

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN OIL-VAPING CARTRIDGES,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-1286

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
INITIAL DETERMINATION FINDING NO VIOLATION OF SECTION 337 AS TO
THE ASSERTED PATENT CLAIMS; REQUEST FOR WRITTEN SUBMISSIONS ON
ISSUES UNDER REVIEW AND ON REMEDY, THE PUBLIC INTEREST, AND
BONDING AS TO THE ASSERTED TRADEMARK**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review in part a final initial determination (“ID”) of the presiding chief administrative law judge (“CALJ”), finding no violation of section 337 as to the asserted patent claims. On review, the Commission has determined to find no violation of section 337 as to the asserted patent claims. The Commission has determined to review all findings and orders as to Respondent Glo Extracts (“Glo Extracts”) of Los Angeles, California and requests briefing from the parties as set forth below. The Commission has also determined to review all findings related to the asserted trademark. The Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding as to the asserted trademark, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. 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 November 10, 2021, the Commission instituted this investigation based on a complaint filed by Shenzhen Smoore Technology Limited (“Smoore” or “Complainant”) of Shenzhen, China. 86 FR 62567-69 (Nov. 10, 2021). The

complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain oil-vaping cartridges, components thereof, and products containing the same by reason of infringement of one or more of claims 1-3, 5, and 6 of U.S. Patent No. 10,357,623 (“the ’623 patent”); claims 1, 2, and 7 of U.S. Patent No. 10,791,762 (“the ’762 patent”); claims 1 and 11 of U.S. Patent No. 10,791,763 (“the ’763 patent”); and U.S. Registered Trademark No. 5,633,060 (“the ’060 mark”). *Id.*

The Commission’s notice of investigation named the following entities as respondents: BBTank USA, LLC (“BBTank”) of Lambertville, Michigan; Glo Extracts; BulkCarts.com of Canton, Michigan; Greenwave Naturals LLC of Austin, Texas; BoldCarts.com of Tempe, Arizona; Bold Crafts, Inc. of Irvine, California; Blinc Group Holdings, LLC of New York, New York; Jonathan Ray Carfield (“Jonathan Carfield”), d/b/a AlderEgo Wholesale, AlderEgo Holdings, Inc. and AlderEgo Group, Limited a/k/a AVD Holdings Limited of Guangdong, China; Hanna Carfield (“Hanna Carfield”) of Tacoma, Washington; Next Level Ventures, LLC (“Next Level Ventures”) of Seattle, Washington; Advanced Vapor Devices, LLC (“AVD”) of Los Angeles, California; avd710.com (“avd710.com”) of Seattle, Washington; AlderEgo Group Limited (“AEG”) of Hong Kong; A&A Global Imports, Inc. (“A&A Global”) d/b/a Marijuana Packaging of Vernon, California; Bulk Natural, LLC (“Bulk Natural”) d/b/a True Terpenes of Portland Oregon; Brand King, LLC (“Brand King”) of Sacramento, California; ZTCSSMOKE USA Inc. (“ZTCSSMOKE”) of Niceville, Florida; headcandysmokeshop.com of Richmond, BC Canada and Head Candy Enterprise Ltd. of Vancouver, BC Canada (together “Head Candy”); Green Tank Technologies Corp. of Toronto, ON Canada; Canary Packaging Inc (“Canary Packaging”) of Kelowna, BC Canada; Canary LA (“Canary LA”) of Signal Hill, California; dcalchemy.com and DC Alchemy, LLC (together “Alchemy”) both of Phoenix, Arizona; Cartridgesforsale.com of Ypsilanti, Michigan; HW Supply, LLC of Ypsilanti, Michigan; International Vapor Group, LLC (“International Vapor”) of Miami Lakes, Florida; Obsidian Supply, Inc. of Irvine, California; Ygreeninc.com and Ygreen Inc. (together (“Ygreen”) both of Walnut, California; Atmos Nation LLC (“Atmos”) of Davie, Florida; shopbv.com of Naperville, Illinois; Best Value Vacs, LLC (“Best Value Vacs”) of Naperville, Illinois; Royalsupplywholesale.com (“Royalsupplywholesale”) of San Francisco, California; Customcanabisbranding.com (“Customcanabisbranding”) of San Francisco, California; CLK Global, Inc. (“CLK”) of San Francisco, California; iKrusher.com, of Arcadia, California (“iKrusher”); and The Calico Group Inc. of Austin, Texas. The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation. *Id.*

