

In the Matter of

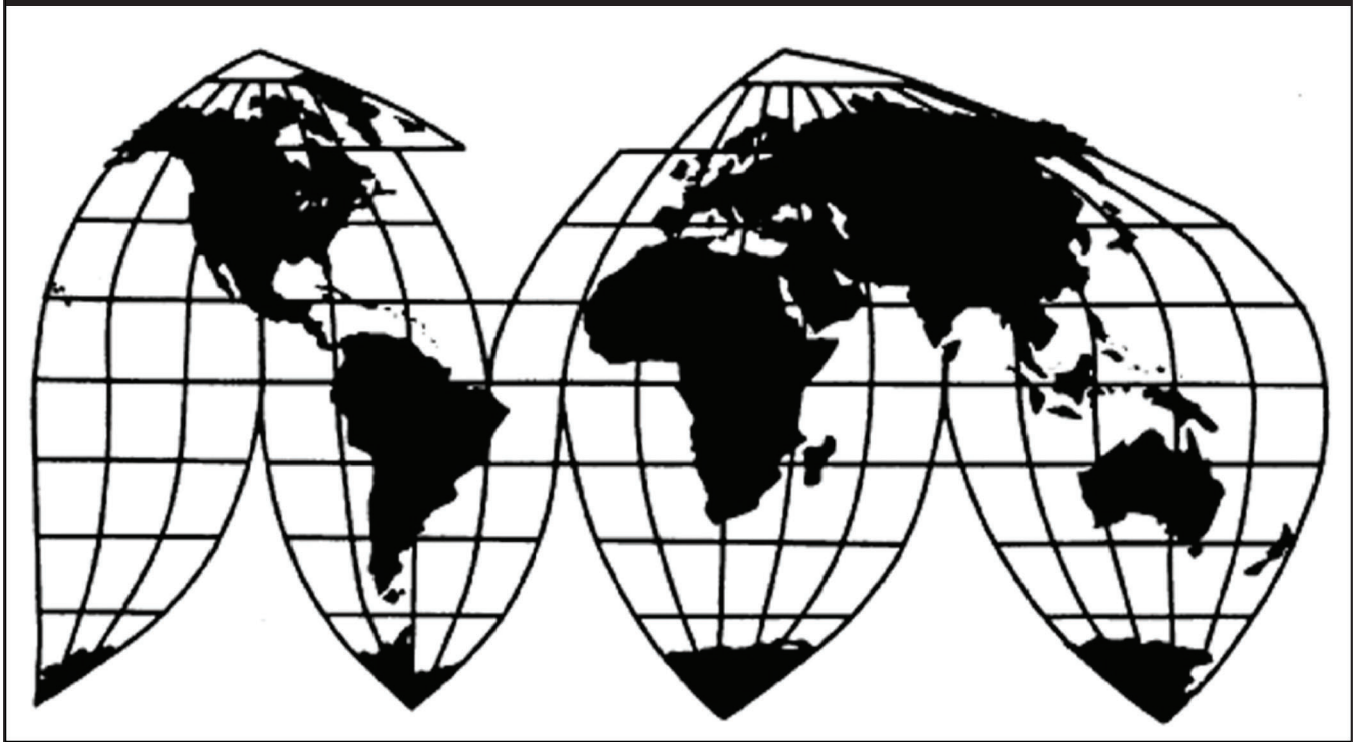
**CERTAIN CARTRIDGES FOR ELECTRONIC
NICOTINE DELIVERY SYSTEMS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1141

Publication 5261

February 2022

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

David S. Johanson, Chairman
Rhonda K. Schmidlein, Commissioner
Jason E. Kearns, Commissioner
Randolph J. Stayin, Commissioner
Amy A. Karpel, Commissioner

**Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436**

U.S. International Trade Commission

Washington, DC 20436
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In the Matter of

CERTAIN CARTRIDGES FOR ELECTRONIC NICOTINE DELIVERY SYSTEMS AND COMPONENTS THEREOF

Investigation No. 337-TA-1141



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 TO ISSUE REMEDIAL ORDERS
AND IMPOSE A BOND ON DEFAULTING RESPONDENTS; TERMINATION OF THE
INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the “Commission”) has determined to issue a limited exclusion order and cease and desist orders against the respondents found to be in default in this investigation, namely, DripTip Vapes LLC (“DripTips”) of Plantation, Florida; Shenzhen OVNS Technology Co., Ltd. (“OVNS”) of Guangdong, China; Shenzhen Haka Flavor Technology Co., Ltd. (“Haka”) of Guangdong, China; and Shenzhen OCIGA Technology Co., Ltd. (“OCIGA”) of Guangdong, China (collectively, “the Defaulting Respondents”). The Commission has also determined to impose a bond equal to 281 percent of the entered value of the accused products imported during the period of Presidential review. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal telephone on (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” or “Complainant”) 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.*

On May 3, 2019, the presiding administrative law judge (“ALJ”) found the Defaulting Respondents in default. 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 terminated the investigation with respect to all of the other respondents through a series of settlement agreements and consent orders. Order No. 51 (Dec. 5, 2019), *not rev’d*, Comm’n Notice (Jan. 6, 2020); 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).

The Commission, in terminating the last active respondent from the investigation, also terminated the proceedings before the ALJ. Order No. 51 at 3 (Dec. 5, 2019), *not rev’d*, Comm’n Notice (Jan. 6, 2020). Accordingly, Juul renewed its request for relief against the Defaulting Respondents on December 12, 2019. The Commission, in the same notice that terminated the investigation with respect to the last remaining respondent, requested briefing on the issues of remedy, bonding, and the public interest. Comm’n Notice (Jan. 6, 2020). The Commission also found Juul’s September 9, 2019, declaration to be moot. *Id.*

On January 13, 2020, both Juul and OUII filed statements on remedy, public interest, and bonding. On January 20, 2020, Juul filed a reply to OUII’s initial submission. None of the Defaulting Respondents filed a response to either the Commission’s original notice or the initial submissions filed by Juul or OUII.

Upon review of the parties’ submissions, and in the absence of any response from the Defaulting Respondents, the Commission has determined to issue a limited exclusion order and cease and desist orders against the Defaulting Respondents. The Commission has further determined to set a bond equal to 281 percent of the entered value of the covered products. The investigation is hereby terminated.

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).

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the

Complainant complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton
Secretary to the Commission

Issued: April 7, 2020

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served via EDIS upon the Commission Investigative Attorney, **Cortney Hoecherl, Esq.**, and the following parties as indicated, on **April 7, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant Juul Labs, Inc. :

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CERTAIN CARTRIDGES FOR ELECTRONIC NICOTINE DELIVERY SYSTEMS AND COMPONENTS THEREOF

Inv. No. 337-TA-1195

Certificate of Service – Page 2

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On Behalf of Respondent ParallelDirect LLC

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CERTAIN CARTRIDGES FOR ELECTRONIC NICOTINE DELIVERY SYSTEMS AND COMPONENTS THEREOF

Inv. No. 337-TA-1195

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 Other: Service to Be Completed by Complainants

Fuma Vapor, Inc.
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Lan & Mike International Trading, Inc.
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**CERTAIN CARTRIDGES FOR ELECTRONIC NICOTINE
DELIVERY SYSTEMS AND COMPONENTS THEREOF**

Inv. No. 337-TA-1195

Certificate of Service – Page 4

Shenzhen Haka Flavor Technology Co., Ltd.
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Shenzhen OCIGA Technology Co., Ltd.
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Shenzhen OVNS Technology Co., Ltd.
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Shajing Town, Bao'an District,
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- Via Hand Delivery
- Via Express Delivery
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United Wholesale LLC
73 Linden Street
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The ZFO
42 Nichols St., Suite 14,
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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

LIMITED EXCLUSION ORDER

The United States International Trade Commission (“Commission”) has found DripTip Vapes LLC of Plantation, Florida; Shenzhen Haka Flavor Technology Co., Ltd. of Guangdong, China; Shenzhen OCIGA Technology Co., Ltd. of Guangdong, China; and Shenzhen OVNS Technology Co., Ltd. of Guangdong, China (collectively, “the Defaulting Respondents”) in default, pursuant to 19 U.S.C. § 1337(g)(1) and 19 C.F.R. § 210.16, for failing to respond to a Complaint and Notice of Investigation that alleged a violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“Section 337”), in the unlawful importation, sale for importation, or sale within the United States after importation of certain cartridges for nicotine vaporizers and components thereof, such as the mouthpiece, storage compartment, and heater, that infringe one or more of claims 1-3, 5-8, 12, 13, 16-20, and 22 of U.S. Patent No. 10,058,129 (“the ’129 patent”); claims 10, 15, 17, and 29-32 of U.S. Patent No. 10,104,915 (“the ’915 patent”); claims 1-4, 7, 8, 10, and 11 of U.S. Patent No. 10,111,470 (“the ’470 patent”); claims 1-7 and 9-20 of U.S. Patent No. 10,117,465 (“the ’465 patent”); and claims 1, 4-8, 10, 12, 14, and 16-23 of U.S. Patent No. 10,117,466 (“the ’466 patent”).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, public interest, and bonding. The Commission has determined that the appropriate form of relief includes a limited

exclusion order prohibiting the unlicensed entry of cartridges for nicotine vaporizers and components thereof, such as the mouthpiece, storage compartment, and heater manufactured abroad by or on behalf of, or imported by or on behalf of, the Defaulting Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns.

The Commission has determined that the public interest factors enumerated in 19 U.S.C. § 1337(g)(1) do not preclude the issuance of the limited exclusion order, and that the bond during the period of Presidential review shall be in the amount of 281 percent of the entered value of the covered articles.

Accordingly, the Commission hereby **ORDERS** that:

1. Cartridges for nicotine vaporizers and components thereof, such as the mouthpiece, storage compartment, and heater, that infringe one or more of claims 1-3, 5-8, 12, 13, 16-20, and 22 of the '129 patent; claims 10, 15, 17, and 29-32 of the '915 patent; claims 1-4, 7, 8, 10, and 11 of the '470 patent; claims 1-7 and 9-20 of the '465 patent; and claims 1, 4-8, 10, 12, 14, and 16-23 of the '466 patent and are manufactured abroad by or on behalf of, or imported by or on behalf of, the Defaulting Respondents, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns ("covered articles"), are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining term(s) of the patent(s), except under license of the patent owner or as provided by law.
2. Notwithstanding paragraph 1 of this Order, covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, or

withdrawal from a warehouse for consumption under bond in the amount of 281 percent of the entered value of the imported products, pursuant to subsection (j) of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(j)), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43,251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to U.S. Customs and Border Protection (“CBP”), in advance of the date of the entry, pursuant to procedures CBP establishes.

