

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 AN AMENDED JOINT MOTION FOR
PARTIAL TERMINATION OF THE INVESTIGATION AS TO
A RESPONDENT BASED ON SETTLEMENT**

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. 13) of the presiding administrative law judge (“ALJ”) granting an amended joint motion for termination of the investigation as to respondent Flair Vapor, LLC (“Flair Vapor”) based on settlement.

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, 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. Patents Nos. 10,070,669; 10,076,139; 10,045,568; 10,058,130; and 10,104,915. *See id.* The notice of investigation names numerous respondents, including Flair Vapor of South Plainfield, New Jersey. *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

On February 21, 2019, Complainant and respondent Flair Vapor (collectively, “the Parties”) filed an amended joint motion (“the Motion”) to terminate the investigation as to Flair Vapor based on a settlement agreement (“the Settlement Agreement”). On March 4, 2019, OUII filed a response in support of the Motion.

On March 12, 2019, the ALJ issued the subject ID (Order No. 13) granting the Motion. In accordance with Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)), the Motion includes redacted and unredacted copies of the Settlement Agreement. In addition, as noted in the ID, the Motion includes a statement that “apart from th[e] Settlement Agreement there are no agreements, written or oral, express or implied between the Parties concerning the subject matter of the investigation.” *See* ID at 2. Furthermore, pursuant to Commission Rule 210.50(b)(2) (19 CFR 210.50(b)(2)), the ID finds no evidence that terminating the investigation as to Flair Vapor based on the Settlement Agreement would be contrary to the public interest. *See id.* at 3. The ID also stays the procedural schedule with respect to Flair Vapor pending Commission review of the subject ID. *See id.*

No petition for review of the subject ID was filed. The Commission has determined not to review the ID.

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', is positioned above the typed name.

Lisa R. Barton
Secretary to the Commission

Issued: April 5, 2019