

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN VAPORIZER DEVICES,
CARTRIDGES USED THEREWITH, AND
COMPONENTS THEREOF

Investigation No. 337-TA-1368

NOTICE OF REQUEST FOR WRITTEN SUBMISSIONS ON AN ISSUE REGARDING
THE CONFIDENTIAL TREATMENT OF INFORMATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission is requesting submissions from the parties, under the schedule set forth below, on an issue regarding the confidential treatment of information included in the Commission’s October 24, 2024 notice to review in part a final initial determination (“ID”) finding a violation of section 337 issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 7, 2023, based on a complaint filed by JUUL Labs, Inc. of Washington, D.C. and VMR Products LLC of San Francisco, California (together, “JLI”). 88 FR 52207 (Aug. 7, 2023). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on the importation into the United States, the sale for importation, and/or the sale within the United States after importation of certain vaporizer devices, cartridges used therewith, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. RE49,114 (“the ’114 patent”), 10,130,123 (“the ’123 patent”), 10,709,173 (“the ’173 patent”), 11,134,722 (“the ’722 patent”), and 11,606,981 (“the ’981 patent”). *Id.* The complaint further alleges that a domestic industry (“DI”) exists. *Id.* The notice of investigation names five respondents: (1) NJOY, LLC of Phoenix, Arizona; (2) NJOY Holdings, Inc. of Scottsdale, Arizona; (3) Altria Group, Inc. of Richmond, Virginia; (4)

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Altria Group Distribution Company of Richmond, Virginia; and (5) Altria Client Services LLC of Richmond, Virginia (collectively, “NJOY”). *Id.* The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.* The Commission also directed the ALJ to take evidence on and provide factual findings and a recommended determination concerning the public interest. *Id.*

On April 30, 2024, the ALJ issued an order regarding NJOY’s motion in limine No. 1. Order No. 26 (Apr. 30, 2024). The order mentioned the term [] as a label for JLI’s discontinued iteration of the JUUL DI product and was issued as a public order. No party requested that the ALJ issue a public version of the order with the term [] redacted.

On August 23, 2024, the ALJ issued the final ID, which finds a violation of section 337 as to claims 27 and 32 of the ’123 patent, claims 1 and 4 of the ’173 patent, claims 1 and 15 of the ’722 patent, and claims 1 and 8 of the ’981 patent. The final ID contained certain findings concerning the asserted [] iteration of the JUUL DI product. On September 17, 2024, the ALJ issued a public version of the final ID with the terms [] and [] redacted.

On October 24, 2024, the Commission issued a notice of its determination to review the ID in part. Comm’n Notice (Oct. 24, 2024) (“Notice of Review”). The Notice of Review included mention of the terms [] and [], and the notice was issued publicly.

After the Notice of Review issued, OUII and JLI notified the Commission that the notice contains certain JLI confidential business information (“CBI”). Specifically, JLI asserts that the term [] as a label for JLI’s discontinued iteration of the JUUL DI product is CBI under Commission Rule 201.6 (19 CFR 201.6). To resolve this issue, the Commission requests responses from the parties to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

- (1) For JLI: Please explain how the term [] meets the requirements of Commission Rule 201.6 (19 CFR 201.6).
- (2) For all parties: Has the term [] as a label for JLI’s discontinued iteration of the JUUL DI product been made publicly available (in addition to Order No. 26), for example, in any public document or in any public forum, such as publicly accessible websites, product manuals, or product labeling?
- (3) For all parties: Has JLI waived its ability to assert that the term [] is CBI under Commission Rule 201.6 where: (1) the term [] as a label for JLI’s discontinued iteration of the JUUL DI product was publicly disclosed on April 30, 2024, in Order No. 26 (denying NJOY’s motion in limine to preclude OUII from presenting evidence or arguing that the “[] JUUL System” practices claims of

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the '123 patent), and JLI did not seek to correct that public disclosure until October 28, 2024; and (2) Order No. 26 is posted on Westlaw (2024 WL 1933326) and JLI has not sought to have that the document removed?

The parties are invited to brief only the discrete issues requested above. Initial written submissions must be filed no later than the close of business on **November 5, 2024**. Reply submissions must be filed no later than the close of business on **November 8, 2024**. Opening submissions are limited to 10 pages. Reply submissions are limited to 5 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1368) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on October 31, 2024.

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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', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: October 31, 2024