

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN HUMAN MILK
OLIGOSACCHARIDES AND METHODS
OF PRODUCING THE SAME**

Inv. No. 337-TA-1120

NOTICE OF INSTITUTION OF INVESTIGATION

Institution of Investigation Pursuant to 19 U.S.C.1337

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 April 2, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Glycosyn LLC. An amended complaint was filed on May 16, 2018. An additional supplement to the complaint was also filed on May 25, 2018. The complaint, as amended and 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 human milk oligosaccharides by reason of infringement of U.S. Patent No. 9,453,230 ("the '230 patent") and U.S. Patent No. 9,970,018 ("the '018 patent"). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone (202) 205-2000. 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>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Pathenia 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 C.F.R. 210.10 (2018).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on June 14, 2018, **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)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of products identified in paragraph (2) by reason of infringement of one or more of claims 1-40 of the '230 patent; and claims 1-28 of the '018 patent; and whether an industry in the United States exists 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 C.F.R. 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 "2'-fucosyllactose oligosaccharides";

(3) Pursuant to Commission Rule 210.50(b)(1), 19 C.F.R. 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) 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 complainant is:

Glycosyn LLC
890 Winter Street, Suite 208
Waltham, MA 95131

(b) The respondent is the following entities alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Jennewein Biotechnologie GmbH
Maarweg 32
D-53619 Rheinbreitbach
Germany

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

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 C.F.R. 210.13. Pursuant to 19 C.F.R. 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission 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.



Lisa R. Barton
Secretary to the Commission

Issued: June 15, 2018

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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AND METHODS OF PRODUCING THE SAME

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DESIGNATION OF OUII ATTORNEY
FOR SERVICE OF PROCESS

The Office of Unfair Import Investigations (OUII) hereby designates Lisa Murray, Esq.
(202) 205-2734, lisa.murray@usitc.gov as OUII's lead attorney for service of process.
Therefore, it is requested that all documents served by the Commission or filed by the parties in
the above-referenced investigation be served upon this investigative attorney.

Respectfully submitted,


Margaret Macdonald, Director

OFFICE OF UNFAIR IMPORT INVESTIGATIONS
U.S. International Trade Commission
500 E Street, S.W., Suite 401
Washington, D.C. 20436
(202) 205-2560
(202) 205-2158 (facsimile)

June 15, 2018

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE OF INSTITUTION OF
IVNESTIGATION** has been served by hand upon the Commission Investigative Attorney, **Lisa
Murray, Esq.**, and the following parties as indicated, on 6/15/2018



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

Complainants:

Glycosyn LLC
890 Winter Street, Suite 208
Waltham, MA 02451-1470

- ☐ Via Hand Delivery
☒ Via Express Delivery
☐ Via First Class Mail
☐ Other: _____

On Behalf of Complainants:

Michael C. Newman, Esq.
MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO, PC
1 Financial Center
Boston, MA 02111

- ☐ Via Hand Delivery
☒ Via Express Delivery
☐ Via First Class Mail
☐ Other: _____

Respondents:

Jennewein Biotechnologie GmbH
Maarweg 32
D-53619 Rheinbreitbach
Germany

- ☐ Via Hand Delivery
☒ Via Express Delivery
☐ Via First Class Mail
☐ Other: _____

Embassy:

Embassy of Germany
4645 Reservoir Road
NW Washington, DC 20007

- ☐ Via Hand Delivery
☒ Via Express Delivery
☐ Via First Class Mail
☐ Other: _____

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