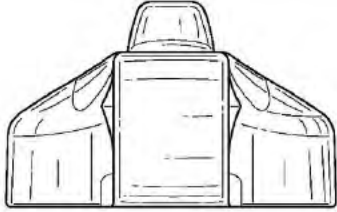

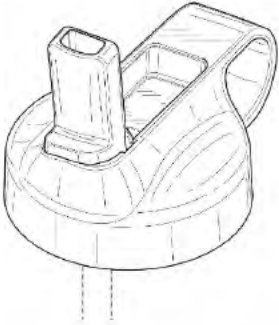

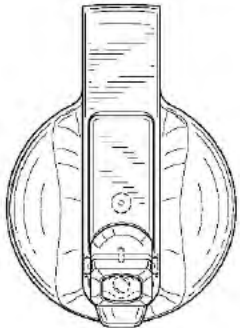



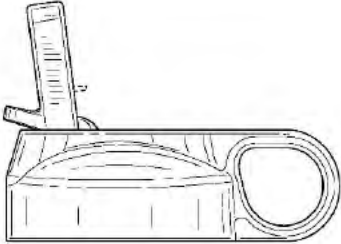
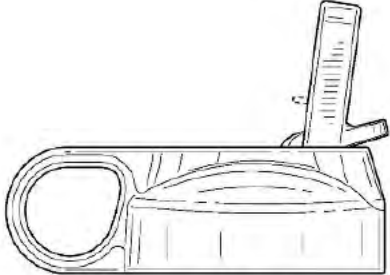
PUBLIC VERSION

<p>Claimed Design – U.S. Patent No. D799,320</p>	<p>Zhejiang Yongkang Unique Industry & Trade Co., Ltd.’s “12 oz Kids Sippy Double Wall Vacuum Insulated Stainless Steel Sports Water Bottle With Straw Lid”</p>
 <p>FIG. 3</p>	
 <p>FIG. 4</p>	
 <p>FIG. 5</p>	
 <p>FIG. 6</p>	



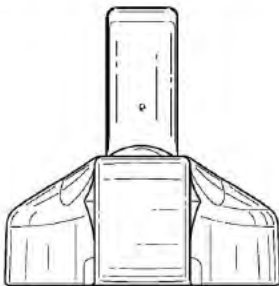

PUBLIC VERSION

Claimed Design – U.S. Patent No. D799,320	Zhejiang Yongkang Unique Industry & Trade Co., Ltd.’s “12 oz Kids Sippy Double Wall Vacuum Insulated Stainless Steel Sports Water Bottle With Straw Lid”
 <p data-bbox="435 611 526 653">FIG. 7</p>	
 <p data-bbox="444 1524 516 1566">FIG. 9</p>	
 <p data-bbox="444 1524 516 1566">FIG. 9</p>	

PUBLIC VERSION

<p>Claimed Design – U.S. Patent No. D799,320</p>	<p>Zhejiang Yongkang Unique Industry & Trade Co., Ltd.’s “12 oz Kids Sippy Double Wall Vacuum Insulated Stainless Steel Sports Water Bottle With Straw Lid”</p>
 <p>FIG. 10</p>	
 <p>FIG. 11</p>	
 <p>FIG. 12</p>	

PUBLIC VERSION

<p>Claimed Design – U.S. Patent No. D799,320</p>	<p>Zhejiang Yongkang Unique Industry & Trade Co., Ltd.’s “12 oz Kids Sippy Double Wall Vacuum Insulated Stainless Steel Sports Water Bottle With Straw Lid”</p>
 <p>FIG. 13</p>	
 <p>FIG. 14</p>	

Compl. Ex. 7.86; Kemnitzer Ex. W.

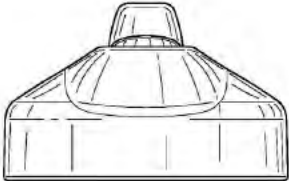

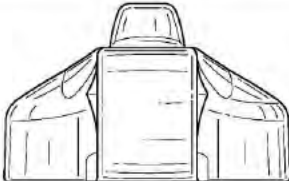



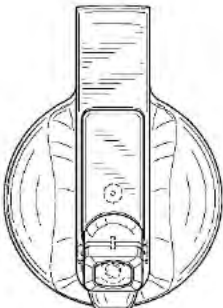

f) Suzhou Prime Gifts Co., Ltd.

