

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC**

In the Matter of

**SELF-ANCHORING BEVERAGE
CONTAINERS**

Investigation No. 337-TA-1092

GENERAL EXCLUSION ORDER

The Commission has determined that there is a violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the unlawful importation, sale for importation, or sale within the United States after importation of certain self-anchoring beverage containers that infringe claim 1 of United States Patent No. 8,028,850 (“the ‘850 patent”).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is necessary to prevent circumvention of an exclusion order limited to products of named persons and because there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing self-anchoring beverage containers (“covered products”).

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of a general exclusion order and that the bond during the Presidential review period shall be in the amount of one hundred (100) percent of the entered value for all covered products in question.

Accordingly, the Commission hereby **ORDERS** that:

1. Self-anchoring beverage containers that infringe claim 1 of the '850 patent (“covered articles”) are excluded from entry into the United States for consumption, entry for consumption from a foreign-trade zone, and withdrawal from a warehouse for consumption for the remaining term of the patent, except under license from, or with the permission of, the patent owner or as provided by law.

2. Notwithstanding paragraph 1 of this Order, the aforesaid covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, and withdrawal from a warehouse for consumption, under bond in the amount of one hundred (100) percent of the entered value of the products pursuant to subsection (j) of Section 337 (19 U.S.C. § 1337(j)), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed Reg.* 43251), from the day after this Order is received by the United States Trade Representative and until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to U.S. Customs and Border Protection (“CBP”), in advance of the date of the entry, pursuant to procedures CBP establishes.

3. At the discretion of CBP and pursuant to procedures it establishes, persons seeking to import self-anchoring beverage containers that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this

paragraph to furnish such records or analyses as are necessary to substantiate the certification.

4. In accordance with 19 U.S.C. § 1337(1), the provisions of this Order shall not apply to covered articles that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

6. The Commission Secretary shall serve copies of this Order upon each party of record in this investigation and upon CBP.

7. Notice of this Order shall be published in the Federal Register.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: December 18, 2018

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **LIMITED EXCLUSION ORDER** has been served by hand upon the Commission Investigative Attorney, **Monisha Deka, Esq.**, and the following parties as indicated, on **December 18, 2018**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
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On Behalf of Complainants Alfay Designs, Inc., Mighty Mug, Inc., and Harry Zimmerman:

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- Via Hand Delivery
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- Via First Class Mail
- Other: _____