

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN NICOTINE POUCHES AND
COMPONENTS THEREOF AND
METHODS OF MAKING THE SAME**

Inv. No. 337-TA-1192

NOTICE OF INSTITUTION OF INVESTIGATION

Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 10, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of NYZ AB of Sweden; Swedish Match North America, LLC of Richmond, Virginia; Pinkerton Tobacco Co., LP of Owensboro, Kentucky; and wm17 holding GmbH of Switzerland. A supplement to the complaint was filed on February 21, 2020. The complaint, as supplemented, alleges violations 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 nicotine pouches and components thereof and methods of making the same by reason of infringement of certain claims of U.S. Patent No. 9,161,908 (“the ’908 patent”). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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, S.W., Room 112, Washington, D.C. 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (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>.

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2559.

SUPPLEMENTARY INFORMATION:

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10 (2019).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on March 6, 2020, **ORDERED THAT** –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 2, 5, 6, 9-18, 20, and 21 of the '908 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is "powders containing a free nicotine salt held in some type of container, such as in a pouch or another type of container used for shipment of the powder, and components thereof";

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

NYZ AB
Sveavägen 44
SE-118 85 Stockholm, Sweden

Swedish Match North America, LLC
Two James Center
1021 East Cary Street, Suite 1600
Richmond, VA 23219

Pinkerton Tobacco Co., LP
1121 Industrial Drive
Owensboro, KY 42301

wm17 holding GmbH
KBT Treuhand AG Zug
Neuhofstrasse 5A

6340 Baar, Switzerland

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

The Art Factory AB
Landskronavägen 25B
SE-252 32 Helsingborg, Sweden

Kretek International, Inc.
5449 Endeavour Court
Moorpark, CA 93021

DRYFT Sciences, LLC
5449 Endeavour Court
Moorpark, CA 93201

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Suite 401, Washington, D.C. 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.13. Pursuant to 19 C.F.R. 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: March 9, 2020