On December 16, 2021, the CALJ issued an ID granting a motion to terminate the investigation as to Head Candy based upon a consent order. Order No. 9 (Dec. 16, 2021), *unreviewed by* Comm’n Notice (Jan. 10, 2022). On December 20, 2021, the CALJ issued an ID granting a motion to terminate the investigation as to ZTCSSMOKE based upon a consent order. Order No. 10 (Dec. 20, 2021), *unreviewed by* Comm’n Notice (Jan. 11, 2022). On December 21, 2021, the CALJ issued IDs granting motions to terminate the investigation as to Alchemy, CLK, Royalsupplywholesale, and Customcanabisbranding based upon consent orders. Order Nos. 12 and 13 (Dec. 21, 2021), *unreviewed by* Comm’n Notice (Jan. 11, 2022). On January 10, 2022, the CALJ issued an ID granting a motion to terminate the investigation as to Ygreen based upon a consent order. Order No. 15 (Jan. 10, 2022), *unreviewed by* Comm’n Notice (Feb. 4, 2022).

On January 18, 2022, the CALJ issued IDs granting motions to terminate the investigation as to Canary Packaging and Canary LA based upon consent orders. Order Nos. 16 and 17 (Jan. 18, 2022), *unreviewed by* Comm'n Notice (Feb. 15, 2022).

On January 21, 2022, the CALJ issued an ID granting a motion to terminate the investigation as to International Vapor based upon withdrawal of allegations in the complaint as to International Vapor. Order No. 17 (Jan. 21, 2022), *unreviewed by* Comm'n Notice (Feb. 15, 2022). On February 23, 2022, the CALJ issued an ID granting a motion to (1) amend the complaint and notice of investigation to change the name of Respondents BoldCarts.com and Bold Crafts, Inc. to Bold Crafts, LLC d/b/a Bold Carts and BoldCarts.com ("Bold Crafts"); (2) amend the complaint and notice of investigation to change the name of Respondent Green Tank Technologies Corp. to Greentank Technologies Corp. ("Greentank"); (3) amend the complaint and notice of investigation to change the name of Respondent Blinc Group Holdings, LLC to The Blinc Group Inc.; and (4) terminate the investigation as to BBTank based upon withdrawal of allegations in the complaint as to BBTank. Order No. 20 (Feb. 23, 2022), *unreviewed by* Comm'n Notice (Mar. 18, 2022).

On June 7, 2022, the CALJ issued an ID granting a motion to terminate the investigation as to Best Value Vacs and shobvv.com based upon settlement. Order No. 29 (June 7, 2022), *unreviewed by* Comm'n Notice (June 22, 2022). On July 5, 2022, the CALJ issued IDs granting motions to terminate the investigation as to Atmos, AEG, Hanna Carfield, and Jonathan Carfield based upon settlement. Order Nos. 33 and 34 (July 5, 2022), *unreviewed by* Comm'n Notice (Aug. 2, 2022).

The CALJ held an evidentiary hearing from August 1-August 5, 2022 and received post-hearing briefs thereafter.

On January 23, 2023, the CALJ issued an ID finding the following respondents in default: Cartridgesforsale.com; HW Supply, LLC; Obsidian Supply, Inc.; BulkCarts.com; and Greenwave Naturals LLC. Order No. 42 (Jan. 23, 2023), *unreviewed by* Comm'n Notice (Feb. 14, 2023). The CALJ declined to find respondent Glo Extracts in default because he found that Glo Extracts was not properly served with the show-cause order. ID at 8.

On January 31, 2023, the CALJ issued an ID granting a motion to terminate the investigation as to The Calico group based upon settlement and a consent order. Order No. 46 (Jan. 31, 2023), *unreviewed by* Comm'n Notice (Mar. 3, 2023). Non-defaulting respondents remaining in the investigation are: The Blinc Group Inc.; Bold Crafts; Greentank; iKrusher; Next Level Ventures; AVD; avd710.com; Bulk Natural; Brand King; and A&A Global (collectively, the "Respondents").

