

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN VACUUM INSULATED
FLASKS AND COMPONENTS THEREOF**

Investigation No. 337-TA-1216

GENERAL EXCLUSION ORDER

The United States International Trade Commission (“Commission”) has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“Section 337”), in the unlawful importation, sale for importation, or sale within the United States after importation of certain vacuum insulated flasks and components thereof that infringe one or more of: (1) the sole claim of U.S. Design Patent Nos. D806,468 (“the D’468 patent”); D786,012 (“the D’012 patent”); and D799,320 (“the D’320 patent”), respectively; and (2) U.S. Trademark Registration Nos. 4,055,784 (“the ’784 trademark”); 5,295,365 (“the ’365 trademark”); and 5,176,888 (“the ’888 trademark”).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination 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 the infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing vacuum insulated flasks and components thereof.

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

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

1. Vacuum insulated flasks and components thereof (as defined in paragraph 4 below) that infringe one or more of the sole claims of the D'468 patent, the D'012 patent, and the D'320 patent, respectively, 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 terms of the patents, except under license of, or with the permission of, the patent owner or as provided by law.
2. Vacuum insulated flasks and components thereof (as defined in paragraph 4 below) that infringe one or more of the '784 trademark, the '365 trademark, and the '888 trademark 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, except under license of, or with the permission of, the trademark owner or as provided by law until such date as the trademarks have been abandoned, canceled, or rendered invalid or unenforceable.
3. For the purpose of assisting U.S. Customs and Border Protection ("CBP") in the enforcement of this Order, and without in any way limiting the scope of the

Order, the Commission has attached to this Order copies of the relevant trademark registrations as Exhibit 1.

4. The vacuum insulated flasks and components thereof that are subject to this Order (*i.e.*, “covered articles”) are “vacuum insulated flasks made of stainless steel and caps for such flasks, including round caps with a strap secured on either side of the cap, and straw caps.”
5. Notwithstanding paragraphs 1 and 2 of this Order, covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, or 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.* 43,251), from the day after this Order is received by the United States Trade Representative 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 CBP, in advance of the date of the entry, pursuant to procedures CBP establishes.
6. This Order does not exempt infringing articles from seizures under trademark laws enforced by CBP, most notably 19 U.S.C. § 1526(e) and 19 U.S.C. § 1595a(c)(2)(C) in connection with 15 U.S.C. § 1124.

7. At the discretion of CBP and pursuant to the procedures it establishes, persons seeking to import articles 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 paragraphs 1 and/or 2 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.
8. In accordance with 19 U.S.C. § 1337(l), 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.
9. Complainants Steel Technology, LLC d/b/a Hydro Flask and Helen of Troy Limited (collectively “Hydro Flask”) shall file a written statement with the Commission, made under oath, each year on the anniversary of the issuance of this Order stating whether Hydro Flask continues to use each of the aforesaid trademarks in commerce in the United States in connection with vacuum insulated flasks and components thereof, whether any of the aforesaid trademarks has been abandoned, canceled, or rendered invalid or unenforceable, and whether Hydro Flask continues to satisfy the domestic industry requirements of Section 337(a)(2) and (3).

10. 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).
11. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon CBP.
12. Notice of this Order shall be published in the Federal Register.

By order of the Commission.

Issued: January 5, 2022

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

Lisa R. Barton,
Secretary to the Commission.