<p>Claimed Design – U.S. Patent No. D799,320</p>	<p>Suzhou Prime Gifts Co., Ltd.’s “High Quality Keep Hot/ Cold Stainless Steel Water Bottle Hydro Thermos Vacuum Flask with Custom Logo”</p>
	

PUBLIC VERSION

Claimed Design – U.S. Patent No. D799,320	Suzhou Prime Gifts Co., Ltd.’s “High Quality Keep Hot/ Cold Stainless Steel Water Bottle Hydro Thermos Vacuum Flask with Custom Logo”
 <p>FIG. 2</p>	
 <p>FIG. 3</p>	
 <p>FIG. 4</p>	
 <p>FIG. 5</p>	

PUBLIC VERSION

Claimed Design – U.S. Patent No. D799,320	Suzhou Prime Gifts Co., Ltd.’s “High Quality Keep Hot/ Cold Stainless Steel Water Bottle Hydro Thermos Vacuum Flask with Custom Logo”
 <p data-bbox="436 604 508 640">FIG. 6</p>	
 <p data-bbox="436 905 508 940">FIG. 7</p>	
	
 <p data-bbox="444 1703 508 1738">FIG. 9</p>	

PUBLIC VERSION

<p>Claimed Design – U.S. Patent No. D799,320</p>	<p>Suzhou Prime Gifts Co., Ltd.’s “High Quality Keep Hot/ Cold Stainless Steel Water Bottle Hydro Thermos Vacuum Flask with Custom Logo”</p>
 <p>FIG. 10</p>	
 <p>FIG. 11</p>	
 <p>FIG. 12</p>	
 <p>FIG. 13</p>	

PUBLIC VERSION

Claimed Design – U.S. Patent No. D799,320	Suzhou Prime Gifts Co., Ltd.’s “High Quality Keep Hot/ Cold Stainless Steel Water Bottle Hydro Thermos Vacuum Flask with Custom Logo”
 <p>FIG. 14</p>	

Compl. Ex. 7.87; *see also* Kemnitzer Decl. at ¶ 73 (noting that while he had not reviewed a physical sample of the Suzhou Prime Flask Lid, he reviewed images of the accused lid and “can discern little to no difference between that lid and the ’320 Patent’s design.”).

4. Conclusion

For these reasons, the undersigned finds that Hydro Flask has established by substantial, reliable, and probative evidence that Respondents Jinhua City Ruizhi E-Commerce Co., Ltd.; Guangzhou Yawen Technology Co., Ltd.; Shenzhen City Yaxin General Machinery Co., Ltd.; Suzhou Prime Gifts Co., Ltd.; Wo Ma Te (Tianjin) International Trade Co., Ltd.; Wuyi Loncin Bottle Co., Ltd.; and Yongkang Huiyun Commodity Co., Ltd. infringe the D’468 patent, Respondents Hangzhou Yuehua Technology Co., Ltd. and Wuyi Loncin Bottle Co., Ltd. infringe the D’012 patent, and Respondents Jinhua City Ruizhi E-Commerce Co., Ltd.; Cangnan Kaiyisi E-Commerce Technology Co., Ltd.; Shenzhen City Yaxin General Machinery Co., Ltd.; Suzhou Prime Gifts Co., Ltd.; Yongkang Huiyun Commodity Co., Ltd.; and Zhejiang Yongkang Unique Industry & Trade Co., Ltd. infringe the D’320 patent.³

³ The undersigned is not aware of any evidence to the contrary with respect to infringement of the Asserted Patents by these Defaulting Respondents.

D. Technical Prong of the Domestic Industry Requirement

Hydro Flask asserts that the Hydro Flask Wide Mouth Flex Cap, Standard Mouth Flex Cap, and Wide Mouth Straw Lid (“DI lids”) practice each of the Asserted Patents. Mem. at 29; *see also* SOMF at ¶ 46. In Staff’s view, “the evidence shows that the technical prong of the domestic industry requirement is satisfied by the Hydro Flask products.” Staff Resp. at 32.

To demonstrate that these products practice the Asserted Patents, Hydro Flask provided testimony from their expert on how the DI lids practice the claimed designs, as well as claim charts comparing the figures of the Asserted Patents to Hydro Flask’s DI lids. Kemnitzer Decl. at ¶¶ 42, 43, 48, 49, 55, 56; Kemnitzer Exs. B-D; Am. Compl. at ¶¶ 184-186; Compl. Exs. 10.2-10.4. Mr. Kemnitzer explained that he examined physical samples of the DI products and compared them to the figures of the Asserted Patents. Kemnitzer Decl. at ¶¶ 43, 49, 56. In his expert opinion, “there is little to no difference between the [asserted design patents’ figures] and the [DI lids].” *Id.* at ¶¶ 43 (Wide Mouth Flex Cap), 49 (Standard Mouth Flex Cap), 56 (Wide Mouth Straw Lid). He further opined that “[i]n the eye of an ordinary observer . . ., the [asserted design patents’] design[s] and the [DI lids] would be substantially the same.” *Id.* Mr. Kemnitzer therefore concluded that Hydro Flask’ DI lids practice the Asserted Patents. *Id.* at ¶ 15 (“[I]t is my opinion that Hydro Flask practices the Asserted Patents through its own products, particularly through the Wide Mouth Flex Cap, the Standard Mouth Flex Cap, and the Wide Mouth Straw Lid.”). The undersigned agrees.