3. At the discretion of CBP and pursuant to the procedures it establishes, persons seeking to import cartridges for electronic nicotine delivery systems and components thereof that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses to substantiate the certification.
4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to covered articles that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission’s Rules of Practice and Procedure, 19 C.F.R. § 210.76.

6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon United States Customs and Border Protection.

7. Notice of this Order shall be published in the Federal Register.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton
Secretary to the Commission

Issued: April 7, 2020

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served via EDIS upon the Commission Investigative Attorney, **Cortney Hoecherl, Esq.**, and the following parties as indicated, on **April 7, 2020**.



Lisa R. Barton, Secretary
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CERTAIN CARTRIDGES FOR ELECTRONIC NICOTINE DELIVERY SYSTEMS AND COMPONENTS THEREOF

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**CERTAIN CARTRIDGES FOR ELECTRONIC NICOTINE
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Respondents:

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**CERTAIN CARTRIDGES FOR ELECTRONIC NICOTINE
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Certificate of Service – Page 4

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- Other: Service to Be Completed by Complainants

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**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

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT RESPONDENT Shenzhen OVNS Technology Co., Ltd., 6F, North Side Of Xinlong Tech Park, No. 2, Dawangshan Industrial 1st Road, Shajing Town, Bao'an District, Shenzhen, Guangdong, China 518101 ("Respondent"), cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of certain cartridges for nicotine vaporizers and components thereof, such as the mouthpiece, storage compartment, and heater, that infringe one or more of claims 1-3, 5-8, 12, 13, 16-20, and 22 of U.S. Patent No. 10,058,129 ("the '129 patent"); claims 10, 15, 17, and 29-32 of U.S. Patent No. 10,104,915 ("the '915 patent"); claims 1-4, 7, 8, 10, and 11 of U.S. Patent No. 10,111,470 ("the '470 patent"); claims 1-7 and 9-20 of U.S. Patent No. 10,117,465 ("the '465 patent"); and claims 1, 4-8, 10, 12, 14, and 16-23 of U.S. Patent No. 10,117,466 ("the '466 patent") (collectively, "the Asserted Patents") in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("Section 337").

**I.
Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Juul Labs, Inc., 560 20th Street, San Francisco, CA 94107.
- (C) “Respondent” shall mean Shenzhen OVNS Technology Co., Ltd., 6F, North Side Of Xinlong Tech Park, No. 2, Dawangshan Industrial 1st Road, Shajing Town, Bao’an District, Shenzhen, Guangdong, China 518101.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

The term “covered products” shall mean cartridges for nicotine vaporizers and components thereof, such as the mouthpiece, storage compartment, and heater, that infringe one or more of claims 1-3, 5-8, 12, 13, 16-20, and 22 of the ’129 patent; claims 10, 15, 17, and 29-32 of the ’915 patent; claims 1-4, 7, 8, 10, and 11 of the ’470 patent; claims 1-7 and 9-20 of the ’465 patent; and claims 1, 4-8, 10, 12, 14, and 16-23 of the ’446 patent. Covered products shall not include articles for which a provision of law or license avoids liability for infringement.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and

assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for which, or otherwise on behalf of, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation) imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the Asserted Patents licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this

section shall cover the period from the date of issuance of this order through December 31, 2020. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that it has imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent 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 by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1141") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf. Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Persons filing written submissions must file the original document electronically on or

¹ Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with the Order. The designated attorney must be on the protective order entered in this investigation.

before the deadlines stated above. The Commission's paper filing requirements in 19 C.F.R. 210.4(f) are currently waived, pending resolution of the COVID-19 crisis. 85 Fed. Reg. 15798 (March 19, 2020).

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI. Record-Keeping and Inspection

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration of the Asserted Patents.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to section VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under Section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), as well as

any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

X. Modification

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI. Bonding

The conduct prohibited by section III of this order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent's posting of a bond in the amount of 281 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* 19 C.F.R. § 210.68. The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this Order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all

parties, and (b) Respondent must serve a copy of the bond and accompanying documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves this Order (or does not disapprove it within the review period), unless (i) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This bond is to be released in the event (i) the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, (ii) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (iii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission, upon service on Respondent of an order issued by the Commission based upon application therefor made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: April 7, 2020

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served via EDIS upon the Commission Investigative Attorney, **Cortney Hoecherl, Esq.**, and the following parties as indicated, on **April 7, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant Juul Labs, Inc. :

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- Via Express Delivery
- Via First Class Mail
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On Behalf of Respondent Vaportronix, LLC

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Fort Lauderdale, FL 33301
Email: derek@plusfirm.com

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- Via Express Delivery
- Via First Class Mail
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On Behalf of Respondent Vapor 4 Life Holdings, Inc.:

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THOMPSON HINE LLP
1919 M Street, NW - Suite 700

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail

CERTAIN CARTRIDGES FOR ELECTRONIC NICOTINE DELIVERY SYSTEMS AND COMPONENTS THEREOF

Inv. No. 337-TA-1195

Certificate of Service – Page 2

Washington, DC 20036
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Other: Email Notification of Availability for Download

On Behalf of Respondent Vape4U, LLC:

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Email: mcohen@cohenip.com

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 Via Express Delivery
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On Behalf of Respondent Twist Vapor Franchising, LLC:

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Washington, DC 20036
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 Via Express Delivery
 Via First Class Mail
 Other: Email Notification of Availability for Download

On Behalf of Respondent Maduro Distributors, Inc.:

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Plantation, FL 33324
Email: dnickel@fostermurphy.com

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 Via Express Delivery
 Via First Class Mail
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On Behalf of Respondents MistHub, LLC, ZLab S.A., Ziip Lab Co., Ltd., Shenzhen Yibo Technology Co., and Vaperz, LLC:

Steven Susser, Esq.
CARLSON, GASKEY AND OLDS, P.C.
400 West Maple Road, Suite 350
Birmingham, MI 48009
Email: ssusser@cgolaw.com

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 Via First Class Mail
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On Behalf of Respondent ParallelDirect LLC

Mark H. Izraelewicz, Esq.
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail

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

Inv. No. 337-TA-1195

Certificate of Service – Page 3

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Other: Email Notification
of Availability for Download

Respondents:

DripTip Vapes LLC
151 N. Nob Hill Rd. #115
Plantation, FL 33324

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be
Completed by Complainants

The Electric Tobacconist, LLC
3235 Prairie Avenue
Boulder, CO 80301

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be
Completed by Complainants

Fuma Vapor, Inc.
605 S. Westgate Rd
Des Plaines, IL 60016

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be
Completed by Complainants

Lan & Mike International Trading, Inc.
20435 Gramercy Place, Suite 101
Torrance, CA 90501

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be
Completed by Complainants

Saddam Aburoumi
193 Homestead Street, Unit D3
Manchester, CT 06042

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be
Completed by Complainants

Sarvasva LLC
D/b/a One Stop Food Mart
32 Church Road
Maple Shade, NJ 08052

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be
Completed by Complainants

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

Inv. No. 337-TA-1195

Certificate of Service – Page 4

Shenzhen Haka Flavor Technology Co., Ltd.
4F, Building B, Anjia Industrial Park, Gonghe Industrial Rd,
Shajing Town, Bao'an District,
Shenzhen City, Guangdong, China 518104

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

Shenzhen OCIGA Technology Co., Ltd.
4F, Building B, Anjia Industrial Park, Gonghe Industrial Rd,
Shajing Town, Bao'an District,
Shenzhen City, Guangdong Province, China 518104

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

Shenzhen OVNS Technology Co., Ltd.
6F, North Side Of Xinlong Tech Park,
No. 2, Dawangshan Industrial 1st Road,
Shajing Town, Bao'an District,
Shenzhen, Guangdong, China 518101

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

United Wholesale LLC
73 Linden Street
Glastonbury, CT 06033

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

The ZFO
42 Nichols St., Suite 14,
Spencerport, NY 14559

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

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

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT RESPONDENT Shenzhen OCIGA Technology Co., Ltd., 4F-B Building, Anjia Industrial Park, Gonghe Industrial Road, Shajing Town, Bao'an District, Shenzhen, Guangdong, China ("Respondent"), cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of certain cartridges for nicotine vaporizers and components thereof, such as the mouthpiece, storage compartment, and heater, that infringe one or more of claims 1-3, 5-8, 12, 13, 16-20, and 22 of U.S. Patent No. 10,058,129 ("the '129 patent"); claims 10, 15, 17, and 29-32 of U.S. Patent No. 10,104,915 ("the '915 patent"); claims 1-4, 7, 8, 10, and 11 of U.S. Patent No. 10,111,470 ("the '470 patent"); claims 1-7 and 9-20 of U.S. Patent No. 10,117,465 ("the '465 patent"); and claims 1, 4-8, 10, 12, 14, and 16-23 of U.S. Patent No. 10,117,466 ("the '466 patent") (collectively, "the Asserted Patents") in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("Section 337").

I.
Definitions

As used in this Order:

- (A) "Commission" shall mean the United States International Trade Commission.

- (B) “Complainant” shall mean Juul Labs, Inc., 560 20th Street, San Francisco, CA 94107.
- (C) “Respondent” shall mean Shenzhen OCIGA Technology Co., Ltd., 4F-B Building, Anjia Industrial Park, Gonghe Industrial Road, Shajing Town, Bao’an District, Shenzhen, Guangdong, China.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

The term “covered products” shall mean cartridges for nicotine vaporizers and components thereof, such as the mouthpiece, storage compartment, and heater, that infringe one or more of claims 1-3, 5-8, 12, 13, 16-20, and 22 of the ’129 patent; claims 10, 15, 17, and 29-32 of the ’915 patent; claims 1-4, 7, 8, 10, and 11 of the ’470 patent; claims 1-7 and 9-20 of the ’465 patent; and claims 1, 4-8, 10, 12, 14, and 16-23 of the ’446 patent. Covered products shall not include articles for which a provision of law or license avoids liability for infringement.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III,

infra, for which, or otherwise on behalf of, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation) imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the Asserted Patents licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2020.