On February 1, 2023, the CALJ issued the final ID finding no violation of section 337. The ID found that by appearing and participating in the investigation, the participating parties (The Blinc Group Inc.; Bold Crafts, LLC; Greentank Technologies Corp.; iKrusher, Inc.; Next Level Ventures, LLC; Bulk Natural, LLC; Brand King, LLC; A&A Global Imports, Inc.) consented to personal jurisdiction at the Commission. ID at 19. The ID further found that the importation requirement under 19 U.S.C. 1337(a)(1)(B) is satisfied and that the Commission has

in rem jurisdiction over the accused products. *Id.* at 19-20 (citing JX-0359C ¶ 3, JX-0375C (Godlewski Depo.) at 49:5-51:8, JX-0381C ¶ 3, JX-0380C (Yu Depo.) 47:14-48:1; 48:11-17, JX-0523C ¶ 3). The ID found that Smoore failed to show that the accused products infringe the asserted claims of the '623, '762, and '763 patents. ID at 55-75. The ID also found that the respondents failed to show that the asserted claims are invalid in view of the cited prior art. ID at 75-89. The ID further found that the asserted claims of the '623 patent are invalid as indefinite under 35 U.S.C. 112 and are unenforceable due to inequitable conduct. ID at 27-29, 89-94. Finally, the ID found that Smoore failed to prove the existence of a domestic industry that practices the Asserted Patents as required by 19 U.S.C. 1337(a)(2). *Id.* at 55-75, 94-102.

The ID included the CALJ's recommended determination on remedy and bonding ("RD"). The RD recommended, should the Commission find a violation, issuance of a limited exclusion order and cease and desist orders. ID/RD at 105-108. The RD also recommended imposing no bond for covered products imported during the period of Presidential review because Smoore failed to meet its burden to establish a need for a bond. *Id.* at 108-09.

On February 13, 2023, Smoore filed a petition for review of the ID and Respondents filed a contingent petition for review of the ID. On February 21, 2023, the parties, including OUII, filed responses to the petitions.

Having reviewed the record of the investigation, including the final ID, the parties' submissions to the ALJ, the petitions for review, and the responses thereto, the Commission has determined to review in part the final ID and orders issued in this investigation. Specifically, the Commission has determined to review the ID's domestic industry findings, all findings related to the asserted trademark, and all findings and orders as to Respondent Glo Extracts. On review, the Commission has determined to affirm the ID's finding that Smoore failed to show that its alleged domestic industry products practice any of the asserted patents. Thus, Smoore has necessarily failed to show the existence of a domestic industry under section 337(a)(3) as to the asserted patents and as such the Commission has determined to take no position on the economic prong of the domestic industry requirement related to the asserted patents. Accordingly, the Commission finds no violation with regard to the '623, '762, and '763 patents.

In connection with the '060 mark asserted against the respondents found in default and Glo Extracts, the Commission requests responses from Smoore, Glo Extracts, and OUII to the following questions pertaining to Glo Extracts:

- (1) Whether Smoore has been able to serve Glo Extracts with the Amended Complaint and Notice of Investigation, Smoore's motion for summary determination, and any of the Orders from this investigation, including the ALJ's show-cause order;
- (2) Smoore shall provide proof of service for any documents successfully served on Glo Extracts, or if unsuccessful, an explanation of its attempts to serve Glo Extracts with those documents, along with supporting evidence, and an explanation of its statement that Glo Extracts "evaded" service of the ALJ's show-cause order (*see* Smoore Pet. at 85);
- (3) Smoore shall also serve this notice on Glo Extracts and provide proof of service or an explanation (and supporting documentation) why it was unable to serve this notice;

- (4) Whether the Commission should terminate the investigation as to Glo Extracts for lack of service or whether the Commission should find Glo Extracts in default and issue a remedy as to it.
- (5) Whether the Commission should find Glo Extracts in violation of Section 337, if it is not found in default, and issue a remedy against it.

All assertions of facts concerning service, attempts to serve, and evasion of service shall be under oath in the form of an affidavit or declaration.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. In particular, the Commission requests that the parties respond to the statements on the public interest received from the various third parties.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The specified parties are requested to file written submissions on the questions identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's

consideration. Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. Complainant is also requested to identify and explain, from the record, articles that it contends are “components thereof and products containing the same” of the subject products, and thus potentially covered by the proposed remedial orders, if imported separately from the subject products. *See* 86 FR 62567-69. Failure to provide this information may result in waiver of any remedy directed to “components thereof and products containing the same” the subject products, in the event any violation may be found.

The initial written submissions and proposed remedial orders must be filed no later than close of business on May 8, 2023. Reply submissions must be filed no later than the close of business on May 15, 2023. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 50 pages. Reply submissions are limited to 25 pages. No further submissions on any of 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 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1286) 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.

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 completes 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).

The Commission vote for this determination took place on April 24, 2023.

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.



Lisa R. Barton
Secretary to the Commission

Issued: April 24, 2023