

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

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

Investigation No. 337-TA-1141

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION (ORDER NO. 51) TO TERMINATE THE INVESTIGATION WITH
RESPECT TO A RESPONDENT DUE TO SETTLEMENT; REQUEST FOR WRITTEN
SUBMISSIONS ON REMEDY, THE PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the “Commission”) has determined not to review an initial determination (“ID”) (Order No. 51) terminating the investigation with respect to respondent Vaperz LLC of Frankfort, Illinois (“Vaperz”) due to a settlement agreement. The Commission is also requesting written submissions on remedy, the public interest, and bonding concerning respondents found to be in default, namely, DripTip Vapes LLC of Plantation, Florida; and Shenzhen OVNS Technology Co., Ltd, Shenzhen Haka Flavor Technology Co., Ltd., and Shenzhen OCIGA Technology Co., Ltd., all of Guangdong, China.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2382. 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, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission’s Electronic Docket Information System (“EDIS”) (<https://edis.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: On December 27, 2018, the Commission instituted the present investigation based on a complaint filed by Juul Labs, Inc. (“Juul”) of San Francisco, California. 83 FR 66746-747 (Dec. 27, 2018). The complaint alleges a violation of 19 U.S.C. 1337, as amended (“Section 337”), in the importation, sale for importation, and sale in the United States after importation of certain cartridges used in electronic nicotine delivery systems and components thereof that allegedly infringe one or more of the asserted claims of U.S. Patent

Nos. 10,058,129; 10,104,915; 10,111,470; 10,117,465; and 10,117,466. *Id.* The complaint also alleges the existence of a domestic industry. *Id.* The notice of investigation named 23 respondents. *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party. *Id.*

Ton May 3, 2019, the presiding administrative law judge (“ALJ”) found four respondents in default, namely, DripTip Vapes LLC, Shenzhen OVNS Technology Co., Ltd, Shenzhen Haka Flavor Technology Co., Ltd., and Shenzhen OCIGA Technology Co., Ltd. (collectively, “the Defaulting Respondents”). Order No. 26 (May 3, 2019), *not rev’d*, Comm’n Notice (May 31, 2019). On September 9, 2019, Juul filed a Declaration Seeking Immediate Relief Against Defaulting Respondents. On September 19, 2019, OUII filed a response opposing Juul’s declaration as premature and stating that any requested relief should be deferred until the end of the investigation. The Commission finds Juul’s declaration is moot.

The Commission terminated the investigation with respect to the other 18 respondents due to settlement agreements or consent orders. *See* Order Nos. 46-50 (Nov. 18, 2019), *not rev’d*, Comm’n Notice (Dec. 16, 2019); Order No. 44 (Sept. 18, 2019), *not rev’d*, Comm’n Notice (Oct. 15, 2019); Order No. 34 (June 14, 2019), *not rev’d*, Comm’n Notice (July 10, 2019); Order No. 30 (May 15, 2019), *not rev’d*, Comm’n Notice (June 12, 2019); Order No. 25 (April 18, 2019), *not rev’d*, Comm’n Notice (May 15, 2019); Order Nos. 19-21 (Apr. 10, 2019), *not rev’d*, Comm’n Notice (May 7, 2019); Order Nos. 15, 16 (Mar. 12, 2019), *not rev’d*, Comm’n Notice (Mar. 26, 2019); Order Nos. 13, 14 (Feb. 28, 2019), *not rev’d*, Comm’n Notice (Mar. 26, 2019).

On November 22, 2019, Juul and the remaining respondent, Vaperz, jointly moved to terminate the investigation with respect to Vaperz based on a settlement agreement. On December 4, 2019, OUII filed a response supporting the motion to terminate.

On December 5, 2019, the ALJ issued the subject ID (Order No. 51) granting the joint motion to terminate the investigation with respect to Vaperz. The ID finds that the joint motion complied with the requirements of 19 CFR 210.21(a)(2) and 210.21(b)(1), including the provision of a public version of each settlement agreement and a statement that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of this investigation. Order No. 51 at 2-3 (Dec. 5, 2019). The ID also finds that the settlement agreement does not adversely impact the public interest, which generally favors settlement. *Id.* The ID also finds there are no other active parties in this investigation; thus, the proceedings before the ALJ are terminated. *Id.* No petitions to review the subject ID were filed.

On December 12, 2019, Juul renewed its request for relief against the Defaulting Respondents, as set forth in its September 9, 2019, declaration.

The Commission has determined not to review the subject ID and has further determined to request briefing on the issues of remedy, bonding, and the public interest.

Section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission Rule 210.16(c) (19 CFR 210.16(c)) direct the Commission, upon request, to issue a limited exclusion order or a cease and desist order or both against a respondent found in default, unless after consideration of the public

interest factors in Section 337(g)(1), it finds that such relief should not issue. Accordingly, in connection with the final disposition of this investigation, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered with respect to the Defaulting Respondents, identified above. 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 (December 1994).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or 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.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *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: 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.

Complainants and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the date that the asserted patents expire, the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation. The written submissions regarding remedy, bonding, and the public interest and proposed remedial orders must be filed no later than close of business on **January 13, 2020**. Reply submissions must be filed no later than the close of business on **January 20, 2020**. 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 and submit eight (8) true paper copies to the Office of the Secretary pursuant to Section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1141") in a prominent place on the cover page and/or the first page. (*See Handbook on Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with 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 personnel¹ solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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: January 6, 2020

¹ All contract personnel will sign appropriate nondisclosure agreements.