This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that it has imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent 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 by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1141") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf. Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 C.F.R.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with the Order. The designated attorney must be on the protective order entered in this investigation.

210.4(f) are currently waived, pending resolution of the COVID-19 crisis. 85 Fed. Reg. 15798 (March 19, 2020).

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

**VI.
Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

**VII.
Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration of the Asserted Patents.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to section VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under Section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is

in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

X. Modification

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI. Bonding

The conduct prohibited by section III of this order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative, as delegated by the President (*70 Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent's posting of a bond in the amount of 281 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* 19 C.F.R. § 210.68. The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this Order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and accompanying documentation on

Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves this Order (or does not disapprove it within the review period), unless (i) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This bond is to be released in the event (i) the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, (ii) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (iii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission, upon service on Respondent of an order issued by the Commission based upon application therefor made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: April 7, 2020

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served via EDIS upon the Commission Investigative Attorney, **Cortney Hoecherl, Esq.**, and the following parties as indicated, on **April 7, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant Juul Labs, Inc. :

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On Behalf of Respondent Vaportronix, LLC

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- Via Express Delivery
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- Other: Email Notification of Availability for Download

On Behalf of Respondent Vapor 4 Life Holdings, Inc.:

Eric N. Heyer, Esq.
THOMPSON HINE LLP
1919 M Street, NW - Suite 700

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail

CERTAIN CARTRIDGES FOR ELECTRONIC NICOTINE DELIVERY SYSTEMS AND COMPONENTS THEREOF

Inv. No. 337-TA-1195

Certificate of Service – Page 2

Washington, DC 20036
Email: Eric.Heyer@ThompsonHine.com

Other: Email Notification of Availability for Download

On Behalf of Respondent Vape4U, LLC:

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On Behalf of Respondent Twist Vapor Franchising, LLC:

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1919 M Street, N.W. Suite 700
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Email: Eric.Heyer@thompsonhine.com

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 Via Express Delivery
 Via First Class Mail
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On Behalf of Respondent Maduro Distributors, Inc.:

David F. Nickel, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, PC
151 N. Nob Hill Rd. #115
Plantation, FL 33324
Email: dnickel@fostermurphy.com

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Email Notification of Availability for Download

On Behalf of Respondents MistHub, LLC, ZLab S.A., Ziip Lab Co., Ltd., Shenzhen Yibo Technology Co., and Vaperz, LLC:

Steven Susser, Esq.
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Birmingham, MI 48009
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Via Hand Delivery
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On Behalf of Respondent ParallelDirect LLC

Mark H. Izraelewicz, Esq.
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail

CERTAIN CARTRIDGES FOR ELECTRONIC NICOTINE DELIVERY SYSTEMS AND COMPONENTS THEREOF

Inv. No. 337-TA-1195

Certificate of Service – Page 3

Chicago, IL 60606
Email: mizraelewicz@marshallip.com

Other: Email Notification of Availability for Download

Respondents:

DripTip Vapes LLC
151 N. Nob Hill Rd. #115
Plantation, FL 33324

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be Completed by Complainants

The Electric Tobacconist, LLC
3235 Prairie Avenue
Boulder, CO 80301

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be Completed by Complainants

Fuma Vapor, Inc.
605 S. Westgate Rd
Des Plaines, IL 60016

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be Completed by Complainants

Lan & Mike International Trading, Inc.
20435 Gramercy Place, Suite 101
Torrance, CA 90501

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be Completed by Complainants

Saddam Aburoumi
193 Homestead Street, Unit D3
Manchester, CT 06042

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be Completed by Complainants

Sarvasva LLC
D/b/a One Stop Food Mart
32 Church Road
Maple Shade, NJ 08052

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be Completed by Complainants

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

Inv. No. 337-TA-1195

Certificate of Service – Page 4

Shenzhen Haka Flavor Technology Co., Ltd.
4F, Building B, Anjia Industrial Park, Gonghe Industrial Rd,
Shajing Town, Bao'an District,
Shenzhen City, Guangdong, China 518104

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

Shenzhen OCIGA Technology Co., Ltd.
4F, Building B, Anjia Industrial Park, Gonghe Industrial Rd,
Shajing Town, Bao'an District,
Shenzhen City, Guangdong Province, China 518104

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

Shenzhen OVNS Technology Co., Ltd.
6F, North Side Of Xinlong Tech Park,
No. 2, Dawangshan Industrial 1st Road,
Shajing Town, Bao'an District,
Shenzhen, Guangdong, China 518101

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

United Wholesale LLC
73 Linden Street
Glastonbury, CT 06033

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

The ZFO
42 Nichols St., Suite 14,
Spencerport, NY 14559

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

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

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT RESPONDENT Shenzhen Haka Flavor Technology Co., Ltd., 4F, Building B, Anjia Industrial Park, Gonghe Industrial Road, Shajing Town, Bao'an District, Shenzhen, Guangdong, China ("Respondent"), cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of certain cartridges for nicotine vaporizers and components thereof, such as the mouthpiece, storage compartment, and heater, that infringe one or more of claims 1-3, 5-8, 12, 13, 16-20, and 22 of U.S. Patent No. 10,058,129 ("the '129 patent"); claims 10, 15, 17, and 29-32 of U.S. Patent No. 10,104,915 ("the '915 patent"); claims 1-4, 7, 8, 10, and 11 of U.S. Patent No. 10,111,470 ("the '470 patent"); claims 1-7 and 9-20 of U.S. Patent No. 10,117,465 ("the '465 patent"); and claims 1, 4-8, 10, 12, 14, and 16-23 of U.S. Patent No. 10,117,466 ("the '466 patent") (collectively, "the Asserted Patents") in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("Section 337").

I.
Definitions

As used in this Order:

(A) "Commission" shall mean the United States International Trade Commission.

- (B) “Complainant” shall mean Juul Labs, Inc., 560 20th Street, San Francisco, CA 94107.
- (C) “Respondent” shall mean Shenzhen Haka Flavor Technology Co., Ltd., 4F, Building B, Anjia Industrial Park, Gonghe Industrial Road, Shajing Town, Bao’an District, Shenzhen, Guangdong, China.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

The term “covered products” shall mean cartridges for nicotine vaporizers and components thereof, such as the mouthpiece, storage compartment, and heater, that infringe one or more of claims 1-3, 5-8, 12, 13, 16-20, and 22 of the ’129 patent; claims 10, 15, 17, and 29-32 of the ’915 patent; claims 1-4, 7, 8, 10, and 11 of the ’470 patent; claims 1-7 and 9-20 of the ’465 patent; and claims 1, 4-8, 10, 12, 14, and 16-23 of the ’446 patent. Covered products shall not include articles for which a provision of law or license avoids liability for infringement.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III,

infra, for which, or otherwise on behalf of, Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation) imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the Asserted Patents licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2020.

This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that it has imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent 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 by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1141") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf. Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 C.F.R.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with the Order. The designated attorney must be on the protective order entered in this investigation.

210.4(f) are currently waived, pending resolution of the COVID-19 crisis. 85 Fed. Reg. 15798 (March 19, 2020).

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

**VI.
Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

**VII.
Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration of the Asserted Patents.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to section VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under Section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is

in violation of this order, the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

X. Modification

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI. Bonding

The conduct prohibited by section III of this order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent's posting of a bond in the amount of 281 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* 19 C.F.R. § 210.68. The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this Order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties, and (b) Respondent must serve a copy of the bond and accompanying documentation on

Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves this Order (or does not disapprove it within the review period), unless (i) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This bond is to be released in the event (i) the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, (ii) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (iii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission, upon service on Respondent of an order issued by the Commission based upon application therefor made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: April 7, 2020

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served via EDIS upon the Commission Investigative Attorney, **Cortney Hoecherl, Esq.**, and the following parties as indicated, on **April 7, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant Juul Labs, Inc. :

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- Via First Class Mail
- Other: Email Notification of Availability for Download

On Behalf of Respondent Lizard Juice, LLC:

Ronald J. Ventola II, Esq.
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Email: rventola@panitchlaw.com

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- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

On Behalf of Respondent Vaportronix, LLC

Derek Fahey
The Plus IP Firm
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Fort Lauderdale, FL 33301
Email: derek@plusfirm.com

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- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

On Behalf of Respondent Vapor 4 Life Holdings, Inc.:

Eric N. Heyer, Esq.
THOMPSON HINE LLP
1919 M Street, NW - Suite 700

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail

CERTAIN CARTRIDGES FOR ELECTRONIC NICOTINE DELIVERY SYSTEMS AND COMPONENTS THEREOF

Inv. No. 337-TA-1195

Certificate of Service – Page 2

Washington, DC 20036
Email: Eric.Heyer@ThompsonHine.com

Other: Email Notification of Availability for Download

On Behalf of Respondent Vape4U, LLC:

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9025 Wilshire Boulevard, Suite 301
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Email: mcohen@cohenip.com

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Email Notification of Availability for Download

On Behalf of Respondent Twist Vapor Franchising, LLC:

Eric N. Heyer, Esq.
THOMPSON HINE LLP
1919 M Street, N.W. Suite 700
Washington, DC 20036
Email: Eric.Heyer@thompsonhine.com

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Email Notification of Availability for Download

On Behalf of Respondent Maduro Distributors, Inc.:

David F. Nickel, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, PC
151 N. Nob Hill Rd. #115
Plantation, FL 33324
Email: dnickel@fostermurphy.com

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On Behalf of Respondents MistHub, LLC, ZLab S.A., Ziip Lab Co., Ltd., Shenzhen Yibo Technology Co., and Vaperz, LLC:

Steven Susser, Esq.
CARLSON, GASKEY AND OLDS, P.C.
400 West Maple Road, Suite 350
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On Behalf of Respondent ParallelDirect LLC

Mark H. Izraelewicz, Esq.
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive

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CERTAIN CARTRIDGES FOR ELECTRONIC NICOTINE DELIVERY SYSTEMS AND COMPONENTS THEREOF

Inv. No. 337-TA-1195

Certificate of Service – Page 3

Chicago, IL 60606
Email: mizraelewicz@marshallip.com

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

Inv. No. 337-TA-1195

Certificate of Service – Page 4

Shenzhen Haka Flavor Technology Co., Ltd.
4F, Building B, Anjia Industrial Park, Gonghe Industrial Rd,
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42 Nichols St., Suite 14,
Spencerport, NY 14559

- Via Hand Delivery
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**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

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT RESPONDENT DripTip Vapes LLC, 151 North Nob Hill Rd. #115, Plantation, FL 33324 (“Respondent”), cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of certain cartridges for nicotine vaporizers and components thereof, such as the mouthpiece, storage compartment, and heater, that infringe one or more of claims 1-3, 5-8, 12, 13, 16-20, and 22 of U.S. Patent No. 10,058,129 (“the ’129 patent”); claims 10, 15, 17, and 29-32 of U.S. Patent No. 10,104,915 (“the ’915 patent”); claims 1-4, 7, 8, 10, and 11 of U.S. Patent No. 10,111,470 (“the ’470 patent”); claims 1-7 and 9-20 of U.S. Patent No. 10,117,465 (“the ’465 patent”); and claims 1, 4-8, 10, 12, 14, and 16-23 of U.S. Patent No. 10,117,466 (“the ’466 patent”) (collectively, “the Asserted Patents”) in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“Section 337”).