As the charts below evidence, Hydro Flask’s Wide Mouth Flex Cap, Standard Mouth Flex Cap, and Wide Mouth Straw Lid products are substantially similar to the designs claimed in the Asserted Patents.

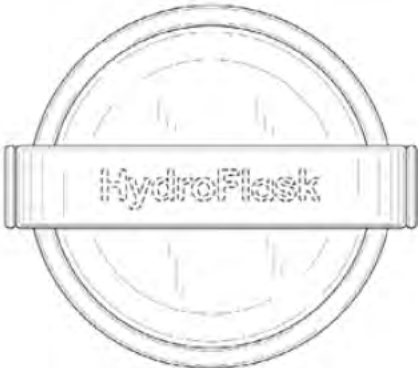



PUBLIC VERSION

1. D’468 Patent & Hydro Flask’s Wide Mouth Flex Cap

U.S. Patent No. D806,468	Hydro Flask’s Wide Mouth Flex Cap
 <p>FIG. 1</p>	
 <p>FIG. 2</p>	
 <p>FIG. 3</p>	

U.S. Patent No. D806,468	Hydro Flask's Wide Mouth Flex Cap
 <p data-bbox="470 609 527 640">FIG. 4</p>	
 <p data-bbox="470 1060 527 1092">FIG. 5</p>	
 <p data-bbox="470 1501 527 1533">FIG. 6</p>	

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U.S. Patent No. D806,468	Hydro Flask's Wide Mouth Flex Cap
 <p data-bbox="469 684 526 709">FIG. 7</p>	
 <p data-bbox="469 1146 526 1171">FIG. 8</p>	

Kemnitzer Ex. B; Compl. Ex. 10. 2; *see also* Kemnitzer Decl. at ¶ 43.

2. D’012 Patent & Hydro Flask’s Standard Mouth Flex Cap

U.S. Patent No. D786,012	Hydro Flask’s Standard Mouth Flex Cap
 <p>FIG. 1</p>	
 <p>FIG. 2</p>	
 <p>FIG. 3</p>	

PUBLIC VERSION

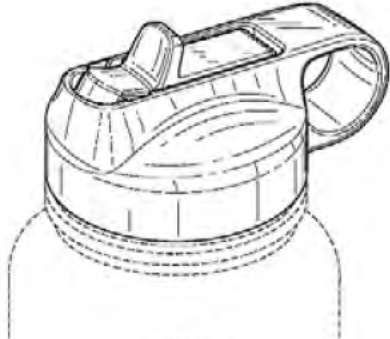

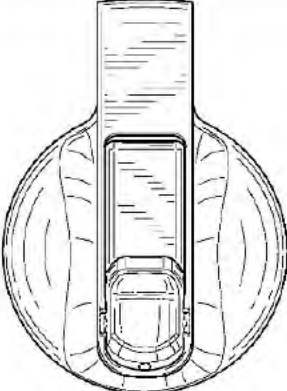

U.S. Patent No. D786,012	Hydro Flask's Standard Mouth Flex Cap
 <p>FIG. 4</p>	
 <p>FIG. 5</p>	
 <p>FIG. 6</p>	

