

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN CIGARETTES AND
PACKAGING THEREOF**

Investigation No. 337-TA-643

**NOTICE OF COMMISSION FINAL DETERMINATION OF VIOLATION OF
SECTION 337; TERMINATION OF INVESTIGATION; ISSUANCE OF GENERAL
EXCLUSION ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of 19 U.S.C. § 1337 by Alcesia SRL (“Alcesia”) of Moldova in the above-captioned investigation and has issued a general exclusion order. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-1999. 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, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://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 April 4, 2008, the Commission instituted this investigation, based on a complaint filed by Philip Morris USA Inc. (“PM USA”) of Richmond, VA, naming Alcesia; Emarket Systems Ltd. (d.b.a. all-discount-cigarettes.com); Jamen Chong (d.b.a. asiadfs.com); Tri-kita (d.b.a. cheapcigarettes4all.com); Mr. Eduard Lee (d.b.a. cigarettesonlineshop.com); Zonitech Properties Limited (d.b.a. cigline.net); Zonitech Properties Limited (d.b.a. shopping-heaven.com); Cendano (d.b.a. galastore.com); Ms. Svetlana Trevinska (d.b.a. save-on-cigarettes.com); LMB Trading SA (d.b.a. k2smokes.ch); G.K.L. International SRL (d.b.a. all-cigarettes-brandsxom); G.K.L. International SRL (d.b.a. smokerjim.net); and Best Product Solution Ltd. as respondents. The complaint alleges violations of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the importation into the United States of certain cigarettes and packaging thereof that infringe registered trademarks owned by PM USA. Subsequent to institution all respondents but Alcesia were found in default.

On February 3, 2009, the ALJ issued Order No. 19, a summary initial determination (“ID”) granting PM USA’s motion for summary determination that Alcesia has violated section 337 with respect to three trademarks: U.S. Trademark Registration Nos. 68,502; 378,340; and 894,450. On February 17, 2009, Alcesia petitioned for review of the ID. On February 24 and 25, 2009, PM USA and the Commission Investigative Attorney (“IA”), respectively, opposed Alcesia’s petition for review.

On April 9, 2009, the Commission determined to review the ID and requested written submissions on the issues under review, remedy, the public interest, and bonding. On May 8, 2009, the parties filed opening submissions, and on May 29, 2009, the parties filed response submissions. Several non-parties also filed submissions addressing issues related to remedy and the public interest.

Having examined the record of this investigation, including the ALJ’s summary ID, the Commission has determined to affirm the ALJ’s finding that Alcesia has violated section 337 by selling for importation into the United States gray market cigarettes that infringe PM USA’s Marlboro®, Parliament®, and Virginia Slims® trademarks. In particular, the Commission has adopted the ALJ’s finding that a lack of English-language warning labels from the Surgeon General on the gray market cigarette packages makes them materially different from the U.S. market cigarettes. The Commission, however, has declined to adopt the ID’s finding that the gray market cigarettes’ susceptibility to seizure under the Imported Cigarette Compliance Act makes them materially different from U.S. market cigarettes. The Commission also takes no position on the ID’s finding that a material difference exists between the gray market and U.S. market cigarettes because PM USA exercises quality control over procedures for distribution, storage, and transportation of the U.S. market cigarettes, while it does not exercise this control over the gray market cigarettes.

The Commission has determined that the appropriate form of relief is a general exclusion order prohibiting the unlicensed entry of Marlboro®, Parliament®, or Virginia Slims® branded cigarettes that (a) infringe one or more of the following U.S. Trademark Reg. Nos. 68,502, 378,340, and 894,450 and (b) are materially different from cigarettes manufactured by or under authority of PM USA for sale and use in the United States.

The Commission further determined that the public interest factors enumerated in section 337(d) (19 U.S.C. § 1337(d)) do not preclude issuance of the general exclusion order. Finally, the Commission determined that the amount of bond during the Presidential review period (19 U.S.C. § 1337(j)) shall be 100 percent of the entered value of the article that is subject to the order. The Commission’s order was delivered to the President and the United States Trade Representative on the day of its issuance.

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 sections 210.42-50 of the Commission’s Rules of Practice and Procedure (19 C.F.R. §§ 210.42-50).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: September 21, 2009