**I.
Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Juul Labs, Inc., 560 20th Street, San Francisco, CA

94107.

- (C) “Respondent” shall mean DripTip Vapes LLC, 151 North Nob Hill Rd. #115, Plantation, FL 33324.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

The term “covered products” shall mean cartridges for nicotine vaporizers and components thereof, such as the mouthpiece, storage compartment, and heater, that infringe one or more of claims 1-3, 5-8, 12, 13, 16-20, and 22 of the ’129 patent; claims 10, 15, 17, and 29-32 of the ’915 patent; claims 1-4, 7, 8, 10, and 11 of the ’470 patent; claims 1-7 and 9-20 of the ’465 patent; and claims 1, 4-8, 10, 12, 14, and 16-23 of the ’446 patent. Covered products shall not include articles for which a provision of law or license avoids liability for infringement.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for which, or otherwise on behalf of, Respondent.

III.
Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by this Order.

For the remaining term of the Asserted Patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation) imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.
Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the Asserted Patents licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

V.
Reporting

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2020.

This reporting requirement shall continue in force until such time as Respondent has truthfully

reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that it has imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

When filing written submissions, Respondent 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 by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1141") in a prominent place on the cover pages and/or the first page. *See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.¹

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 C.F.R. 210.4(f) are currently waived, pending resolution of the COVID-19 crisis. 85 Fed. Reg. 15798

¹ Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with the Order. The designated attorney must be on the protective order entered in this investigation.

(March 19, 2020).

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

**VI.
Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

**VII.
Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this

Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration of the Asserted Patents.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to section VI of this order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties under Section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), as well as any other action that the Commission deems appropriate. In determining whether Respondent is in violation of this order, the Commission may infer facts adverse to Respondent if it fails to

provide adequate or timely information.

X. Modification

The Commission may amend this order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI. Bonding

The conduct prohibited by section III of this order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative, as delegated by the President (*70 Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent's posting of a bond in the amount of 281 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond as set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* 19 C.F.R. § 210.68. The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct that is otherwise prohibited by section III of this Order. Upon the Secretary's acceptance of the bond, (a) the Secretary will serve an acceptance letter on all parties; and (b) Respondent must serve a copy of the bond and accompanying documentation on

Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves this Order (or does not disapprove it within the review period), unless (i) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (ii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission.

This bond is to be released in the event (i) the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved (or not disapproved) by the United States Trade Representative, (ii) the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or (iii) Respondent exports or destroys the products subject to this bond and provides certification to that effect that is satisfactory to the Commission, upon service on Respondent of an order issued by the Commission based upon application therefor made by Respondent to the Commission.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: April 7, 2020

² See Footnote 1.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION ORDER** has been served via EDIS upon the Commission Investigative Attorney, **Cortney Hoecherl, Esq.**, and the following parties as indicated, on **April 7, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant Juul Labs, Inc. :

Daniel E. Yonan, Esq.
STERNE, KESSLER, GOLDSTEIN & FOX, P.L.L.C.
1100 New York Avenue, N.W.
Washington, DC 20005
Email: dyanon@sternekessler.com

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

On Behalf of Respondent Lizard Juice, LLC:

Ronald J. Ventola II, Esq.
PANITCH SCHWARZE BELISARIO & NADEL LLP
2001 Market St., Suite 2800
Philadelphia, PA 19103
Email: rventola@panitchlaw.com

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

On Behalf of Respondent Vaportronix, LLC

Derek Fahey
The Plus IP Firm
101 NE 3rd Ave., Suite 1500
Fort Lauderdale, FL 33301
Email: derek@plusfirm.com

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Email Notification of Availability for Download

On Behalf of Respondent Vapor 4 Life Holdings, Inc.:

Eric N. Heyer, Esq.
THOMPSON HINE LLP
1919 M Street, NW - Suite 700

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail

CERTAIN CARTRIDGES FOR ELECTRONIC NICOTINE DELIVERY SYSTEMS AND COMPONENTS THEREOF

Inv. No. 337-TA-1195

Certificate of Service – Page 2

Washington, DC 20036
Email: Eric.Heyer@ThompsonHine.com

Other: Email Notification of Availability for Download

On Behalf of Respondent Vape4U, LLC:

Michael N. Cohen, Esq.
COHEN IP LAW GROUP, PC
9025 Wilshire Boulevard, Suite 301
Beverly Hills, CA 90211
Email: mcohen@cohenip.com

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Email Notification of Availability for Download

On Behalf of Respondent Twist Vapor Franchising, LLC:

Eric N. Heyer, Esq.
THOMPSON HINE LLP
1919 M Street, N.W. Suite 700
Washington, DC 20036
Email: Eric.Heyer@thompsonhine.com

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Email Notification of Availability for Download

On Behalf of Respondent Maduro Distributors, Inc.:

David F. Nickel, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, PC
151 N. Nob Hill Rd. #115
Plantation, FL 33324
Email: dnickel@fostermurphy.com

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Email Notification of Availability for Download

On Behalf of Respondents MistHub, LLC, ZLab S.A., Ziip Lab Co., Ltd., Shenzhen Yibo Technology Co., and Vaperz, LLC:

Steven Susser, Esq.
CARLSON, GASKEY AND OLDS, P.C.
400 West Maple Road, Suite 350
Birmingham, MI 48009
Email: ssusser@cgolaw.com

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Email Notification of Availability for Download

On Behalf of Respondent ParallelDirect LLC

Mark H. Izraelewicz, Esq.
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail

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

Inv. No. 337-TA-1195

Certificate of Service – Page 3

Chicago, IL 60606
Email: mizraelewicz@marshallip.com

Other: Email Notification
of Availability for Download

Respondents:

DripTip Vapes LLC
151 N. Nob Hill Rd. #115
Plantation, FL 33324

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be
Completed by Complainants

The Electric Tobacconist, LLC
3235 Prairie Avenue
Boulder, CO 80301

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be
Completed by Complainants

Fuma Vapor, Inc.
605 S. Westgate Rd
Des Plaines, IL 60016

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be
Completed by Complainants

Lan & Mike International Trading, Inc.
20435 Gramercy Place, Suite 101
Torrance, CA 90501

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be
Completed by Complainants

Saddam Aburoumi
193 Homestead Street, Unit D3
Manchester, CT 06042

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be
Completed by Complainants

Sarvasva LLC
D/b/a One Stop Food Mart
32 Church Road
Maple Shade, NJ 08052

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: Service to Be
Completed by Complainants

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

Inv. No. 337-TA-1195

Certificate of Service – Page 4

Shenzhen Haka Flavor Technology Co., Ltd.
4F, Building B, Anjia Industrial Park, Gonghe Industrial Rd,
Shajing Town, Bao'an District,
Shenzhen City, Guangdong, China 518104

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

Shenzhen OCIGA Technology Co., Ltd.
4F, Building B, Anjia Industrial Park, Gonghe Industrial Rd,
Shajing Town, Bao'an District,
Shenzhen City, Guangdong Province, China 518104

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

Shenzhen OVNS Technology Co., Ltd.
6F, North Side Of Xinlong Tech Park,
No. 2, Dawangshan Industrial 1st Road,
Shajing Town, Bao'an District,
Shenzhen, Guangdong, China 518101

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

United Wholesale LLC
73 Linden Street
Glastonbury, CT 06033

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

The ZFO
42 Nichols St., Suite 14,
Spencerport, NY 14559

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: Service to Be Completed by Complainants

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.*

On 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.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, **Cortney Hoecherl, Esq.**, and the following parties as indicated, on **January 6, 2020**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant:

Daniel E. Yonan, Esq.
STERNE, KESSLER, GOLDSTEIN & FOX, P.L.L.C.
1100 New York Avenue, N.W.
Washington, DC 20005

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

On Behalf of Respondent Vaperz LLC:

Steven Susser
CARLSON, GASKEY AND OLDS, P.C.
400 West Maple Road, Suite 350
Birmingham, MI 48009

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Respondents:

DripTip Vapes LLC
151 N. Nob Hill Rd. #115
Plantation, FL 33324

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen Haka Flavor Technology Co., Ltd.
4F, Building B, Anjia Industrial Park, Gonghe Industrial Rd.
Shajing Town, Bao'an District
Shenzhen City, Guangdong, China 518104

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

Shenzhen OCIGA Technology Co., Ltd.
4F, Building B, Anjia Industrial Park, Gonghe Industrial Rd.
Shajing Town, Bao'an District
Shenzhen City, Guangdong Province, China 518104

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

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

Inv. No. 337-TA-1141

Certificate of Service – Page 2

Shenzhen OVNS Technology Co., Ltd.
6F, North Side Of Xinlong Tech Park
No.2, Dawangshan, Industrial 1st Road,
Shaijing Town, Bao'an District
Shenzhen, Guangdong, China 518101

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

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

Inv. No. 337-TA-1141

**ORDER NO. 51: INITIAL DETERMINATION TERMINATING RESPONDENT
VAPERZ LLC BASED ON SETTLEMENT**

(December 5, 2019)

On November 22, 2019, Complainant Juul Labs, Inc. (“Juul”) and Respondent Vaperz LLC (“Vaperz”) filed a joint motion to terminate the investigation as to the Vaperz based on settlement (Motion Docket No. 1141-054). The Commission Investigative Staff (“Staff”) filed a response in support of the motion on December 4, 2019. There are no other active parties remaining in the investigation, because all of the other named respondents were previously terminated by consent order¹ or by settlement,² or have been found in default.³

¹ Order No. 13 (Feb. 28, 2019) and Order No. 14 (Feb. 28, 2019), *not reviewed by* Comm’n Notice (Mar. 27, 2019); Order No. 15 (Mar. 12, 2019) and Order No. 16 (Mar. 12, 2019), *not reviewed by* Comm’n Notice (Mar. 27, 2019); Order No. 25 (Apr. 18, 2019), *not reviewed by* Comm’n Notice (May 16, 2019); Order No. 34 (Jun. 14, 2019), *not reviewed by* Comm’n Notice (Jul. 10, 2019).

