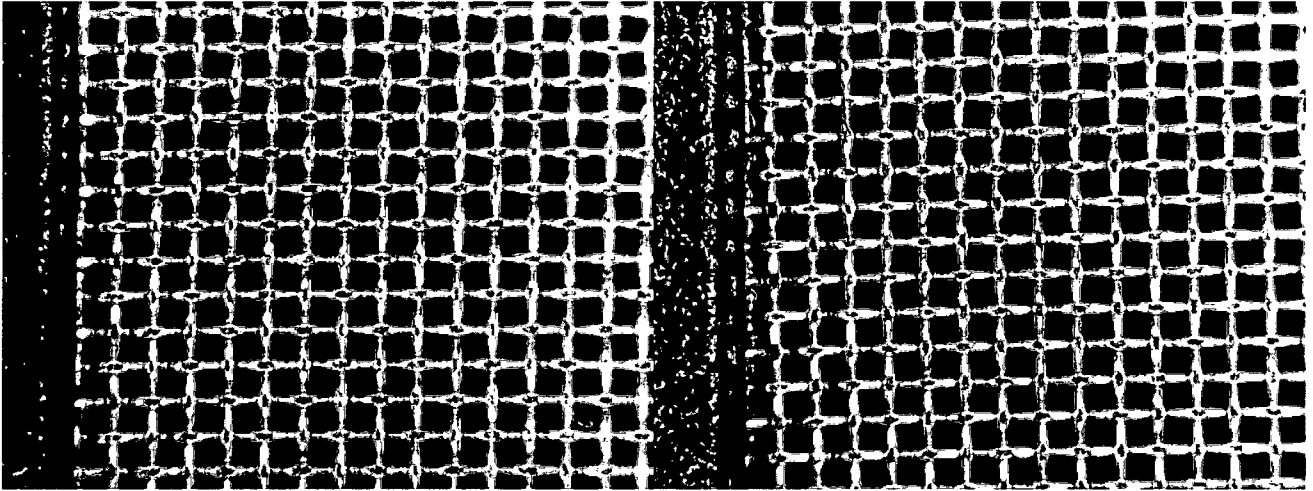


60. The pictures above are close ups of the spray head in the lid. Note the flaw in the plastic that is identical in both products. This is further evidence that the two products were made with the same tool. Exhibit 10 at ¶¶ 14-15.

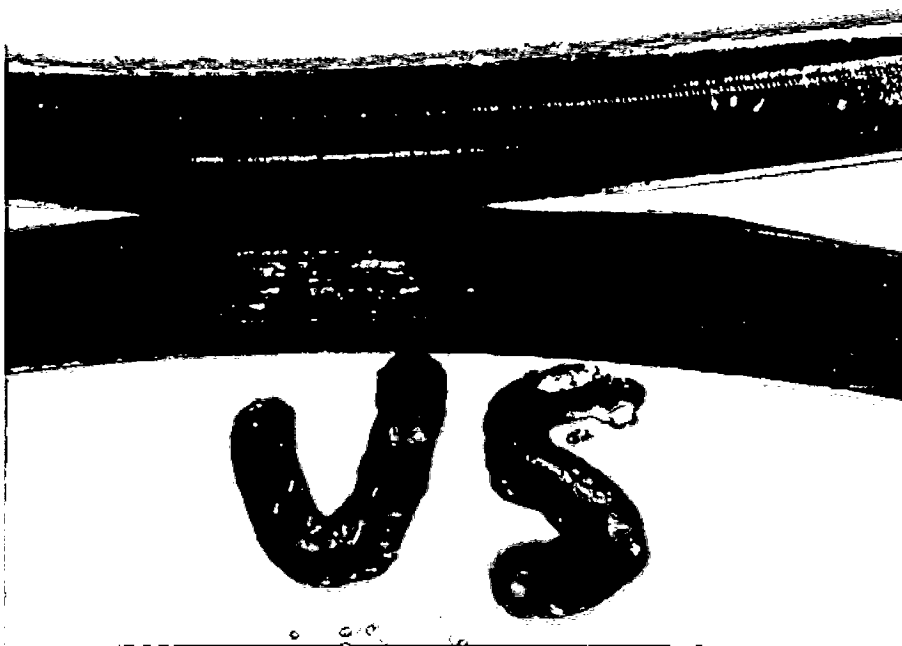


61. The pictures above zoom in around one of the needle cavities. The perspective of these pictures is looking into the capsules. One can see the large dimple on the top of each of the needle cavities. Circled are marks that are identical in both products. By looking closely, one

can notice many other identical irregularities in both products. This again shows that the two products were made using the same tool. Exhibit 10 at ¶¶ 16-17.