PUBLIC VERSION

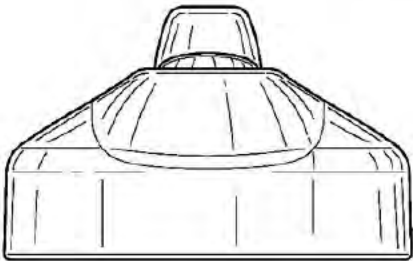

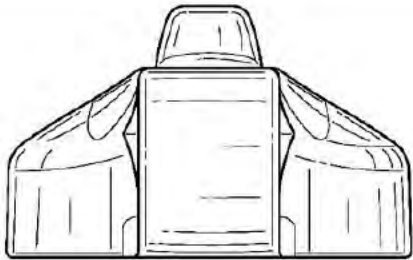

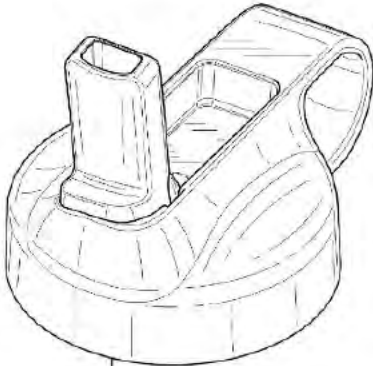

U.S. Patent No. D786,012	Hydro Flask's Standard Mouth Flex Cap
 <p data-bbox="451 600 493 621">FIG. 7</p>	

Kemnitzer Ex. C; Compl. Ex. 10. 3; *see also* Kemnitzer Decl. at ¶ 49.

3. D'320 Patent & Hydro Flask's Wide Mouth Straw Lid

U.S. Patent No. D799,320	Hydro Flask's Wide Mouth Straw Lid
 <p data-bbox="435 1335 496 1356">FIG. 1</p>	
 <p data-bbox="440 1808 521 1839">FIG. 2</p>	

U.S. Patent No. D799,320	Hydro Flask's Wide Mouth Straw Lid
 <p data-bbox="435 722 505 758">FIG. 3</p>	
 <p data-bbox="396 1079 483 1115">FIG. 4</p>	
 <p data-bbox="467 1436 555 1472">FIG. 5</p>	

U.S. Patent No. D799,320	Hydro Flask's Wide Mouth Straw Lid
 <p data-bbox="423 625 540 678">FIG. 6</p>	
 <p data-bbox="423 1024 540 1077">FIG. 7</p>	
 <p data-bbox="435 1549 513 1581">FIG. 8</p>	

U.S. Patent No. D799,320	Hydro Flask's Wide Mouth Straw Lid
 <p data-bbox="440 730 519 768">FIG. 9</p>	
 <p data-bbox="427 1302 534 1339">FIG. 10</p>	
 <p data-bbox="401 1749 503 1787">FIG. 11</p>	

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U.S. Patent No. D799,320	Hydro Flask's Wide Mouth Straw Lid
 <p data-bbox="461 630 558 667">FIG. 12</p>	
 <p data-bbox="418 1157 542 1194">FIG. 13</p>	
 <p data-bbox="418 1667 542 1705">FIG. 14</p>	

Kemnitzer Ex. C; Compl. Ex. 10. 4; *see also* Kemnitzer Decl. at ¶ 56.

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4. Conclusion

For the reasons stated above, the undersigned finds that the technical prong of the domestic industry requirement is satisfied for the Asserted Patents.

VII. DOMESTIC INDUSTRY – ECONOMIC PRONG

Hydro Flask asserts that it satisfies prongs (A), (B), and (C) of the domestic industry requirement. Mem. at 37, 40, 43. Staff argues that the evidence “shows that at least prongs (A) and (B) of the domestic industry requirements are satisfied with respect to products that practice the asserted intellectual property.” Staff Resp. at 33.

The undersigned finds that Hydro Flask has adduced substantial, reliable, and probative evidence to support a finding that they satisfy the economic prong of the domestic industry requirement under § 337(a)(3)(A). The evidence shows that Hydro Flask has invested in three facilities with respect to the Domestic Industry Products. First, the evidence shows that, since 2016, Hydro Flask has leased a 12,000 square-foot office in Bend, Oregon. Villano Decl. ¶ 11. “Hydro Flask’s business activities are largely conducted” from this office, including “engineering, product development and design, quality assurance, research and development, and new product activities.” *Id.* at ¶ 8. The evidence further shows that research and design employees at this facility developed a TempShield double-wall vacuum technology used in the Domestic Industry Products and that employees are further developing caps for the Domestic Industry Products that use lightweight technology. Villano Decl. at ¶¶ 19, 31. The annual expense to Hydro Flask for this lease for FY2020 was \$ [REDACTED]. Schenk Decl. at ¶ 32.

Second, Hydro Flask maintains a facility in Southaven, Mississippi. The evidence shows that this facility is not a mere distribution center. Rather, [REDACTED]

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[REDACTED],⁴ [REDACTED]

[REDACTED] Villano Decl. at ¶ 26.

Additionally, “[a]side from normal distribution-related activities, Hydro Flask employees at this facility . . . fulfill orders for customized products placed through the Hydro Flask website, marketed as MyHydro™.” *Id.* at ¶ 27. In FY2020, Hydro Flask assembled and packaged MyHydro™ products totaling \$ [REDACTED] in gross sales. Schenk Decl. at ¶ 33. Employees at the Mississippi distribution center also fulfill orders “for customized Domestic Industry Products engraved or printed with logos for corporate use.” Villano Decl. at ¶ 28.

