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 11 **UNITED STATES DISTRICT COURT**  
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13  
 14 ISRAEL HARRY ZIMMERMAN, an  
 Individual,

15  
 16 Plaintiff,

17 vs.

18 MIGHTY MUG, INC., a New Jersey  
 corporation; ALFAY DESIGNS,  
 19 INC. a New York corporation; and  
 20 DOES 1 through 10, inclusive,

21 Defendants.

Case No.: 2:23-cv-10596

**COMPLAINT FOR:**

- 1. Patent Infringement
- 2. Patent Infringement
- 3. Patent Infringement

**DEMAND FOR JURY TRIAL**

1 Plaintiff, ISRAEL HARRY ZIMMERMAN (“Plaintiff,” “Zimmerman”), alleges  
2 as follows:

3 **PARTIES**

4 1. Plaintiff Israel Harry Zimmerman (“Zimmerman”) is an individual who  
5 resides in the State of California at in Los Angeles, California 90024.

6 2. Defendant Alfay Designs, Inc. (“Alfay”) is a New York corporation with an  
7 address of 4099 Ocean Avenue, Brooklyn, New York 11235. Alfay is owned or otherwise  
8 controlled by Al Smaldone (“Al”) and/or Jayme Smaldone (“Jayme”) (collectively, the  
9 “Smaldones”). In 2011, Alfay entered into the Patent License and Royalty Agreement,  
10 dated June 21, 2011 (the “Patent Royalty and License Agreement”), with JO-EL Wire  
11 Company, LLC, a California limited liability company owned by Plaintiff (“JO-EL”).  
12 Plaintiff Zimmerman is not a party to the Patent License and Royalty Agreement.

13 3. Defendant Mighty Mug, Inc. (“Mighty Mug”) is a New Jersey corporation  
14 with an address of 665 Martin Street, Rahway, New Jersey 07065. Mighty Mug is owned  
15 or otherwise controlled by the Smaldones and is otherwise controlled by or affiliated with  
16 Defendant Alfay. Alfay sublicensed its license to produce products using the 169 Patent,  
17 to Mighty Mug.

18 4. Plaintiff is not aware of the true names and capacities of all of the defendants,  
19 whether individual, corporate, affiliate, or otherwise, sued herein under the fictitious  
20 names DOES 1 through 10, inclusive, and therefore sues certain defendants by fictitious  
21 names. Each fictitiously named defendant is responsible in some manner for the violations  
22 of the law, as alleged. Plaintiff will amend this Complaint to add the true names of the  
23 fictitiously named defendants once they are discovered, as well as the manner in which  
24 each fictitious defendant is responsible for the violations of law herein alleged, when these  
25 facts are ascertained.

26 **JURISDICTION AND VENUE**

27 5. This is an action for patent infringement arising under the patent laws of the  
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1 United States, 35 U.S.C. § 1 et seq., including §§ 271 and 281. This Court has original  
2 jurisdiction over this patent infringement action under 28 U.S.C. § 1338(a).

3 6. Venue is proper in this Court because Defendants Mighty Mug and Alfay  
4 Designs are each responsible for acts of infringement occurring in the Central District of  
5 California, as alleged in this Complaint, and have delivered or caused to be delivered  
6 infringing products or services in the Central District of California.

7 7. Plaintiff Zimmerman is the inventor of various highly coveted patents,  
8 including United States Patent Nos. 8025169 (the “169 Patent”), 8028850 (the “850  
9 Patent”), and 8757418 (the “418 Patent”) (collectively, the “Infringed Patents”).

10 8. Plaintiff has held the rights to each of the 169 Patent, the 850 Patent and the  
11 418 Patent, since their respective dates of issuance. Each of these patents concerns a  
12 certain “smart-grip” technology that has been used to manufacture and sell various  
13 products, including the “Mighty Mug.” The Mighty Mug is sold by Mighty Mug, Inc.,  
14 which is owned or otherwise controlled by Alfay Designs, Inc. and/or the Smaldones,  
15 through the website <https://themightymug.com>, and is similarly sold via online  
16 marketplaces, including Amazon.

