

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)

CERTAIN ENERGY DRINK PRODUCTS)

Investigation No. 337-TA-678

Order No. 19: Requiring Each Of Respondents Posh Nosh, Greenwich And Advantage
By 12/21/09 To Show Cause Why Each Should Not Be Found In Default

On November 16, 2009, complainants Red Bull GmbH and Red Bull North America, Inc. (Red Bull) moved for an order directing each of respondents Posh Nosh Imports (USA) (Posh Nosh), Greenwich Inc. (Greenwich) and Advantage Food Distributors; Ltd. (Advantage) to show cause why each should not be found in default for failure to respond to the complaint and notice of investigation (NOI) as required by Commission rule 210.13; and further requested that the administrative law judge, upon the failure of each of said respondents to show such cause, issue an initial determination (1) finding each of said respondents in default; (2) finding each of said respondents to have admitted all allegations in the complaint and NOI; (3) finding each of said respondents has waived its right to appear and be served with documents; and (4) finding each of said respondents has waived its right to contest the allegations at issue in this investigation.

(Motion Docket No. 678-18.)

The staff, in a response dated November 16, 2009, supported Motion No. 678-18.

No other party responded to Motion No. 678-18.¹

¹ Complainants represented in Motion No. 678-18 that counsel for respondents India Imports, Inc. a/k/a/ International Wholesale Club, Washington Food & Supply of D.C., Inc., a/k/a Washington Cash & Carry, and Vending Plus, Inc. d/b/a Baltimore Beverage Co. have indicated that said respondents neither support nor oppose Motion No. 678-18; and that counsel for Wheeler Trading, Inc. has indicated that Wheeler Trading Inc. takes no position on Motion No.

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Commission rule 210.16(a)(1) states that “[a] party shall be found in default if it fails to respond to the complaint and notice of investigation in the manner prescribed in Commission rule 210.13 or 210.59(c), or otherwise fails to answer the complaint and notice, and fails to show cause why it should not be found in default.” Pursuant to Commission rule 210.16(b)(1) when a respondent fails to respond or appear, “a party may file a motion for . . . an order directing that respondent to show cause why it should not be found in default. If the respondent fails to make the necessary showing, the administrative law judge shall issue an initial determination finding the respondent in default.” Pursuant to Commission rule 210.16(c), a party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.

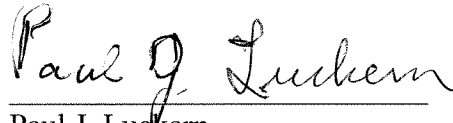
The record indicates that Commission served each of said respondents with a copy of the complaint, the amended complaint, and the Commission’s Notice of Non-Review on October 2, 2009;² that each of said respondents failed to provide any response to the complaint, amended complaint, and NOI and that the due date for such response has passed by several days. Hence each of said respondents is ordered to show cause, no later than December 21, 2009 why each should not be held in default pursuant to Commission rules 210.16(a)(1) and (b)(1). See, e.g., Certain Light Emitting Diode Chips, Laser Diode Chips and Products Containing Same, Inv. No. 337-TA-674, Order No. 18 (Sept. 10, 2009); Certain Tadalafil or Any Salt or Solvate Thereof and Products Containing Same, Inv. No. 337- TA-539, Order No. 4 (Aug. 8, 2005).

678-18.

² The staff noted that although the Commission’s letter states 20 days, Advantage, as a foreign entity, had 30 days to respond citing Commission rule 201.16(d) and that therefore, Advantage’s response was due on or about November 1, 2009.

Motion No. 678-18 is granted to the extent indicated.³

The administrative law judge is requesting that this order be served by overnight delivery.



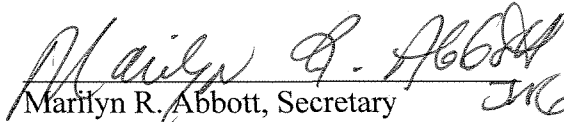
Paul J. Luckern
Chief Administrative Law Judge

Issued: November 30, 2009

³ Referring to complainants' request for the issuance of initial determinations finding each of said respondents in default and granting certain relief against each of them, Commission rule 210.16(c) expressly requires such request for relief to be made after the Commission has found a respondent in default. Hence, Motion No. 678-18 is granted only to the extent indicated.

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **Order** has been served by hand upon the Commission Investigative Attorney, Juan Cockburn, Esq., and the following parties as indicated, on NOV 30 2009.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

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RESPONDENTS:

FOR RESPONDENT INDIA IMPORTS, INC.;
WASHINGTON FOOD AND SUPPLY OF D.C., INC.;
d/b/a WASHINGTON CASH & CARRY ;VENDING
PLUS, INC. d/b/a BALTIMORE BEVERAGE CO.:

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