The evidence shows that Hydro Flask incurred \$ [REDACTED] in FY2020 expenses to maintain its Oregon office and Mississippi distribution center facilities. Schenk Decl. at ¶ 34. The below chart shows the allocation⁵ of these expenses:

	Square Feet (Bend, OR) ⁴³	FY2020 Expenses ⁴⁴
'468 Patent Domestic Industry Products	[REDACTED]	[REDACTED]
'012 Patent Domestic Industry Products	[REDACTED]	[REDACTED]
'320 Patent Domestic Industry Products	[REDACTED]	[REDACTED]
HYDRO FLASK Trademark Domestic Industry Products	[REDACTED]	[REDACTED]
H-Man Logo Trademark Domestic Industry Products	[REDACTED]	[REDACTED]

Id.

Third, the evidence shows that Hydro Flask shares a call center in Pennsylvania with other Helen of Troy brands. Schenk Decl. ¶ 35. Hydro Flask accounts for approximately [REDACTED] of the

⁴ The Standard Mouth products practice all of the Asserted Trademarks, as well as the D'012 patent. Mem. at 29.

⁵ Hydro Flask [REDACTED] Mem. at 35. Accordingly, Hydro Flask applies a revenue-based allocation. *Id.* at 36; *see also* Schenk Decl. at ¶¶ 27-31. The undersigned agrees that this approach is reasonable.

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calls and expenses within that call center. *Id.* In FY2020, Hydro Flask's expenses for this call center were \$ [REDACTED] which are allocated as follows:

	FY2020 Expenses
'468 Patent Domestic Industry Products	[REDACTED]
'012 Patent Domestic Industry Products	[REDACTED]
'320 Patent Domestic Industry Products	[REDACTED]
HYDRO FLASK Trademark Domestic Industry Products	[REDACTED]
H-Man Logo Trademark Domestic Industry Products	[REDACTED]

Id.

Finally, the evidence shows that Hydro Flask has invested in equipment related to the Domestic Industry Products. This equipment includes, for example, [REDACTED]

[REDACTED]

[REDACTED] Villano Decl. at ¶ 20; *see also* Schenk Decl. at ¶ 36. At the end of FY2020, the book value of this equipment was \$ [REDACTED].

Schenk Decl. at ¶ 38. The equipment is allocated to the relevant intellectual property as follows:

	FY2020 Depreciation	Book Value
'468 Patent Domestic Industry Products	[REDACTED]	[REDACTED]
'012 Patent Domestic Industry Products	[REDACTED]	[REDACTED]
'320 Patent Domestic Industry Products	[REDACTED]	[REDACTED]
HYDRO FLASK Trademark Domestic Industry Products	[REDACTED]	[REDACTED]
H-Man Logo Trademark Domestic Industry Products	[REDACTED]	[REDACTED]

Id.

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In sum, Hydro Flask's plant and equipment totals are:

	Facilities Expenses ⁶³	FY2020 Equipment Depreciation ⁶⁴
'468 Patent Domestic Industry Products	██████████	██████████
'012 Patent Domestic Industry Products	██████████	██████████
'320 Patent Domestic Industry Products	██████████	██████████
HYDRO FLASK Trademark Domestic Industry Products	██████████	██████████
H-Man Logo Trademark Domestic Industry Products	██████████	██████████

Id. at ¶ 39.⁶

The undersigned further finds that these investments are significant. Hydro Flask's plant and equipment expenses are approximately ██████████ of its sales of the Domestic Industry Products in the United States. Schenk Decl. ¶ 40. The evidence also shows that Hydro Flask's investments are necessary for all aspects of product development, engineering, production and assembly, marketing, and sales of the Domestic Industry Products. Villano Decl. ¶ 14. Additionally, as Staff states: "Other than the manufacturing of the products, most all other services and operations are conducted in the United States" at these facilities. Staff Resp. at 40. "Accordingly, [Hydro Flask has] provided a contextual analysis for the facilities and equipment investments." *Id.*

For these reasons, no genuine issue of material fact remains and a summary determination that the economic prong of the domestic industry requirement is satisfied is appropriate.⁷

⁶ As Staff recognizes, Hydro Flask's allocation of its domestic investments was conservative. Staff Resp. at 38. Additionally, "these investments are merely for a single year, and accordingly, are likely conservative quantitative values." *Id.* Accordingly, the true total of Hydro Flask's domestic industry investments is likely to be higher than the amounts presented in its motion.