62. The pictures above zoom into the metal mesh. In comparison, it is clear that the metal mesh on both products are identical. Put another way, the metal mesh in the product labeled as “Made in the USA” is identical to the one that is made in China. Exhibit 10 at ¶¶ 18-19.



63. The picture above is a close up of the O-rings that are found on the lid of both products. The bottom O-ring is from the product identified as "Made in the USA." While there are no intentional mold markings (such as a cavity number) on the O-rings, it is clear that the O-rings are the exact same color and the O-ring rubber diameters are the same. Exhibit 10 at ¶ 20. This indicates that the O-ring on the product labeled "Made in the USA" is the same as the one made in China. *Id.*

64. On information and belief, the above comparison shows that the Brew & Save ARM purchased after the remedial orders were issued that state "Made in the USA," was actually manufactured in China, and imported and sold in the United States. And though the purchase of these two Brew & Save products took place during the Presidential review period, on information and belief, Respondents did not post any bond for these sales. In fact, during this period, on information and belief, Respondents did not at all post a bond though the remedial orders required a 100% bond. *See* Exhibit 6 at 2.

E. Ekobrew “Made in the USA”

65. The Respondents advertise and sell their Ekobrew product as having been made in the United States. On information and belief, for each of these products, claimed components are manufactured in China and imported into this country on behalf of Respondents. This violates the remedial orders, which apply not only to beverage capsules, but to components of those capsules. Exhibit 6 at 2; Exhibit 7 at 1-3.

66. As discussed above, ARM’s investigation determined that it was economically unfeasible to have O-rings for beverage capsules manufactured in the United States and that the metal mesh screens were not manufactured in the United States. Exhibit 10 at ¶¶ 4-7. ARM has uncovered public customs records showing that for the Ekobrew products, the O-rings and the mesh screens are imported.

67. The O-rings seal the cover of the Ekobrew to the sidewalls, when the cover is in the closed position. As such they are directed to the claimed element “wherein the cover is adapted to sealingly engage with a top edge of the at least one sidewall,” which is recited in claims 8 and 19 of the ‘320 patent. The metal mesh screens are part of the container, thus forming part of the claimed receptacle “configured to receive the brewing material,” as recited in claim 8 and “configured to receive and support the brewing material,” as recited in claim 19.

68. ARM searched customs records for “Ekobrew” and learned that Ekobrew O-rings and metal mesh components have been shipped by a company called Zhejiang Minmetals Sanhe Import & Export Co., Ltd. based in Hangzhou Shi, Zhejiang Sheng, China. Exhibit 29 (report from customs database (accessed via www.panjiva.com) based on search of “Ekobrew.”). The components were shipped to a company called Laube Technology. *Id.* The most recent shipment of these Ekobrew components was on April 30, 2016, which was after the remedial

orders issued. *Id.* On information and belief, this shipment was on behalf of Respondents given that the components shipped were identified as “EKOBREW ORING AND EKOBREW SS SCREEN.” Exhibit 29.

69. On May 23, 2016, ARM purchased an Ekobrew product. Exhibits 34 and 35. The product was sold by Eko Brands. Exhibit 34. On information and belief, each of the Ekobrew products sold after issuance of the remedial orders contain metal mesh screens and O-rings that were imported from China. *See, e.g.*, Exhibit 29. On information and belief, the O-rings and screens are specifically designed and intended for use in Respondents’ products. Thus, each sale of the Ekobrew is a violation of the remedial orders. On information and belief, not only have the Respondents sold the Ekobrew in violation of the remedial orders, but they still advertise these products on their website (www.ekobrew.com) and thus aid and abet in the sales of these products.