17 9. Alfay initially entered into the Patent License and Royalty Agreement with  
18 JO-EL on June 21, 2011, regarding Patent 169. Plaintiff Zimmerman was not a party to  
19 the Patent License and Royalty Agreement, which provided Alfay a four-year license to  
20 use the 169 Patent to “make ‘Products’...and to sell Products in mass retail channels...”

21 10. The Patent License and Royalty Agreement described the patent technology  
22 as one, “allowing standard pick up but grips to a flat surface when hit in a lateral motion.”  
23 The Patent License and Royalty Agreement also expressly acknowledged that the 169  
24 Patent was “owned solely by [Plaintiff] Harry Zimmerman”; and provided a royalty  
25 structure related to the “Alfay” brand and the “Farberware” brand of products.

26 11. The Patent License and Royalty Agreement also provided, “Alfay will share  
27 monthly sales with and will inform JO-EL of projections and potential new business.  
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1 Alfay will issue a monthly royalty check and JO-EL (and its representatives) will be  
2 allowed to come onsite at Alfay and see and audit all sales records and documents  
3 associated with the product.”

4 12. The Patent License and Royalty Agreement initially pertained to the  
5 licensing of the 169 Patent. Plaintiff licensed the 169 Patent to JO-EL, which sublicensed  
6 the right to use the patent to Alfay. Along the way, the 850 Patent and the 418 Patent were  
7 also added and licensed to Mighty Mug pursuant to the very same Patent Royalty and  
8 License Agreement.

9 13. The Patent Royalty and License Agreement was amended by that certain  
10 Amendment to Agreement, dated March of 2015, and further amended by that certain  
11 Amendment to Agreement, dated December 19, 2017. The amendments were limited to  
12 the extension of the life of the licenses under the Patent License and Royalty Agreement  
13 through January 1, 2021.

14 14. Plaintiff Zimmerman further extended the license term to March 1, 2023, but  
15 that was the last extension of the license term. Plaintiff Zimmerman issued a cease and  
16 desist letter to Defendants Mighty Mug and Alfay on April 13, 2023, notifying them of  
17 the expired license. The former license agreement (which is no longer in effect) called for  
18 a 180-day “sell-off” period, which was honored by Plaintiff Zimmerman, and which  
19 ended on September 5, 2023.

20 15. Plaintiff Zimmerman issued a notice to Amazon.com, Inc., addressing the  
21 expired licenses that are no longer in effect, reporting patent infringement on at least two  
22 items sold (ASINs B00P2AS69K and B07XPDKR), via complaint ID number  
23 14035925261.

24 16. Plaintiff Zimmerman issued additional correspondence to Amazon.com,  
25 Inc., confirming that that there is no “license” or “contract” in dispute, and otherwise  
26 advised that Defendants are continually and willfully infringing on the Infringed Patents  
27 by manufacturing products with “smart grip” technology, and offering, selling, and  
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1 distributing these products through online platforms, including through Amazon.com.

2 **CAUSES OF ACTION**

3 **First Cause of Action**

4 (For Patent Infringement (“169 Patent”) Against All Defendants)

5 17. Plaintiff incorporates by reference as if fully set forth here, the averments  
6 contained in paragraphs 1 through 16 above.

7 18. On September 27, 2011, United States Patent No. 8025169, entitled “Self-  
8 Anchoring Beverage Container with Directional Release and Attachment Capability”  
9 (“**Exhibit A**”), was duly and legally issued by the United States Patent and Trademark  
10 Office.

11 19. Plaintiff Zimmerman is the owner of the 169 Patent with full rights to pursue  
12 recovery of royalties or damages for infringement of the 169 Patent, including full rights  
13 to recover past and future damages.

14 20. Each claim of the 169 Patent is valid and enforceable.

15 21. Defendants Mighty Mug and Alfay have infringed and are infringing on the  
16 169 Patent and, unless enjoined, will continue to do so, by using, offering and selling  
17 products that exploit the 169 Patent.