⁷ The undersigned has already determined that Hydro Flask satisfies the economic prong under section 337(a)(3)(A). Accordingly, the undersigned need not decide whether Hydro Flask meets the economic prong under sections 337(a)(3)(B) or (C).

VIII. REMEDY AND BONDING

A. General Exclusion Order

Section 337(d)(2) provides that a general exclusion order may issue in cases where (a) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named respondents; or (b) there is a widespread pattern of violation of section 337 and it is difficult to identify the source of infringing products. 19 U.S.C. § 1337(d)(2). The statute essentially codifies Commission practice under *Certain Airless Paint Spray Pumps & Components Thereof*, Inv. No. 337-TA-90, Comm’n Op. at 18-19, USITC Pub. 119 (Nov. 1981) (“*Spray Pumps*”). See *Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, & Articles Containing the Same*, Inv. No. 337-TA-372 (“*Magnets*”), Comm’n Op. on Remedy, the Public Interest and Bonding at 5 (USITC Pub. 2964 (1996)) (statutory standards “do not differ significantly” from the standards set forth in *Spray Pumps*). In *Magnets*, the Commission confirmed that there are two requirements for a general exclusion order: [1] a “widespread pattern of unauthorized use;” and [2] “certain business conditions from which one might reasonably infer that foreign manufacturers other than the respondents to the investigation may attempt to enter the U.S. market with infringing articles.” *Id.* The focus now is primarily on the statutory language itself and not an analysis of the *Spray Pump* factors. *Ground Fault Circuit Interrupters & Prods. Containing Same*, Inv. No. 337-TA-615, Comm’n Op. at 25 (Mar. 9, 2009).

Hydro Flask and Staff both submit that a GEO is appropriate in this Investigation.

1. Circumvention of a Limited Exclusion Order

Hydro Flask claims it has “identified tens of thousands of infringing sales on the internet, including through online marketplaces such as Bonanza.com, Alibaba.com, and AliExpress.com.” Mem. at 44. It contends that “each storefront on each online marketplace could easily circumvent

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[a limited exclusion order] directed at the Defaulting Respondents by deceptive practices including changing the Defaulting Respondents' storefront name, providing a false address, or by concealing their identity.” *Id.* at 45. Hydro Flask therefore submits that a GEO is necessary to prevent circumvention of a limited exclusion order directed to the Defaulting Respondents. *Id.*

Staff agrees that a GEO is necessary. Staff Resp. at 48-49. In Staff's view, “the evidence shows that excluding only the products of the named respondents would not be effective, and a GEO is necessary.” *Id.*

The undersigned finds that the evidence shows a GEO is necessary to prevent circumvention of an LEO. Hydro Flask identified “tens of thousands” of sales on the Internet, including through online marketplaces such as Bonanza.com, Alibaba.com, and AliExpress.com. *See, e.g.,* Am. Compl. at ¶¶ 134-68, 174-75, 202, 204; Compl. Exs. 1.3-1.7. Many of these storefronts are anonymous and provide no identifying information about the sellers or buyers of the allegedly infringing or counterfeit products. *See* Am. Compl. at ¶¶ 175-175; SOMF at ¶¶ 95-97; Mot. Exs. B-E; Compl. Ex. 3.35. As the Commission has previously stated, “a large number of anonymous infringing sales on the Internet [] supports a likelihood of circumvention under subparagraph (A) and also supports a determination that it is difficult to identify the source of infringing products under subparagraph (B).” *Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm'n Op. at 13 (June 26, 2015).

The evidence also shows that the Defaulting Respondents can easily circumvent a LEO by engaging in deceptive business practices, such as changing their storefront name, providing a false address, or masking their identity. *See* SOMF at ¶ 100; *see also* EDIS Doc. No. 737556 (detailing how many of the defaulting and withdrawn respondents engage in deceitful business practices, which makes enforcement of a LEO nearly impossible). *See Certain Cases for Portable Electronic*

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Devices, Inv. No. 337-TA-867/861, Comm’n Op. at 9 (July 10, 2014) (“[T]he respondents can easily circumvent a LEO by selling infringing goods online . . . and foreign manufacturing operations can change their names and distribution patterns to avoid detection.”). [REDACTED]

[REDACTED]

See, e.g., Geyer Ex. 29.

