

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN VAPORIZER CARTRIDGES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1211

**ISSUANCE OF A GENERAL EXCLUSION ORDER AND CEASE AND DESIST
ORDERS; TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm a summary determination of violation of section 337 with respect to certain respondents found in default. The Commission and has further determined to issue a general exclusion order (“GEO”) denying entry of certain infringing vaporizer cartridges and components thereof as well as cease and desist orders (“CDOs”) against certain of the defaulting respondents. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3427. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On August 14, 2020, the Commission instituted this investigation based on a complaint, as supplemented, filed on behalf of Juul Labs, Inc. (“JLI”) of San Francisco, California. 85 FR 49679-80 (Aug. 14, 2020). 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 upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vaporizer cartridges and components thereof by reason of infringement of the sole claims of U.S. Design Patent Nos. D842,536; D858,870; D858,869; and D858,868 (collectively, the “Asserted Patents”), respectively. *Id.* The complaint further alleges that a domestic industry exists. *Id.*

The Commission’s notice of investigation, as amended, names forty-nine respondents (grouped by defaulting and non-defaulting respondents):

- (1) 101 Smoke Shop, Inc. (“101 Smoke Shop”); (2) Eon Pods LLC (“Eon Pods”); (3) Jem Pods, U.S.A. (“Jem Pods”); (4) Sky Distribution LLC (“Sky Distribution”); (5) Vapers & Papers, LLC (“Vapers & Papers”); (6) Access Vapor LLC D/B/A Cali Pods (“Access Vapor”) (Access Vapor LLC and Cali Pods were originally identified as two distinct respondents. *See* 85 FR 49679-80 (notice of investigation). Cali Pods, however, is a business alias of Access Vapor. *See* Order No. 65 at 2, n.1); (7) eLiquid Stop; (8) Shenzhen Apoc Technology Co., Ltd. (“Shenzhen Apoc”); (9) Shenzhen Ocity Times Technology Co., Ltd. (“Shenzhen Ocity”); (10) Evergreen Smokeshop; (11) Shenzhen Azure Tech USA LLC F/K/A DS Vaping P.R.C. (“Shenzhen Azure”); (12) DripTip Vapes LLC (“DripTip Vapes”); (13) Modern Age Tobacco; (14) Dongguan Hengtai Biotechnology Co., Ltd. D/B/A Mr. Fog (“Mr. Fog”); (15) Shenzhen Yark Technology Co., Ltd. (“Shenzhen Yark”); (16) Guangdong Cellular Workshop Electronic Technology Co., Ltd. (“Guangdong Cellular”); (17) Shenzhen Bauway Technology Ltd. (“Shenzhen Bauway”); (18) Shango Distribution LLC D/B/A Puff E-Cig (“Puff E-Cig”) (the first 18 respondents are collectively referred to herein as the “Defaulting Respondents.”);

- (19) Vapeonline LLC D/B/A 2nd Wife Vape (“2nd Wife Vape”); (20) All Puff Store; (21) Alternative Pods; (22) Ana Equity LLC (“Ana Equity”); (23) Aqua Haze LLC (“Aqua Haze”); (24) Cali Pods; (25) Canal Smoke Express, Inc. (“Canal Smoke”); (26) Tobacco Club & Gifts, Inc., D/B/A CaryTown Tobacco (“CaryTown Tobacco”); (27) Cigar Road, Inc. (“Cigar Road”); (28) Cloud 99 Vapes; (29) eCig-City; (30) VR Products I LLC D/B/A eJuiceDB (“eJuiceDB”); (31) Texas E. Cigarette D/B/A EZFumes (“EZFumes”); (32) JC Pods; (33) JUULSite Inc. (“JUULSite”); (34) Keep Vapor Electronic Tech. Co., Ltd. (“Keep Vapor”); (35) Limitless Accessories, Inc. (“Limitless Accessories”); (36) Midwest Goods, Inc. (“Midwest Goods”); (37) OMID Holdings, Inc. D/B/A Naturally Peaked Health Co. (“Naturally Peaked Health”); (38) Nilkant 167 Inc. (“Nilkant”); (39) Perfect Vape LLC (“Perfect Vape”); (40) Price Point Distributors Inc. D/B/A Price Point NY (“Price Point NY”); (41) Bansidhar Inc. D/B/A Smoker’s Express (“Smoker’s Express”); (42) The Kind Group LLC (“Kind Group”); (43) Three Mini Calvins, LLC D/B/A Tobacco Alley of Midland (“Tobacco Alley”); (44) Valgous; (45) Vape Central Group; (46) Cork & Twist, Inc. D/B/A Vape ‘n Glass (“Vape ‘n Glass”); (47) Vaperistas; (48) WeVapeUSA; and (49) Wireless N Vapor Citi LLC (“Wireless N Vapor Citi”). *Id.*; *see also* Order No. 22 (Oct. 21, 2020) (granting motion to amend the complaint and notice of investigation to correct the legal names of Respondents 2nd Wife Vape, CaryTown Tobacco, eJuiceDB, EZFumes, Price Point NY, Smoker’s Express, Tobacco Alley, Vape ‘n Glass, Naturally Peaked Health, and Puff E-Cig and “the name and address for Respondent Mr. Fog.”), *unreviewed by* Notice, 85 FR 73748-49 (Nov. 19, 2020).

