

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN ELECTRONIC
NICOTINE DELIVERY SYSTEMS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1139

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING A JOINT MOTION FOR PARTIAL
TERMINATION OF THE INVESTIGATION AS TO CERTAIN RESPONDENTS
BASED ON CONSENT ORDER STIPULATIONS AND PROPOSED
CONSENT ORDERS; ISSUANCE OF CONSENT ORDERS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 11) of the presiding administrative law judge (“ALJ”) granting a joint motion for termination of the investigation as to respondents Limitless MOD, LLC, Asher Dynamics, Inc., and Ply Rock based upon consent order stipulations and proposed consent orders. The Commission has issued consent orders as to those respondents.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.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 December 13, 2018, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Juul Labs, Inc. of San Francisco, California (“Complainant”). *See* 83 FR 64156-57 (Dec. 13, 2018). The complaint, as amended and supplemented, alleges a violation of 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 electronic nicotine delivery systems and components thereof by reason of infringement of certain

claims of U.S. Patent No. 10,070,669; U.S. Patent No. 10,076,139; U.S. Patent No. 10,045,568; U.S. Patent No. 10,058,130; and U.S. Patent No. 10,104,915. *See id.* The notice of investigation names numerous respondents, including: Limitless Mod Co. of Simi Valley, California; Asher Dynamics, Inc. of Chino, California; and Ply Rock of Chino, California (collectively, “the Asher Respondents”). *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

On February 1, 2019, Complainant and the Asher Respondents filed a joint motion to amend the complaint and notice of investigation to: (1) correct the name of respondent Limitless MOD, LLC, and (2) terminate the investigation as to the Asher Respondents based on their entry into consent order stipulations. On February 13, 2019, OUII filed a response in support of the joint motion. On February 28, 2019, the ALJ issued an ID (Order No. 10) granting-in-part the joint motion as to the request to correct the name of respondent Limitless but the ALJ did not rule on the request to terminate the Asher Respondents.

On February 28, 2019, the ALJ issued the subject ID (Order No. 11) granting the joint motion to partially terminate the investigation as to the Asher Respondents. Pursuant to Commission Rule 210.21(c), the ID notes that the joint motion includes: (1) redacted and unredacted copies of the settlement agreement between Complainant and the Asher Respondents, and (2) a statement that “there are no other agreements, written or oral, express or implied, relating to the subject matter of this Investigation.” *See ID* at 2. In addition, the ID finds that the consent order stipulations and the proposed consent orders comply with Commission Rule 210.21(c)(3)-(4). *See id.* at 2-3. Furthermore, in accordance with Commission Rule 210.50(b)(2), the ID finds no evidence that terminating the investigation as to the Asher Respondents based on the consent orders would be contrary to the public interest. *See id.* at 4. The ID also suspends the procedural schedule with respect to the Asher Respondents pending Commission review of the ID. *See id.*

No petition for review of the subject ID was filed. The Commission has determined not to review the ID and has issued consent orders as to the Asher Respondents.

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: March 26, 2019