2. Widespread Pattern of Unauthorized Use

Hydro Flask alleges that “[t]here is widespread violation of Section 337 due to the unlawful importation, sale for importation, and sale in the United States after importation of infringing and counterfeit products that infringe the Asserted IP.” Mem. at 46-49. As proof, it points to the “over 10,000 infringing and counterfeit products sold by the Defaulting Respondents.” *Id.* According to Hydro Flask, “[t]his barely scrapes the surface of continuous widespread infringement of Hydro Flask goods.” *Id.* Staff agrees that there is a pattern of violation and that it is difficult to identify the source of infringing products. Staff Resp. at 46-48.

The evidence shows that there is a widespread pattern of violation of section 337. As noted above, Hydro Flask has identified many instances of unlawful conduct on online marketplaces. Manufacturers and sellers often maintain multiple storefronts on the same platform and use identical product listings – all to conceal the source of the goods. Kemnitzer Decl. at ¶¶ 81-104; Am. Compl. at ¶ 213; SOMF at ¶¶ 104-105. And, identifying the seller and importer of the Accused Products has proven to be difficult. For example, physical samples of the Accused Products were purchased from the Defaulting Respondents from websites like Alibaba.com; however, the Accused Products were often sent from a third party (not the Defaulting Respondent from which the product was purchased), in plain packaging, and labeled as “cups.” *See, e.g.*, SOMF at ¶ 99; Compl. Exs. 3.34-3.38. Notices from the U.S. Customs and Border Protection (“CBP”) further

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illustrate the difficulties in trying to identify the source of the infringing and counterfeit Hydro Flask goods. The CBP notices often only identify the name of the importer, not the name or address of the manufacturer. *See* Am. Compl. at ¶ 202; Compl. Ex. 12.1; Judge Exs. 13-17; SOMF at ¶ 110.

The evidence also shows that despite Hydro Flask’s extensive enforcement activities, infringement continues. [REDACTED]

[REDACTED] Judge Decl. at ¶ 23. [REDACTED]

[REDACTED] *Id.* at ¶ 24; *see also id.* at ¶¶ 16-21; Judge Ex.

15.

3. Conclusion

For the above reasons, the undersigned recommends that in the event the Commission finds a violation of section 337, the appropriate remedy is a GEO that encompasses the infringing vacuum insulated flasks and components thereof. The undersigned also finds that the additional requirements of section 337(g)(2) have been satisfied in this Investigation.

B. Limited Exclusion Order

Under section 337(d), if the Commission determines that there is a violation of section 337, the Commission may issue a limited exclusion order (“LEO”) directed to a respondent’s infringing products. 19 U.S.C. § 1337(d). A limited exclusion order instructs the U.S. Customs and Border Protection to exclude from entry all articles that are covered by the patent at issue that originate from a named respondent in the investigation. *Fuji Photo Film Co. Ltd. v. Int’l Trade Comm’n*, 474 F.3d 1281, 1286 (Fed. Cir. 2007).

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Hydro Flask submits that “at the very least, an LEO should be issued as to each of the Defaulting Respondents.” Mem. at 50. Staff did not address this issue in its brief.

Here, the Defaulting Respondents have “waived [their] right . . . to contest the allegations at issue in the investigation.” 19 U.S.C. § 210.16(b)(4). The undersigned therefore recommends issuance of an LEO covering the Defaulting Respondents’ products found to infringe the Asserted Trademarks and Patents.

C. Cease and Desist Orders

Under section 337(f)(1), the Commission may issue a cease-and-desist order (“CDO”) in addition to, or instead of, an exclusion order. 19 U.S.C. § 1337(f)(1). The Commission generally issues a CDO directed to a domestic respondent when there is a “commercially significant” amount of infringing, imported product in the United States that could be sold, thereby undercutting the remedy provided by an exclusion order. *See Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293 USITC Pub. 2391, Comm’n Op. on Remedy, the Public Interest and Bonding at 37-42 (June 1991); *Certain Condensers, Parts Thereof & Prods. Containing Same, Including Air Conditioners for Automobiles*, Inv. No. 337-TA-334 (Remand), Comm’n Op. at 26-28, 1997 WL 817767 at *11-12 (U.S.I.T.C. Sept. 10, 1997).

Hydro Flask requests the issuance of cease-and-desist orders against each of the Defaulting Respondents. Mem. at 49-50. Hydro Flask asserts that they were unable to obtain discovery about the Defaulting Respondents’ U.S. inventory due to their lack of participation and that “great harm . . . would befall” Hydro Flask absent such an order. *Id.* Staff does not support Hydro Flask’s request. Staff Resp. at 49-50.