The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. 85 FR at 49679.

After institution of this investigation, JLI amended the Complaint and notice of investigation to, *inter alia*: (1) include “the true legal names for each of Respondents 2nd Wife Vape, CaryTown Tobacco, eJuiceDB, EZFumes, Price Point NY, Smoker’s Express, Tobacco Alley, Vape ‘n Glass, Naturally Peaked Health, and Puff E-Cig”; (2) clarify that originally-named respondents Limitless Accessories and Valgous are a single legal entity; (3) correct “the name and address for Respondent Mr. Fog”; and (4) correct “the addresses for Respondents Shenzhen Azure Tech USA LLC f/k/a DS Vaping P.R.C. and Shenzhen Yark Technology Co., Ltd.” Order No. 22 (Oct. 21, 2020), *unreviewed by* Notice, 85 FR 73748–49 (Nov. 19, 2020).

The Commission previously terminated the investigation as to 29 respondents pursuant to Commission Rule 210.21(c) (19 CFR 210.21(c)) based on consent orders, and one respondent pursuant to Commission Rule 210.21(a) (19 CFR 210.21(a)) due to JLI’s failure to serve that entity with the Complaint and Notice of Investigation. Order No. 23 (Oct. 29, 2020) (terminating and issuing consent order to Midwest Goods), *unreviewed by* Notice (Nov. 18, 2020); Order Nos. 26–29 (Dec. 8, 2020) (terminating and issuing consent orders to Vape ‘N Glass, Vaperistas, Aqua Haze, and 2nd Wife Vape), *unreviewed by* Notice (Dec. 22, 2020); Order Nos. 30 & 31 (Dec. 10, 2020) (terminating and issuing consent orders to EZFumes and eJuiceDB), *unreviewed by* Notice (Jan. 4, 2021); Order No. 32 (Dec. 14, 2020) (terminating and issuing a consent order to JC Pods), *unreviewed by* Notice (Jan. 4, 2021); Order Nos. 33 & 34 (Dec. 15, 2020) (terminating and issuing consent orders to Tobacco Alley and WeVapeUSA), *unreviewed by* Notice (Jan. 5, 2021); Order No. 37 (Dec. 30, 2020) (terminating and issuing a consent order to Vape Central Group), *unreviewed by* Notice (Jan. 21, 2021); Order No. 38 (Jan. 5, 2021) (terminating and issuing a consent order to Ana Equity), *unreviewed by* Notice (Jan. 21, 2021); Order Nos. 40–42 (Feb. 1, 2021) (terminating and issuing consent orders to eCig-City, All Puff Store, and Wireless N Vapor Citi), *unreviewed by* Notice (Feb. 16, 2021); Order Nos. 43–48 (Feb. 2, 2021) (terminating and issuing consent orders to JUULSite, Alternative Pods, Limitless Accessories, Price Point NY, Naturally Peaked Health Co., and Smoker’s Express), *unreviewed by* Notice (Feb. 22, 2021); Order Nos. 49 & 50 (Feb. 3, 2021) (terminating and issuing consent orders to Kind Group and CaryTown Tobacco), *unreviewed by* Notice (Feb. 22, 2021); Order Nos. 53 & 54 (Feb. 17, 2021) (terminating and issuing consent orders to Cigar Road and Nilkant), *unreviewed by* Notice (Mar. 15, 2021); Order No. 58 (Mar. 18, 2021) (terminating and issuing a consent order to Cloud 99 Vapes), *unreviewed by* Notice (Apr. 2, 2021); Order No. 60 (Apr. 9, 2021) (terminating and issuing a consent order to Canal Smoke), *unreviewed by* Notice, (Apr. 22, 2021); Order No. 61 (Apr. 28, 2021) (terminating and issuing a consent order to Perfect Vape), *unreviewed by* Notice (May 17, 2021); Order No. 51 (Feb. 8, 2021) (terminating investigation as to Keep Vapor), *unreviewed by* Notice (Feb. 22, 2021).