² Order No. 19 (Apr. 10, 2019), Order No. 20 (Apr. 10, 2019), and Order No. 21 (Apr. 10, 2019), *not reviewed by* Comm’n Notice (May 7, 2019); Order No. 30 (May 15, 2019), *not reviewed by* Comm’n Notice (Jun. 12, 2019); Order No. 44 (Sept. 18, 2019), *not reviewed by* Comm’n Notice (Oct. 15, 2019); Order No. 46 (Nov. 18, 2019); Order No. 47 (Nov. 18, 2019); Order No. 48 (Nov. 18, 2019); Order No. 49 (Nov. 18, 2019); Order No. 50 (Nov. 18, 2019).

³ Order No. 26 (May 3, 2019), *not reviewed by* Comm’n Notice (May 31, 2019).

PUBLIC VERSION

Commission Rule 210.21(a)(2) states in relevant part that “[a]ny party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement” 19 C.F.R. § 210.21(a)(2).

Commission Rule 210.21(b) governs termination by settlement, and subsection (b)(1) provides that in order for an investigation to be terminated on the basis of a licensing or other settlement agreement, the motion for termination must include: (1) copies of the “licensing or other settlement agreement,” including both a public and a confidential version if necessary; (2) any supplemental agreements; and (3) “a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.” 19 C.F.R. § 210.21(b)(1).

Consistent with Commission Rule 210.21(b)(1), a public version of the settlement agreement between Juul and Vaperz was attached to the motion as Exhibit A, with a confidential version attached as Exhibit B.

In further compliance with Commission Rule 210.21(b)(1), the motion contains a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. Motion at 2. Pursuant to Commission Rule 210.50(b)(2), the moving parties submit that termination of the Ziip Respondents from this investigation will not adversely affect the public interest because it will not affect the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. customers. Motion Memo. at 4 (citing 19 C.F.R. § 210.50(b)(2)). Staff agrees that there is no evidence of any adverse effect on the public interest with respect to this settlement. Staff Resp. at 2-3. Moreover, the public interest

PUBLIC VERSION

generally favors settlement to avoid needless litigation and to conserve public resources. *See, e.g.,* Order No. 19 at 2-3 (Apr. 9, 2019), *not reviewed by Comm'n Notice* (May 7, 2019).

Accordingly, it is my initial determination that Motion Docket No. 1141-054 is hereby GRANTED, and Respondent Vaperz LLC shall be terminated from the investigation. Pursuant to Commission Rule 210.21(b)(2), a copy of the settlement agreement is attached hereto as Exhibit A, and a redacted version shall issue simultaneously with a public version of this order. 19 C.F.R. § 210.21(b)(2). Because there are no other active respondents in this investigation, this concludes the proceedings before the administrative law judge.

Pursuant to Commission Rule 210.42(h), this initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to Commission Rule 210.43(a), or the Commission, pursuant to Commission Rule 210.44, orders, on its own motion, a review of the initial determination or certain issues contained herein. 19 C.F.R. § 210.42(d).

SO ORDERED.



Dee Lord
Administrative Law Judge

PUBLIC VERSION

Exhibit A

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made this 18th day of November, 2019 (the "Effective Date"), between Juul Labs, Inc. ("JLI"), a privately-held corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 560 20th Street, San Francisco, California 94107, and Vaperz LLC ("Vaperz"), a privately-held corporation with its principal place of business at 19818 S. Harlem Ave, Frankfort, Illinois 60423. JLI and Vaperz are individually referred to herein as a "Party," and collectively as the "Parties."

WHEREAS, JLI named Vaperz as a Respondent in a Complaint ("Complaint") in an investigation styled *In the Matter of Certain Cartridges for Electronic Nicotine Delivery Systems and Components Thereof*, Investigation No. 337-TA-1141, filed on November 20, 2018, and instituted by the United States International Trade Commission (the "Investigation") for violation of Section 337 of the Tariff Act of 1930, as amended, by way of manufacturing, distributing, selling in the United States, and/or otherwise dealing in certain cartridges for electronic nicotine delivery systems ("ENDS") and components thereof that infringe certain JLI U.S. Patent Nos. 10,058,129, 10,104,915, 10,111,470, 10,117,465, and 10,117,466 (the "Asserted Patents");

WHEREAS, JLI named Vaperz as a Defendant in a district court complaint, including *JUUL Labs., Inc. v. Vaperz LLC*, No. 1:18-cv-07715 (N.D. Ill.) (the "District Court Case") for infringing JLI's intellectual property;

WHEREAS, Vaperz stipulated that its products contain the limitations of the Asserted Patents on May 28, 2019. Vaperz further did not oppose JLI's motion for summary determination of infringement of those patents on July 23, 2019;

WHEREAS, Vaperz proceeded to a hearing in the Investigation on Sept. 24, 2019, and executed a binding Term Sheet to settle the case during JLI's opening argument;

WHEREAS, Vaperz agreed to settle the Investigation and the district court suit and, in so doing, Vaperz admits that the claims of the Asserted Patents are valid and that the Juul-compatible products that it sold in the United States infringe the claims of the Asserted Patents; and Vaperz desires to work with JLI in an effort to resolve the ITC and district court litigation and prevent products that infringe JLI's intellectual property from being sold through Vaperz;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions

The terms set forth below shall have the following meanings in the Agreement:

1.1 “Juul-compatible products” means any ENDS cartridge—including any and all components thereof—that is compatible with or work with JLI’s ENDS and any device—including any and all components thereof—that is compatible with or will work with JLI’s ENDS cartridge. For the avoidance of doubt, for the purposes of this agreement, Juul-compatible products include, but are not limited to, any products, any devices, any cartridges, or any components thereof that infringe any of the claims of JLI N.A. Patents and includes, but is not limited to, the articles listed in **Appendix 1**.

1.3 “Vaperz Website” means Vaperz’s website, namely, any website, social media account, or e-commerce account owned or controlled by Vaperz now or in the future.

1.4 “Third Party” or “Third Parties” means any person other than JLI or Vaperz.

1.5 “Vaperz CBI” means documents and things produced by Vaperz in the investigation styled *In the Matter of Certain Cartridges for Electronic Nicotine Delivery Systems and Components Thereof*, Investigation No. 337-TA-1141, that was designated as Confidential Business Information pursuant to the Protective Order (Order No. 1 filed December 21, 2018).

1.6 “JLI N.A. Patents” means all U.S., Mexican, and Canadian patents and U.S., Mexican, and Canadian patent applications that JLI owns or controls as of the Effective Date and all related patents, including but not limited to continuations, continuations-in-part, and divisionals of those patent and patent applications that derive therefrom regardless of when filed, to the extent they cover Juul-compatible products.

Section 2. Termination of the Investigation

2.1 **Timing of Dismissal.** Within [REDACTED] business days after the Effective Date, the Parties shall prepare and file a joint Motion to Terminate the Investigation and the District Court Case with respect to Vaperz based on this Agreement. The parties agree that the district court will retain jurisdiction to enforce this agreement. Vaperz agrees to reasonably cooperate if needed in filing all papers necessary to resolve the Investigation and the District Court Case with respect to Vaperz.

2.2 [REDACTED]

Section 3. Consideration and Obligations

3.1 No Knowing Violation of JLI Intellectual Property. Vaperz (1) will not knowingly manufacture, market, sell, distribute, sell for importation, import or sell after importation any Juul-compatible or any JUUL-branded products in retail or online, directly or indirectly and (2) will not knowingly aid, abet, encourage, participate in, or induce the manufacture, marketing, sale, distribution, sale for importation, importation, or sale after importation of any Juul-compatible products or any JUUL-branded products in retail or online except (as applied to (1) and (2) above) under consent or license from JLI, its successors, or assignees, or to the extent permitted by the Agreement or by law, or until the expiration, invalidation, or unenforceability of the applicable JLI Intellectual Property. Such efforts shall include:

3.1.1 Cease and Desist Marketing, Distribution, and Sale. Vaperz agrees to immediately cease and desist marketing, distributing, and selling of any Juul-compatible and any JUUL-branded products in retail or online. Vaperz agrees to remove listings of any Juul-compatible and any JUUL-branded products from the Vaperz Website, until such time as provided by Section 3.1. To the extent Vaperz becomes an authorized JUUL reseller, Vaperz may then sell JUUL-branded products like any other authorized seller.

3.1.2 Cessation of Sales. Vaperz attests that [REDACTED] (a) it no longer [REDACTED] (b) it has [REDACTED] and (c) [REDACTED]

3.2 [REDACTED]

3.2.1 [REDACTED]

3.2.2. [REDACTED]

3.3 Direct Contacts. Within two (2) weeks of the Effective Date, Vaperz and JLI will assign and identify a direct contact having sufficient authority for the purpose of communicating with the other Party to coordinate on JLI's intellectual property protection measures, including those detailed in Sections 3.1 and 3.2, to effectuate the obligations under this Agreement and to



create a communication path for escalation of related issues. Such direct contacts will communicate by telephone or in person as necessary to discuss the current state of such issues and the effectiveness of the measures and obligations set forth under this Agreement.

3.4 Ownership of JLI N.A. Patents; Agreement Not to Challenge Validity. Vaperz hereby acknowledges, agrees, and assents to JLI's exclusive ownership of JLI N.A. Patents. Vaperz represents, warrants, and covenants to JLI that it shall never directly or indirectly raise, assist a Third Party in asserting, cause to be raised, take any action, or assert any claim of any kind relating to the exclusive rights of JLI and its affiliates in and to the JLI N.A. Patents or the validity of the JLI N.A. Patents, or oppose, object to, or otherwise challenge any application for any JLI N.A. Patents. Vaperz acknowledges that JLI N.A. Patents will change from time to time as JLI adopts, acquires or claims patents and other intellectual property rights.

