

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN SELF-ANCHORING
BEVERAGE CONTAINERS**

**Investigation No. 337-TA-1092
(Rescission Petition)**

**NOTICE OF COMMISSION DETERMINATION TO DENY
A PETITION TO RESCIND A GENERAL EXCLUSION ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny a petition to rescind the Commission's general exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be 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, SW, Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<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>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on January 8, 2018, based on the complaint of Alfay Designs, Inc. of Rahway, New Jersey; Mighty Mug, Inc. of Rahway, New Jersey; and Harry Zimmerman of Los Angeles, California (collectively, "Complainants") that alleged that several respondents, including Zhejiang OUOH Houseware Co., Ltd. of Taipei, Taiwan ("OUOH"), violated section 337 by infringing, *inter alia*, claim 1 of U.S. Patent No. 8,028,850 ("the '850 patent"). 83 Fed. Reg. 835 (Jan. 8, 2018). On December 18, 2018, at the conclusion of the investigation, the Commission issued a general exclusion order ("GEO") with respect to claim 1 of the '850 patent.

On April 4, 2019, Mayborn USA, Inc. and Mayborn Group Limited (collectively, "Mayborn"), which were not parties to the underlying investigation, petitioned to rescind

the GEO. Mayborn alleges it has discovered prior art that renders claim 1 of the '850 patent invalid as anticipated, and argues that "the presentation of prior art that invalidates claim 1 of the '850 patent . . . constitute[s] changed circumstances that justify rescission of the GEO." Petition at 7. Mayborn requests that the Commission "conduct proceedings as necessary to find that claim 1 of the '850 patent is invalid based on the . . . prior art reference and rescind the GEO." *Id.* at 4. On April 15, 2019, Complainants and the Office of Unfair Import Investigations ("OUII") filed separate responses opposing the petition.

On April 19, 2019, Mayborn moved for leave to file a reply in support of its rescission petition. OUII opposed the motion on April 24, 2019, and Complainants opposed the motion on April 26, 2019. Finally, on April 26, 2019, Mayborn moved to file a reply in support of its motion for leave to file a reply.

The Commission has determined to deny Mayborn's petition to rescind the GEO. A GEO may be rescinded if "the Commission finds . . . that the conditions which led to such exclusion from entry or order no longer exist," 19 U.S.C. 1337(k)(1), including when "changed conditions of fact or law, or the public interest, require that an exclusion order . . . be modified or set aside, in whole or in part," 19 CFR 210.76(a)(1).

Here, the following "conditions" led the Commission to issue the GEO: (1) the Commission's finding that Complainants demonstrated by substantial, reliable, and probative evidence that respondent OUOH violated section 337; (2) the Commission's finding that a GEO is necessary to prevent circumvention of a limited exclusion order; and (3) the Commission's finding that there is a pattern of violation and that it is difficult to identify the source of infringing products. *See* Comm'n Op. at 8-16 (Dec. 18, 2018). Nothing in Mayborn's petition demonstrates that these conditions that led to the GEO no longer exist.

Mayborn's petition acknowledges the Commission's findings during the underlying investigation that the patent claim at issue here is presumed valid (35 U.S.C. 282(a)), and that no party challenged the validity of the asserted claim. The Commission has rescinded remedial orders when the petitioner has demonstrated a changed circumstance sufficient to warrant rescission of remedial orders regarding the presumption of validity, such as a showing that a tribunal has held the subject patent claims invalid. *See, e.g., Certain Silicon Microphone Packages and Products Containing the Same*, Inv. No. 337-TA-629, Notice (Oct. 28, 2011); *Certain Composite Wear Components and Products Containing the Same*, Inv. No. 337-TA-644, Comm'n Op. (Jan. 25, 2011). The Commission has never found, and does not find here, that Mayborn's alleged discovery of prior art after the issuance of a GEO constitutes a changed circumstance that warrants rescission of that order. In addition, Mayborn points to no authority that allows the Commission to commence a proceeding solely to determine invalidity in the context of a petition to rescind under 19 U.S.C. 1337(k).

The Commission therefore finds that Mayborn's petition fails to show that the conditions that led to the GEO no longer exist and fails to show that changed conditions

of fact or law, or the public interest, require rescission of the GEO. Finally, the Commission denies both Mayborn's motion for leave to file its reply and its motion for leave to file a reply in support of its reply.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: May 17, 2019

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached NOTICE has been served by hand upon the Commission Investigative Attorney, **Monisha Deka, Esq.**, and the following parties as indicated, on **May 17, 2019**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
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