The Commission previously found the remaining eighteen respondents (“the Defaulting Respondents”) in default. *See* Order No. 35 (Dec. 17, 2021) (finding 101 Smoke Shop, Eon Pods, Jem Pods, Vapers & Papers, Sky Distribution, and Guangdong Cellular in default), *unreviewed by* Notice (Jan. 5, 2021); Order No. 62 (May 5, 2021) (finding Shenzhen Azure,

Evergreen Smokeshop, DripTip Vapes, Modern Age Tobacco, and Mr. Fog in default), *unreviewed by* Notice (May 19, 2021); Order No. 63 (May 5, 2021) (finding Shango Distribution and Shenzhen Yark in default), *unreviewed by* Notice (May 19, 2021); Order No. 64 (Sept. 13, 2021) (finding Shenzhen Bauway, Shenzhen Apoc, Access Vapor, eLiquid Stop, and Shenzhen Ocity in default), *unreviewed by* Notice (Sept. 30, 2021).

On October 14, 2021, the presiding administrative law judge (“ALJ”) issued an initial determination (“ID”), Order No. 65, granting a motion filed by JLI pursuant to Commission Rule 210.18 (19 CFR 210.18) seeking a summary determination on violation as to the Defaulting Respondents. The ID includes the ALJ’s Recommended Determination (“RD”) on remedy and bonding, which recommended that the Commission issue a general exclusion order and impose a one hundred percent (100%) bond during the period of Presidential review. The RD also recommends that the Commission issue cease and desist orders directed to the twelve domestic Defaulting Respondents, namely, 101 Smoke Shop, Eon Pods, Jem Pods, Sky Distribution, Vapers & Papers, Access Vapor, eLiquid Stop, Evergreen Smokeshop, Shenzhen Azure, DripTip Vapes, Modern Age Tobacco, and Shango Distribution.

No petitions for review of the ID were filed, and the Commission received no comments or statements on the public interest, either pursuant to Commission Rule 210.50(a)(4) (19 C.F.R. § 210.50(a)(4)) or the post-RD notice, *see* 86 FR 58099 (Oct. 20, 2021).

On November 29, 2021, the Commission determined to review Order No. 65 in part with respect to the economic prong of the domestic industry requirement. The Commission requested briefing concerning only remedy, the public interest, and bonding.

On December 13, 2021, JLI filed an initial submission in response to the Commission’s notice requesting that the Commission issue a GEO, issue CDOs against the twelve domestic Defaulting Respondents, and set a bond of one hundred percent (100%) of entered value during the period of Presidential review. On the same day, OUII also filed an initial submission supporting the ALJ’s recommendations. On December 20, 2021, JLI submitted a response to OUII’s brief. No other submissions were filed in response to the Notice.

On review, the Commission affirms the ID’s finding that there is a violation of section 337 with respect to the Defaulting Respondents, including the ID’s finding that JLI has satisfied the economic prong of the domestic industry requirement. Moreover, the Commission finds that the statutory requirements for issuance of a GEO under section 337(d)(2) are met. *See* 19 U.S.C. 1337(d)(2). The Commission also finds that issuance of CDOs against the twelve domestic Defaulting Respondents is appropriate under sections 337(f)(1) and (g)(1). *See* 19 U.S.C. 1337(f)(1), (g)(1). In addition, the Commission finds that the public interest factors do not preclude issuance of the requested relief. *See* 19 U.S.C. 1337(d)(1), (f)(1), (g)(1).

The Commission therefore has determined that the appropriate remedy in this investigation is: (1) a GEO prohibiting the unlicensed entry of certain vaporizer cartridges and components thereof that infringe the claims of the Asserted Patents; and (2) CDOs against

respondents 101 Smoke Shop, Eon Pods, Jem Pods, Sky Distribution, Vapers & Papers, Access Vapor, eLiquid Stop, Evergreen Smokeshop, Shenzhen Azure, DripTip Vapes, Modern Age Tobacco, and Shango Distribution. The Commission has also determined that the bond during the period of Presidential review shall be in the amount of one hundred percent (100%) of the entered value of the articles subject to the GEO and CDOs. *See* 19 U.S.C. 1337(j).

The Commission's orders were delivered to the President and to the United States Trade Representative on the day of their issuance. The investigation is terminated.

The Commission vote for this determination took place on February 14, 2022.

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).

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: February 14, 2022