3.5 Release. JLI and its parent entities, successors, predecessors, subsidiaries, and respective members, partners, shareholders, officers, directors, and employees, agree to release Vaperz, its successors, heirs, members, partners, shareholders, assigns, officers, directors, servants, and employees, as to all claims for patent infringement of JLI N.A. Patents based on Vaperz's activities that were known or reasonably could have been known prior to the date of this Agreement and could have been raised through the date of the Agreement. For the avoidance of doubt, this section does not include any claims based on future events. In the event that Vaperz materially breaches this Agreement, this Section shall no longer apply.

3.6 Right to Enforce This Agreement. Notwithstanding Section 3.5 or any other provision of this Agreement, the parties shall have the right to enforce this Agreement, including the right to seek specific performance of the terms and conditions of this Agreement.

Section 4. Representations, Warranties and Disclaimers

4.1 Authority to Sign. Each Party represents and warrants to the other Party as of the Effective Date that it has the full right and power to enter into this Agreement, and the person executing this Agreement has the full right and authority to enter into this Agreement on behalf of such Party and the full right and authority to bind such Party to the terms and obligations of this Agreement.

4.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, heirs, assigns, officers, directors, servants, and employees. In particular, any breach of Section 3.1 by Vaperz, Vaperz's successors, heirs, assigns, officers, servants or employees, now or in the future, will constitute a material breach of this agreement. For the avoidance of doubt, should Vaperz sell control of its business, or a substantial portion of the business related to JUUL-compatible products, this Agreement will bind future owners to the effect that no future owner of Vaperz, or any same or differently named entity using all or a substantial portion of the Vaperz current or future assets used to manufacture, import and sell Juul-compatible products into North America will manufacture, import or sell Juul-compatible products into North America.

4.3 **No License.** All Parties acknowledge and agree that no license is given or intended, explicitly or implicitly, by entering into this Agreement to any intellectual property owned or otherwise controlled by JLI, including but not limited to patents, trademarks, and tradeseecrets.

Section 5. Term and Termination

5.1 **Term.** The term of this Agreement shall commence as of the Effective Date and shall remain in full force and effect until the expiration, invalidation, or unenforceability of the JLI N.A. Patents. The following sections survive expiration or termination of this Agreement: all sections of Section 6.

5.2 **Termination.** Either Party may seek to terminate this Agreement based on material breach by the other Party. Vaperz acknowledges that any violation of Section 3 constitutes a breach of the terms of this Agreement. Vaperz waives any objections and consents to JLI seeking relief before the International Trade Commission or district court without the need for any new Complaint or the institution of any new proceeding for matters alleged in the Complaint as of the Effective Date of this Agreement, as well as those related to the Juul-compatible products. The parties further agree that if a party is found to have breached this Agreement, the party shall be liable for all of the non-breaching party's costs and fees that relate in any way to enforcing this Agreement.

Section 6. Miscellaneous Provisions

6.1 **Notices.** Notices and other communications regarding or under this Agreement shall be sent (i) by overnight courier or by registered or certified mail and (ii) if available, electronic mail to the following addresses:

If to JLI:

Juul Labs, Inc.
Attn: General Counsel and IP Department
560 20th Street
San Francisco CA 94107-4344

And

Sterne, Kessler, Goldstein & Fox PLLC
Attn: Daniel Yonan
1100 New York Avenue, NW
Washington, DC 20005



If to Vaperz LLC:

Carlson, Gaskey & Olds, P.C.
Attn: Steven Susser
400 West Maple Road
Birmingham, MI 48009

Such notices shall be deemed to have been served when received by addressee. Either Party may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such Party as above provided at such changed address.

6.2 Confidentiality. The Parties agree that the terms of this Agreement and the License are confidential. No Party shall disclose the terms of this Agreement to any Third Party without the prior, written consent of each other Party to this Agreement. Notwithstanding the foregoing, a Party may disclose any information that is already publicly available, as well as the mere fact of the Agreement. Furthermore, each Party may disclose the terms of this Agreement (a) to the extent disclosure is required by court or government order or otherwise required by law subject to a protective order and marked as Attorneys' Eyes Only or higher designation; (b) to the extent required to enforce its rights under this Agreement; and (c) to the extent reasonably necessary, on a confidential basis, to any Person who, directly or indirectly, is or may be required to be bound by the terms and conditions of this Agreement.

6.3 Publicity. Vaperz publicly admits to infringement of JLI's valid U.S. patent claims in the Asserted Patents. Notwithstanding any other provision of Sections 6.2 and 6.3 of this Agreement, the parties agree that JLI may release the information substantially as contained in Appendix 2.

The Parties shall direct their representatives not to make any disclosures of the terms of this Agreement.

6.4 Governing Law. The construction, validity and performance of this Agreement shall be governed in all respects (without regard to conflicts of law provisions) by the law of the State of Delaware, United States of America, as such law applies to contracts signed and fully performed in the State of Delaware. The Parties hereby submit to the jurisdiction of, and waive any venue objections against, the federal courts in the State of Illinois.

6.5 Conflicts of Law. Nothing in the Agreement is to be construed as requiring the commission of any act contrary to law. Wherever there is any conflict between any provision of the Agreement and any statute, law or ordinance, or a treaty and its valid regulations, the statute, law, ordinance, or treaty and its valid regulations shall prevail. In such event the provisions of the Agreement shall be curtailed and limited only to the extent necessary to bring them within

the legal requirements, and such provisions, so curtailed and limited, together with all other provisions of this Agreement shall continue in full force and effect. The Parties further agree to negotiate in good faith an enforceable substitute provision for any invalid or unenforceable provision that most nearly achieves the intent of such provision.

6.6 Effective Date; Amendment. Although the Parties executed a binding Term Sheet on September 24, 2019, this Agreement will not be binding upon the Parties until it has been signed herein below by or on behalf of each Party, in which event, it shall be effective as of the Effective Date. No amendment or modification hereof shall be valid or binding upon the Parties unless made in writing and signed as aforesaid.

6.7 Waiver. The failure of a Party to enforce any provision of this Agreement shall not prevent the subsequent enforcement of such provision. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any Waiver constitute a continuing waiver unless expressly stated in writing by the party making the Waiver. No waiver of any provision shall be binding in any event unless executed in writing by the party making the waiver.

6.8 Sophisticated Parties Represented by Counsel. The Parties each acknowledge, accept, warrant and represent that (i) they are sophisticated Parties represented at all relevant times during the negotiation and execution of this Agreement by counsel of their choice, and that they have executed this Agreement with the consent and on the advice of such independent legal counsel, and (ii) they and their counsel have determined through independent investigation and robust, arm's-length negotiation that the terms of this Agreement shall exclusively embody and govern the subject matter of this Agreement.

6.9 Entire Agreement. This Agreement embodies the entire understanding of the Parties and supersedes all previous communications, representations or understandings, either oral or written, between the Parties relating to the subject matter hereof. The Parties expressly state that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the Investigation.

6.10 Construction; Language. The language of this Agreement has been approved by counsel for each Party, and neither Party (nor their respective counsel) shall be deemed to be the draftsman of this Agreement. Thus, any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be applied in the interpretation of this Agreement. The words "include" and "including" and variations thereof, will not be deemed to be terms of limitation in this Agreement, but rather will be deemed to be followed by the words "without limitation." The headings in this Agreement are for convenience and organization only, and not intended to constitute the substance of this Agreement and will not be referred to in connection with the construction or interpretation of this Agreement.

6.11 Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. Such counterparts may be exchanged by fax, or scanned and exchanged by


electronic mail, confirmed with printed copy, but shall be effective upon receipt of fax/electronic mail as applicable. The Parties agree that facsimile or scanned copies of signatures shall be deemed originals for all purposes hereof and that either Party may produce such copies, without the need to produce original signatures, to prove the existence of this Agreement in any proceeding brought hereunder.

AGREED TO:

JUUL LABS, INC.

By: DocuSigned by:
Matthew J. Healt
0288D185A427437 _____
Its: Sr. Director, IP _____
Date: 18-Nov-2019 _____

VAPERZ LLC

By:  _____
Its: MANAGER _____
Date: 11-15-19 _____

APPENDIX 1
EXAMPLES OF JUUL-COMPATIBLE PRODUCTS

Atom Pods

Fuma Pod / Fumo Pod cartridges

J Pod / Ref Pod cartridges

Blankz Pod cartridges

Sex Pod cartridges

Magic Mist Pod cartridges

X Pod cartridges

5 Star Universal Pod cartridges

Edge Pod cartridges

VQ Pod cartridges

3X pod

4X pods

Airbender pod

Amo pod

Bombz pod

Buz pod

Cali pod

Cigma pod

Delicious pod

Eonsmoke device

Eonsmoke pod

Eonsmoke v2.0 device



Iced pod
I-pod
JC01 pod
Jewel pod
Just pod
Loon pod
Magic pod
Mr. Fog pod
OG pod
Plus pod
Pods pod
Pūr pod
Salteez pod
Sea pod
Sea100 pod
Sonic pod
Ultra Max (also known as
Ultimate) pod
Unique pod
Vape Heads pod
ViV pod
VQ pod
Zalt pod
Ziip device





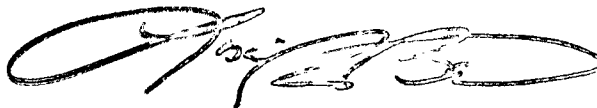
APPENDIX 2
EXAMPLE OF PRESS RELEASE MATERIAL

Juul Labs, Inc. announces that it has resolved the U.S. International Trade Commission Investigation—and related action in federal district court—that it brought against Vaperz LLC, in the Fall of 2018 for importing into and selling in the United States Juul-compatible products that infringe JLI’s U.S. Patent Nos. 10,058,129, 10,104,915, 10,111,470, 10,117,465, and 10,117,466. Vaperz has admitted that its Juul-compatible products infringed these JLI patents and has admitted that all of these patents are valid

A handwritten mark, possibly initials or a signature, located in the bottom right corner of the page. It consists of a few dark, ink-like strokes.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, **Cortney Hoecherl, Esq.**, and the following parties as indicated, on **December 5, 2019**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainants Juul Labs, Inc:

Daniel E. Yonan, Esq.
STERNE, KESSLER, GOLDSTEIN & FOX, PLLC
1100 New York Ave., NW, Suite 600
Washington, D.C. 20005

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

On Behalf of Respondent Vaportronix, LLC:

Derek Fahey, Esq.
THE PLUS IP FIRM, PLLC
101 NE 3rd Ave., Suite 1500
Fort Lauderdale, FL 33101

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

**On Behalf of Respondent Vapor 4 Life Holdings, Inc., and
Twist Vapor Franchising, LLC:**

Eric N. Heyer, Esq.
THOMPSON HINE LLP
1919 M Street, NW – Suite 700
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

On Behalf of Respondent Maduro Distributors, Inc.:

David F. Nickel, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, PC
1150 18th Street, NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

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

Inv. No. 337-TA-1141

Certificate of Service – Page 2

**On Behalf of Respondents ZLab S.A., SS Group Holdings,
Shenzhen Yibo Technology Co., and Vaperz, LLC:**

Stephen Susser, Esq.
CARLSON, GASKEY AND OLDS, P.C.
400 West Maple Road, Suite 350
Birmingham, MI 48009

- ~~Via Hand Delivery~~
- Via Express Delivery
- Via First Class Mail
- Other: _____

**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 GRANTING COMPLAINANT'S MOTION FOR SUMMARY
DETERMINATION ON ISSUES OF IMPORTATION, INFRINGEMENT, AND
DOMESTIC INDUSTRY**

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. 38) granting complainant's motion for summary determination on issues of importation, infringement, and domestic industry.