18 22. Defendant Mighty Mug (which is owned and/or controlled by Defendant  
19 Alfay and/or the Smaldones) makes, offers for sale, sells, and otherwise distributes,  
20 throughout the United States (including in the State of California) and otherwise, various  
21 products, including the “Mighty Mug”<sup>1</sup> via its website,<sup>2</sup> as well as through Amazon<sup>3</sup> and  
22 other marketplaces.

23  
24 <sup>1</sup> The Mighty Mug is also known as the “Untippable Mug.” The Mighty Mug (in addition to related  
25 products that are produced or otherwise created by Mighty Mug and Alfay) allow products to self-  
26 anchor with a directional release by using Plaintiff’s “smart grip” patent and technology. The Mighty  
27 Mug is described on Amazon as “the only mug that [g]rips when [h]it, but [l]ifts for [s]ips.”

28 <sup>2</sup> See <https://themightymug.com/>

<sup>3</sup> [https://www.amazon.com/Mighty-Mug-Stainless-Unspillable-Metallic/dp/B07XPBHDMG/ref=sr\\_1\\_1?qid=1702912423&sr=8-1&srs=8213937011&th=1](https://www.amazon.com/Mighty-Mug-Stainless-Unspillable-Metallic/dp/B07XPBHDMG/ref=sr_1_1?qid=1702912423&sr=8-1&srs=8213937011&th=1)

1 23. The production, sale and distribution of the Mighty Mug entails using the  
2 169 Patent.

3 24. Plaintiff Zimmerman has been damaged by Defendants' infringement of the  
4 169 Patent and will suffer irreparable damages until Defendants are each enjoined from  
5 continuing to infringe the 169 Patent.

6 25. Plaintiff Zimmerman demands trial by jury for all issues relating to this  
7 claim.

8 26. On information and belief, Defendants' infringement has been willful and  
9 continues to be, since September 5, 2023, when the 180-day "sell-off" period in the Patent  
10 Royalty and License Agreement expired.

11 **Second Cause of Action**

12 (For Patent Infringement ("850 Patent") Against All Defendants)

13 27. Plaintiff incorporates by reference as if fully set forth here, the averments  
14 contained in paragraphs 1 through 26 above.

15 28. On October 4, 2009, the 850 Patent, entitled, "Self-Anchoring Beverage  
16 Container with Directional Release and Attachment Capability" ("**Exhibit B**"), was duly  
17 and legally issued by the United States Patent and Trademark Office.

18 29. Plaintiff Zimmerman is the owner of the 850 Patent with full rights to pursue  
19 recovery of royalties or damages for infringement of the 850 Patent, including full rights  
20 to recover past and future damages.

21 30. Each claim of the 850 Patent is valid and enforceable.

22 31. Defendants Mighty Mug and Alfay have infringed and continue to infringe  
23 on the 850 Patent and, unless enjoined, will continue to do so, by using, offering and  
24 selling products that exploit the 850 Patent.

25 32. Defendant Mighty Mug (which is owned and/or controlled by Defendant  
26 Alfay and/or the Smaldones) makes, offers for sale, sells, and otherwise distributes,  
27 throughout the United States (including in the State of California) and otherwise, various  
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1 products, including the Mighty Mug via its website,<sup>4</sup> as well as through Amazon<sup>5</sup> and  
2 other marketplaces.

3 33. The production, sale and distribution of the Mighty Mug entails using the  
4 850 Patent.

5 34. Defendants' have refused to permit Plaintiff to review their books and  
6 records.

7 35. Plaintiff Zimmerman has been damaged by Defendants' infringement of the  
8 850 Patent and will suffer irreparable damages until Defendants are each enjoined from  
9 continuing to infringe the 850 Patent.

10 36. On information and belief, Defendants' infringement has been willful and  
11 continues to be, since September 5, 2023, when the 180-day "sell-off" period in the Patent  
12 Royalty and License Agreement expired.

