

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SELF-ANCHORING
BEVERAGE CONTAINERS**

Inv. No. 337-TA-1092

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 October 31, 2017, under section 337 of the Tariff Act of 1930, as amended, on behalf of Mighty Mug, Inc. of Rahway, New Jersey. An amended complaint was filed on December 1, 2017, on behalf of Alfay Designs, Inc., of Rahway, New Jersey, Mighty Mug, Inc., of Rahway, New Jersey, and Harry Zimmerman of Los Angeles, California. Supplements to the amended complaint were filed on December 4, 8, 19, and 22, 2017. The amended complaint 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 self-anchoring beverage containers by reason of infringement of (1) certain claims of U.S. Patent No. 8,028,850 (“the ’850 patent”) and U.S. Patent No. 8,757,418 (“the ’418 patent”); and (2) U.S. Trademark Registration No. 4,191,803 (“the ’803 trademark”). The amended complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order and cease and desist orders.

ADDRESSES: The amended 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 M. 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 (2017).

SCOPE OF INVESTIGATION: Having considered the amended complaint, the U.S. International Trade Commission, on January 2, 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:

(a) 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 certain self-anchoring beverage containers by reason of infringement of one or more of claim 1 of the '850 patent and claim 1 of the '418 patent; and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(b) whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain self-anchoring beverage containers by reason of infringement of the '803 trademark; and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) 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 complainants are:

Alfay Designs, Inc.
665 Martin Street
Rahway, NJ 07065

Mighty Mug, Inc.
665 Martin Street
Rahway, NJ 07065

Harry Zimmerman
310 Comstock Avenue
Los Angeles, CA 90024

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Telebrands, Corp.
One Telebrands Plaza
Fairfield, NJ 07004

HIRALIY
Room 1306, Easter Tower
Poly World Trade Center Pazhou
No. 1000 Xingang Dong Road
Haizhu District, Guangzhou
Guangdong Province, China

Chekue
Shenzhen Chekue Trading Co. Ltd.
Shenzhen
Guangdong Province, 518131 China

Tapcet
Guangzhou Tinghui Trade Co., Ltd.
Guangzhou, Tianhe
Longdong W Street
Guangdong Province, China

OUOH
Zhejiang OUOH Houseware Co., Ltd.
No. 1278-1308 Wanxiang Road
Wanquan Town
Wenzhou
Zhejiang Province, 325204 China

DevBattles
3rd Floor
Street Cardinala Josepha Slipogo, 7
Ternopil, Ukraine, 46000

OTELAS, MB
Panevezio g.7-19
LT-92316
Klaipeda, Lithuania

Artiart Limited
8F-4, No. 412, SEC5
Chung Hsiao East Road
Taipei, Taiwan

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

(3) 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 amended 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 amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended 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 amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended 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 amended 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: January 3, 2018