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" or "complainant") 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 ("the '129 patent"); 10,104,915 ("the '915 patent"); 10,111,470 ("the '470 patent"); 10,117,465 ("the '465 patent"); and 10,117,466 ("the '466 patent"). *Id.* The complaint also alleges the existence of a domestic industry. *Id.*

The notice of investigation originally named twenty-three (23) respondents, of which only nine (9) remain actively involved in this investigation: Shenzhen Yibo Technology Co. of Shenzhen City, China; Ziip Lab Co. of Shenzhen City, China; Ziip Lab S.A. of Maldonado, Uruguay; Maduro Distributors, Inc. (“Maduro”) of Maplewood, MN; Twist Vapor Franchising LLC of Tampa, Florida; Vape4U LLC of Montclair, California; Vaperz LLC (“Vaperz”) of Frankfurt, Illinois; Vaportronix, LLC (“Vaportronix”) of Aventura, Florida; and Vapor 4 Life Holdings, Inc. of Northbrook, Illinois (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party. 83 FR at 66747.

On July 23, 2019, Juul moved for summary determination of importation, infringement, and domestic industry based on stipulations entered by Respondents and additional un rebutted evidence submitted by Juul. On July 25, 2019, Juul filed a motion for leave to clarify its original motion with respect to its allegations of direct and indirect infringement. On August 2, 2019, OUII filed a response in support of the motion, as clarified, except to the extent that Juul was seeking summary determination that the accused Vaperz JC01 pods indirectly infringe one or more of the asserted patent claims. OUII made no objection to Vaperz’s other accused products, *i.e.*, its Airbender pods and Ziip pods. On August 2, 2019, Vaportronix filed a response opposing Juul’s motion, but only with respect to whether Juul’s investments and activities in the United States satisfy the domestic industry requirement. Juul filed a reply in support of its motion on August 5, 2019.

On August 14, 2019, the presiding administrative law judge (“ALJ”) issued the subject ID (Order No. 38), which grants Juul’s motion and enters summary determination that: (1) the importation requirement has been satisfied for each of the accused products; (2) the accused products infringe, directly or indirectly, each of the asserted claims of the ’129, ’915, ’470, ’465, and ’466 patents, with the exception of Vaperz’s JC01 cartridge, which infringes only the ’915 patent, and Maduro, which is not accused of infringing the ’129 patent; and (3) Juul has satisfied the domestic industry requirement with respect to each asserted patent. ID at 26-28.

No party filed a petition to review the subject ID. The Commission has determined not to review the subject 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.



Lisa R. Barton
Secretary to the Commission

Issued: September 13, 2019

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, **Cortney Hoecherl, Esq.**, and the following parties as indicated, on **September 16, 2019**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainant Juul Labs, Inc.:

Daniel E. Yonan, Esq.
STERNE, KESSLER, GOLDSTEIN & FOX, P.L.L.C.
1100 New York Avenue, N.W.
Washington, DC 20005

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

On Behalf of Respondents Ziip Lab S.A., SS Group Holdings, Limited, Shenzhen Yibo Technology Co., Ltd., Vaperz LLC

Steven Susser, Esq.
CARLSON, GASKEY AND OLDS, P.C.
400 West Maple Road, Suite 350
Birmingham, MI 48009

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

On Behalf of Respondent Maduro Distributors, Inc.:

David Nickel, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, PC
1150 18th Street NW, Suite 775
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

On Behalf of Respondent Vaportronix, LLC:

Derek Fahey, Esq.
THE PLUS IP FIRM, PLLC
101 NE 3rd Ave., Suite 150
Fort Lauderdale, FL 33301

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

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

Inv. No. 337-TA-1141

Certificate of Service – Page 2

**On Behalf of Respondent Vapor 4 Life Holdings, Inc. and
Twist Vapor Franchising, LLC:**

Eric Heyer, Esq.
THOMPSON HINE LLP
1919 M Street, NW Suite 700
Washington, DC 20036

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

On Behalf of Respondent Vape4U, LLC:

Michael Cohen, Esq.
COHEN IP LAW GROUP, PC
9025 Wilshire Boulevard, Suite 301
Beverly Hills, CA 90211

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

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

Inv. No. 337-TA-1141

**ORDER NO. 38: INITIAL DETERMINATION GRANTING COMPLAINANT'S
MOTION FOR SUMMARY DETERMINATION REGARDING
IMPORTATION, INFRINGEMENT, AND DOMESTIC INDUSTRY**

(August 14, 2019)

On July 23, 2019, Complainant Juul Labs Inc. ("Juul") filed a motion for summary determination of importation, infringement, and satisfaction of the domestic industry requirement (Motion Docket No. 1141-036). The motion incorporated a memorandum and appendix of exhibits pursuant to Ground Rule 3.3.¹ Juul filed an unopposed motion for leave to clarify its memorandum on July 25, 2019 (Motion Docket No. 1141-037), which is hereby GRANTED. The Commission Investigative Staff ("Staff") filed a response in support of the motion on August 2, 2019. Respondent Vaportronix LLC ("Vaportronix") filed a response on August 2, 2019, stating its opposition to the motion with respect to the economic prong of the domestic industry requirement. Juul filed a reply brief on August 5, 2019.

I. BACKGROUND

This investigation was instituted pursuant to a complaint alleging infringement of certain claims of U.S. Patent No. 10,058,129 ("the '129 patent"); U.S. Patent No. 10,104,915 ("the '915

¹ There is no opposition to Juul's filing of a summary determination motion with multiple subparts, notwithstanding the limitation in Ground Rule 3.3.1.

PUBLIC VERSION

patent”); U.S. Patent No. 10,111,470 (“the ’470 patent”); U.S. Patent No. 10,117,465 (“the ’465 patent”); and U.S. Patent No. 10,117,466 (“the ’466 patent”) by certain cartridges for nicotine vaporizers, and components thereof, such as the mouthpiece, storage compartment, and heater. Notice of Investigation (Dec. 19, 2018). The Notice of Investigation named 23 respondents, and a majority of these respondents have been terminated pursuant to consent order² or by settlement,³ or have been found in default.⁴ The remaining active respondents in the investigation are Shenzhen Yibo Technology Co., Ltd., Ziip Lab Co. Ltd., Ziip Lab S.A. (collectively “Ziip”), Maduro Distributors Inc. (“Maduro”), Twist Vapor Franchising LLC (“Twist”), Vape4U LLC (“Vape4U”), Vaperz LLC (“Vaperz”), Vaportronix LLC (“Vaportronix”), and Vapor 4 Life Holdings, Inc. (“V4L”) (all collectively, “Respondents”).

The asserted claims are claims 1-3, 5-8, 12, 13, 16-20, and 22 of the ’129 patent; claims 10, 15, 17, and 29-32 of the ’915 patent; claims 1-4, 7, 8, 10, and 11 of the ’470 patent; claims 1-7 and 9-20 of the ’465 patent; and claims 1, 4-8, 10, 12, 14, and 16-23 of the ’466 patent. The accused Ziip products are Ziip Pods, Plus Pods, Airbender Pods, Iced Pods, Eonsmoke Pods (also known as Eon Pods), Loon Pods, Mr. Fog Pods, Cali Pods, Delicious Pods, ViV Pods, Unique Pods, I-pods, Jewel pods, Amo pods, Vape Heads pods, OG pods, Pods pods, Cigma pods, Salteez pods, Magic Pods, Sonic pods, and Pür Pods. The accused Maduro products are Loon Pods. The accused Twist products are Sea100 Pods, Sea Pods, Buz Pods, and Eonsmoke

² Order No. 13 (Feb. 28, 2019) and Order No. 14 (Feb. 28, 2019), *not reviewed by Comm’n Notice* (Mar. 27, 2019); Order No. 15 (Mar. 12, 2019) and Order No. 16 (Mar. 12, 2019), *not reviewed by Comm’n Notice* (Mar. 27, 2019); Order No. 25 (Apr. 18, 2019), *not reviewed by Comm’n Notice* (May 16, 2019); Order No. 34 (Jun. 14, 2019), *not reviewed by Comm’n Notice* (Jul. 10, 2019).

³ Order No. 19 (Apr. 10, 2019), Order No. 20 (Apr. 10, 2019), and Order No. 21 (Apr. 10, 2019), *not reviewed by Comm’n Notice* (May 7, 2019); Order No. 30 (May 15, 2019), *not reviewed by Comm’n Notice* (Jun. 12, 2019).

⁴ Order No. 26 (May 3, 2019), *not reviewed by Comm’n Notice* (May 31, 2019).

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Pods. The accused Vape4U products are Zalt Pods, Just Pods, and Ultimate Pods (formerly UltraMax pods). The accused Vaperz products are Airbender Pods, Ziip pods, and JC01 pods. The accused Vaportronix products are VQ Pods. The accused V4L products are Phix Pods, Smoke Infinix Pods, Suorin iShare Pods, Bombz Pods, ViV Pods, Ziip Pods, Plus Pods, Eonsmoke Pods, VQ Pods, and Kangertech U Boat Pods. The domestic industry products are the JUUL system, including the JUUL device and the JUULpod.