13 37. Plaintiff Zimmerman demands trial by jury for all issues relating to this  
14 claim.

15 **Third Cause of Action**

16 (For Patent Infringement ("418 Patent") Against All Defendants)

17 38. Plaintiff incorporates by reference as if fully set forth here, the averments  
18 contained in paragraphs 1 through 37 above.

19 39. On June 24, 2014, the 418 Patent, entitled, "Self-Anchoring Low-Profile  
20 Container with Directional Release and Attachment Capability," ("**Exhibit C**"), was duly  
21 and legally issued by the United States Patent and Trademark Office.

22 40. Plaintiff Zimmerman is the owner of the 418 Patent with full rights to pursue  
23 recovery of royalties or damages for infringement of the 418 Patent, including full rights  
24 to recover past and future damages.

25 41. Each claim of the 418 Patent is valid and enforceable.

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28 <sup>4</sup> See *supra*, fn. 2.

<sup>5</sup> See *supra*, fn. 3.

1 42. Defendants Mighty Mug and Alfay have infringed and continue to infringe  
2 on the 418 Patent and, unless enjoined, will continue to do so, by using, offering and  
3 selling products that exploit the 418 Patent.

4 43. Defendant Mighty Mug (which is owned and/or controlled by Defendant  
5 Alfay and/or the Smaldones) makes, offers for sale, sells, and otherwise distributes,  
6 throughout the United States (including in the State of California) and otherwise, various  
7 products, including the Mighty Mug via its website,<sup>6</sup> as well as through Amazon<sup>7</sup> and  
8 other marketplaces.

9 44. The production, sale and distribution of the Mighty Mug entails using the  
10 418 Patent.

11 45. Plaintiff Zimmerman has been damaged by Defendants' infringement of the  
12 418 Patent and will suffer irreparable damages until Defendants are each enjoined from  
13 continuing to infringe the 418 Patent.

14 46. On information and belief, Defendants' infringement has been willful and  
15 continues to be, since September 5, 2023, when the 180-day "sell-off" period in the Patent  
16 Royalty and License Agreement expired.

17 47. Plaintiff Zimmerman demands trial by jury for all issues relating to this  
18 claim.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff respectfully requests the following relief against  
21 Defendant, and each of them:

22 **AS TO ALL CAUSES OF ACTION**

23 1. Enter judgment for Plaintiff Zimmerman that Defendants have willfully  
24 infringed, and are willfully infringing on or more of the Infringed Patents;

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27 \_\_\_\_\_  
28 <sup>6</sup> See *supra*, fn. 2.

<sup>7</sup> See *supra*, fn. 3.



1           2.     Issue a preliminary injunction enjoining Defendants (including their  
2 respective officers, directors, employees, agents, and all persons acting in concert with  
3 them) from infringing any of the Infringed Patents;

4           3.     Order that Defendants pay compensatory damages to Plaintiff Zimmerman  
5 for Defendants’ infringement of the Infringed Patents, including but not limited to,  
6 damages for lost profits and in no event less than a reasonable royalty, together with  
7 interest and cost under 35 U.S.C. § 284, and believed to in the range of \$2,000,000 to  
8 \$3,000,000, subject to proof at trial;

9           4.     Find this to be an exceptional case, award Plaintiff Zimmerman treble  
10 damages due to Defendants’ deliberate and willful conduct, and order Defendants to pay  
11 Plaintiff Zimmerman’s costs of suit and attorney’s fees;

12          5.     Order that Defendants account to Plaintiff and allow access to Defendants’  
13 books and records.

14          6.     Award Plaintiff Zimmerman pre-judgment interest; and

15          7.     For such other relief as the Court deems appropriate.

16                                 **JURY DEMAND**

17                 Plaintiff hereby demands a trial by jury for all issues so triable.  
18

19 DATED: December 18, 2023

WEINBERG GONSER LLP

21   By: */s/ Jordan Matthews*  
22   JORDAN MATTHEWS (SBN 31630T)

23   *Attorney for Plaintiff Israel Harry*  
24   *Zimmerman.*