Here, none of the Defaulting Respondents are located in the United States. There is also no evidence in the record to suggest that the Defaulting Respondents have domestic operations or

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“commercially significant” inventory in the United States. For these reasons, the undersigned finds that CDOs are not warranted.

D. Bonding

Pursuant to section 337(j)(3), the Administrative Law Judge and the Commission must determine the amount of bond to be required of a respondent during the 60-day Presidential review period following the issuance of permanent relief, in the event that the Commission determines to issue a remedy. 19 U.S.C. § 1337(j)(3). The purpose of the bond is to protect the complainant from any injury. 19 C.F.R. § 210.42(a)(1)(ii), § 210.50(a)(3).

When reliable price information is available, the Commission has often set the bond by eliminating the differential between the domestic product and the imported, infringing product. *See Microsphere Adhesives, Processes for Making Same, & Prods. Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. 2949, Comm’n Op. at 24 (Dec. 8, 1995). In other cases, the Commission has turned to alternative approaches, especially when the level of a reasonable royalty rate could be ascertained. *See, e.g., Certain Integrated Circuit Telecomm. Chips & Prods. Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Comm’n Op. at 41, 1993 WL 13033517, at *24 (U.S.I.T.C. June 22, 1993). A 100 percent bond has been required when no effective alternative existed. *See, e.g., Certain Flash Memory Circuits & Prods. Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm’n Op. at 26-27 (July 1997) (imposing a 100% bond when price comparison was not practical because the parties sold products at different levels of commerce, and the proposed royalty rate appeared to be *de minimus* and without adequate support in the record).

Hydro Flask requests that the bond be set at 100 percent during the Presidential review period “because the Defaulting Respondents failed to participate in this Investigation and

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prevented Hydro Flask from obtaining any discovery into pricing of the infringing goods.” Mem. at 50. Staff also believes that a bond of 100% is appropriate. Staff Resp. at 50-51. In Staff’s view, “the evidentiary record lacks sufficiently reliable information as to price levels for the Accused Products in the United States.” *Id.* at 50.

None of the Defaulting Respondents have participated in this Investigation or produced any discovery. As a result, Hydro Flask was unable to obtain information on which to base a reasonable bond rate. With little to no information on pricing or royalty information, it is impossible to calculate a bond rate based on the average price differential between Hydro Flask’s products and the Accused Products. The undersigned therefore agrees with Hydro Flask and Staff that the Commission set the bond value at 100%. *See Certain Digital Photo Frames & Image Display Devices & Components Thereof*, Inv. No. 337-TA-807, Comm’n Op. at 17 (Mar. 27, 2013) (“The Commission finds that there is little or no evidence in the record of this investigation as to pricing of the defaulting respondents’ products. . . . The Commission has traditionally set a bond of 100 percent of the entered value of the products under these circumstances.”).

IX. INITIAL DETERMINATION

For the foregoing reasons, it is the Initial Determination of the undersigned that Hydro Flask has shown by reliable, probative, and substantial evidence that a violation of section 337 has occurred with respect to U.S. Trademark Registration Nos. 4,055,784; 5,295,365; and 5,176,888 and U.S. Design Patent Nos. D806,468; D786,012; and D799,320, and that the domestic industry requirement is satisfied for the Asserted Trademarks and Patents. The undersigned has also determined that no violation has been established as to Respondents Shenzhen Huichengyuan Technology Co., Ltd.; Sinbada Impex Co., Ltd.; and Zhejiang Yuchuan Industry & Trade Co., Ltd.


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Accordingly, Hydro Flask's motion for summary determination of violation (1216-008) is hereby granted-in-part.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review pursuant to 19 C.F.R. § 210.43(a) or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues therein.

Within ten days of the date of this document, the parties must jointly submit a statement to Bullock337@usitc.gov stating whether they seek to have any portion of this document redacted from the public version. The parties shall attach to the statement a copy of a joint proposed public version of this document indicating with red brackets any portion asserted to contain confidential business.⁸ To the extent possible, the proposed redacting should be made electronically, in a PDF of the issued order, using the "Redact Tool" within Adobe Acrobat, wherein the proposed redactions are submitted as "marked" but not yet "applied." The parties' submission concerning the public version of this document should not be filed with the Commission Secretary.

SO ORDERED.


Charles E. Bullock
Chief Administrative Law Judge

⁸ If the parties submit excessive redactions, they may be required to provide an additional written statement, supported by declarations from individuals with personal knowledge, justifying each proposed redaction and specifically explaining why the information sought to be redacted meets the definition for confidential business information set forth in Commission Rule 201.6(a). 19 C.F.R. § 201.6(a).