70. Exhibit 36 illustrates how the Ekobrew infringes claims 8 and 19 of the ‘320 patent. Furthermore, Respondents indirectly infringe these claims because they provide instructions on the packaging informing users to fill the Ekobrew with brewing material and insert the Ekobrew in a Keurig machine. Exhibit 36. This inducement leads to the infringement of claims 8 and 19. *Id.* Furthermore, as discussed above in paragraph 9, Respondents were put on notice that their actions constitute infringement of claims 8 and 19. Respondents additionally contribute to the infringement of claims 8 and 19 by providing the claimed container (e.g., the beverage capsule) that satisfies the elements of these claims. Moreover, there are no substantial non-infringing uses of this product, and it is not a staple article or commodity of commerce suitable for substantial noninfringing use. It is designed and intended to be used in a Keurig machine. *See* Exhibit 36. Finally, the Ekobrew was identified as infringing in the Amended

Complaint, which led to institution of the 929 investigation. *See* Exhibit 23, Amended Complaint at ¶¶ 18, 52-57. In the Final Determination, the Commission presumed the allegations to be true and issued the remedial orders based on Eko Brands' "infringement of claims 8 and 19." *See* Final Determination at 83.

F. Ekobrew Included in Imported Eko Brands Brewer

71. Respondents also sell via Amazon.com a product called the Ekobrew Universal Single Cup Brewer. Exhibit 37. This product is imported into the United States. *Id.* at 3 of document (identifying country of origin as "China"). The product includes an Ekobrew product. *See id.* at 1 of document ("Includes a Free Ekobrew Reusable single serve coffee pods"). On information and belief, the Ekobrew, which is included in the imported brewer is also imported in violation of the remedial orders. And as shown in Exhibit 36, the Ekobrew infringes claims 8 and 19 of the '320 patent. On information and belief Respondents have offered for sale and sold the imported brewer along with the imported Ekobrew each day after issuance of the remedial orders.

VIII. RELATED LITIGATION

72. There is one related litigation. Eko Brands initiated a lawsuit against ARM in the Western District of Washington alleging that the '320 patent was not infringed and was invalid. The case is styled *Eko Brands v. Adrian Rivera Enterprises, Inc.*, Case No. 2:15-cv-00522-RSL (W.D. Wash.). The litigation is ongoing. In this litigation, Eko Brands also asserted that ARM infringed its U.S. Patent No. 8,707,855. ARM has asserted that it does not infringe this patent and that it is invalid. ARM also requested an *ex parte* reexamination of the '855 patent, which the Patent Office granted. That reexamination has been given application no. 90/013,729.

IX. LICENSE

73. There are no licenses to ARM's '320 patent other than the confirmatory license agreement provided as Confidential Exhibit 11C. However, in the underlying 929 investigation, Respondents LBP Manufacturing Inc. and LBP Packaging Shenzhen Co. Ltd. ("LBP") entered into a settlement and release agreement whereby ARM allowed LBP to sell accused products until July 1, 2015. The LBP settlement and release agreement is provided as Confidential Exhibit 30C. Additionally, in the underlying 929 investigation, Respondents Spark Innovators Corp. and B. Marlboros International (HK) Ltd. entered into a settlement and release agreement whereby ARM allowed these Respondents to sell accused products until April 1, 2015, after which a consent order went into effect. The settlement agreement with Spark Innovators Corp. and B. Marlboros International (HK) Ltd. is provided as Confidential Exhibit 31C.

X. RELIEF REQUESTED

74. WHEREFORE, by reason of the foregoing, ARM requests that the United States International Trade Commission:

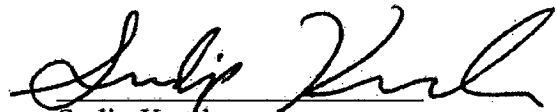
- A. Institute a formal enforcement proceeding pursuant to 19 C.F.R. § 210.75 to confirm the violations of the Limited Exclusion Order and Cease and Desist Orders issued against Respondents Eko Brands and Espresso Supply, Inc.
- B. Properly refer this matter to the Administrative Law Judge for issuance of an Initial and Final Determination on the issues of the enforcement violation and remedy requested;
- C. Direct the Administrative Law Judge to (1) issue a supplemental protective order to protect ARM's confidential business information; (2) permit a necessary and expedited period of fact discovery on Respondents, and parties acting in concert

with it, regarding continued violation of the Limited Exclusion Order and Cease and Desist Orders; (3) hold a hearing; and (4) issue a Final Determination of Enforcement within four months of initiation of the enforcement proceeding; and

D. After the enforcement proceeding, in the event the Commission determines that there has been a violation of the Limited Exclusion Order and Cease and Desist Orders, issue the following remedies:

- i. impose civil penalties pursuant to 19 U.S.C. § 1337(f) that are not more than the greater of \$100,000 or twice the domestic value of the articles entered or sold on each day in violation of the remedial orders; and
- ii. impose such other remedies and sanctions as are appropriate and within the Commission's authority.

Dated: June 1, 2016



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