II. LEGAL STANDARDS

In section 337 investigations, Commission Rule 210.18 governs motions for summary determination:

The determination sought by the moving party shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

19 C.F.R. § 210.18(b). By analogy to Fed. R. Civ. P. 56 (a), in deciding whether to grant summary determination, the evidence “must be viewed in the light most favorable to the party opposing the motion . . . with doubts resolved in favor of the nonmovant.” *Crown Operations Int’l, Ltd. v. Solutia, Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002) (citations omitted); *see also Xerox Corp. v. 3Com Corp.*, 267 F.3d 1361, 1364 (Fed. Cir. 2001) (“When ruling on a motion for summary judgment, all of the nonmovant’s evidence is to be credited, and all justifiable inferences are to be drawn in the nonmovant’s favor.”). The court should “assure itself that there is no reasonable version of the facts, on the summary judgment record, whereby the nonmovant could prevail, recognizing that the purpose of summary judgment is not to deprive a litigant of a fair hearing, but to avoid an unnecessary trial.” *EMI Group N. Am., Inc. v. Intel Corp.*, 157 F.3d 887, 891 (Fed. Cir. 1998) (citations omitted). “In other words, ‘[s]ummary judgment is authorized when it is quite clear what the truth is’ . . . and the law requires judgment in favor of

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the movant based upon facts not in genuine dispute.” *Paragon Podiatry Lab., Inc. v. KLM Labs., Inc.*, 984 F.2d 1182, 1185 (Fed. Cir. 1993) (citations omitted).

III. IMPORTATION

Section 337 prohibits “[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that . . . infringe a valid and enforceable United States patent.” 19 U.S.C.

§ 1337(a)(1)(B). Accordingly, a necessary element for invoking the Commission’s jurisdiction under section 337 is proof that the respondent imported, sold for importation, or sold after importation the articles at issue. *Certain Carbon and Alloy Steel Products*, Inv. No. 337-TA-1002, Order No. 103 at 33 (Oct. 2, 2017), *not reviewed by Comm’n Notice* (Nov. 1, 2017). The importation of even one accused product can satisfy the importation requirement of section 337. *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, Comm’n Op. at 7-8, USITC Pub. No. 1605 (Nov. 1984).

Each of the respondents has stipulated to the sale and importation of the accused products. Ziip stipulated to the sale and importation of Ziip Pods, Plus Pods, Airbender Pods, Iced Pods, Eonsmoke Pods (also known as Eon Pods), Loon Pods, Mr. Fog Pods, Cali Pods, Delicious Pods, ViV Pods, Unique Pods, I-pods, Jewel pods, Amo pods, Vape Heads pods, OG pods, Pods pods, Cigma pods, Salteez pods, Magic Pods, Sonic pods, and Pūr Pods. Motion Exhibit 1, Ziip Stipulation ¶¶ 1-4 (May 28, 2019). Maduro stipulated to the sale and importation of Loon Pods. Motion Exhibit 2, Maduro Stipulation ¶¶ 1-4 (June 5, 2019). Twist stipulated to the sale and importation of Sea100 Pods, Sea Pods, Buz Pods, and Eonsmoke Pods. Motion Exhibit 3, Twist Stipulation ¶¶ 1-4 (June 4, 2019). Vape4U stipulated to the sale and importation of Zalt Pods, Just Pods, and Ultimate Pods (formerly UltraMax pods). Motion Exhibit 4, Vape4U Stipulation ¶¶ 1-4 (May 30, 2019). Vaperz stipulated to the sale and importation of

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Airbender Pods, Ziip pods, and JC01 pods. Motion Exhibit 5, Vaperz Stipulation ¶¶ 1-4 (May 28, 2019). Vaportronix stipulated to the sale and importation of VQ Pods. Motion Exhibit 6, Vaportronix Stipulation ¶¶ 1-4 (May 30, 2019). V4L stipulated to the sale and importation of Phix Pods, Smoke Infinix Pods, Suorin iShare Pods, Bombz Pods, ViV Pods, Ziip Pods, Plus Pods, Eonsmoke Pods, VQ Pods, and Kangertech U Boat Pods. Motion Exhibit 7, V4L Stipulation ¶¶ 1-4 (Jun. 5, 2019). Juul's motion identifies additional evidence of importation for each of the accused products. Memorandum at 12-16 (citing Confidential Exhibits 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 38, 39, 40).

Based on the parties' stipulations and the evidence cited by Juul, there is no dispute of material fact that the importation requirement is satisfied for each of the accused products. Staff agrees that the importation requirement has been satisfied with respect to each of the accused products. Staff Resp. at 9-20. Accordingly, summary determination is appropriate with respect to importation of each of the accused products.

IV. INFRINGEMENT

The Respondents have stipulated to infringement of each of the asserted claims, and Juul has submitted reports by its experts, Ramon Alarcon and Dr. John Collins, analyzing infringement with respect to the accused products. Memorandum at 16-42. All of the accused products are accused of infringing each of the asserted claims, with two exceptions: The Maduro products are not accused of infringing the '129 patent, and the Vaperz JC01 cartridge is only accused of infringing the '915 patent. *Id.* at 28-29, 34-36.

A. Legal Standards

The Commission has held that the word "infringe" in Section 337(a)(1)(B)(i) "derives its legal meaning from 35 U.S.C. § 271, the section of the Patent Act that defines patent infringement." *Certain Electronic Devices with Image Processing Systems, Components*

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Thereof, and Associated Software, Inv. No. 337-TA-724, Comm'n Op. at 13-14 (December 21, 2011). Under 35 U.S.C. § 271(a), direct infringement of a patent consists of making, using, offering to sell, or selling the patented invention without consent of the patent owner.

In addition to direct infringement, a respondent may be liable for indirect infringement, including induced infringement, which is defined in section 271(b) of the Patent Act: "Whoever actively induces infringement of a patent shall be liable as an infringer." 35 U.S.C. § 271(b). *See DSU Med. Corp. v. JMS Co., Ltd.*, 471 F.3d 1293, 1305 (Fed. Cir. 2006) (*en banc*) ("To establish liability under section 271(b), a patent holder must prove that once the defendants knew of the patent, they actively and knowingly aided and abetted another's direct infringement.") (citations omitted). "The mere knowledge of possible infringement by others does not amount to inducement; specific intent and action to induce infringement must be proven." *Id.* (citations omitted). The Federal Circuit has held that induced infringement "requires knowledge that the induced acts constitute . . . infringement." *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 766 (2011). In *Suprema, Inc. v. Int'l Trade Comm'n*, the Federal Circuit upheld the Commission's interpretation of the section 337 language "articles that infringe" in the context of induced infringement, holding that the statute "covers goods that were used by an importer to directly infringe post-importation as a result of the seller's inducement." 796 F.3d 1338, 1352-53 (Fed. Cir. 2015).

Another form of indirect infringement is contributory infringement, defined in section 271(c) of the Patent Act: "Whoever offers to sell . . . or imports into the United States a component of a patented machine, . . . or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or

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commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.” 35 U.S.C. § 271(c). The intent requirement for contributory infringement requires that the respondent knew “that the combination for which [the] component was especially designed was both patented and infringing.” *Global-Tech*, 563 U.S. at 763. A violation of section 337 based on contributory infringement requires that “the accused infringer imported, sold for importation, or sold after importation within the United States, the accused components that contributed to another’s direct infringement.” *Spansion, Inc. v. Int’l Trade Comm’n*, 629 F.3d 1331, 1353 (Fed. Cir. 2010).

B. The ’129 Patent

Juul asserts that the accused products directly infringe claims 1-3, 5-8, 12, 13, 16-20, and 22 of the ’129 patent. Claim 1 recites:

1. A cartridge for use with a vaporization device, the cartridge comprising:
 - a body having a long axis and a short axis;
 - a mouthpiece at a proximal end of the body;
 - a reservoir within the body, the reservoir configured to hold a vaporizable material;
 - a heater comprising:
 - a pair of plates extending in the long axis;
 - a wick; and
 - a resistive heating element in contact with the pair of plates and with the wick, wherein the wick is configured to contact the vaporizable material; and
 - a pair of exposed contact tabs integrally formed from the pair of plates and folded over an outer surface of a distal end of the cartridge, each contact tab of the pair of exposed contact tabs disposed and configured to physically contact one of two contact surfaces within the vaporization device to complete an electrical circuit with the vaporization device when the cartridge is inserted into the vaporization device, the pair of exposed contact tabs disposed substantially in a first plane, the two

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contact surfaces within the vaporization device disposed substantially in a second plane, the first plane being substantially parallel to the second plane when the cartridge is inserted into the vaporization device.

Claims 2-3 and 5-8 depend from claim 1, adding limitations regarding the body, a cartridge receptacle, the heating element, and the mouthpiece. Claim 12 is an independent claim with limitations similar to claim 1, adding a limitation for “a mouthpiece at least partially over the reservoir and having an opening.” Claims 13 and 16-18 depend from claim 12, adding additional limitations regarding the body, mouthpiece, and heating element. Claim 19 is an independent claim that recites:

19. A cartridge comprising:

a reservoir configured to hold a vaporizable material;

a heater comprising:

a first plate and a second plate;

a wick; and

a resistive heating element in contact with the first plate and the second plate, wherein the resistive heating element is in contact with the wick,

and wherein the wick is configured to be in contact with the vaporizable material; and

a first contact and a second contact, respectively extending from the first plate and the second plate and over an exterior surface of the cartridge, wherein the first and second contacts are integrally formed from the first and second plates, wherein the first and second contacts extend from the heater, wherein the first and second contacts are folded over the exterior surface of the cartridge, and wherein the first and second contacts are disposed and configured to complete an electrical circuit with a pair of contacts in a vaporization device when the cartridge is coupled to the vaporization device, the first contact and the second contact disposed substantially in a first plane, the first plane substantially parallel to a second plane comprising the pair of contacts when the cartridge is coupled to the vaporization device.

Claims 20 and 22 depend from claim 19, adding limitations regarding the mouthpiece and the

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first and second contacts.

Each of the respondents except for Maduro has stipulated to infringement of all of the asserted claims of the '129 patent. Ziip stipulated to infringement by its Ziip Pods, Plus Pods, Airbender Pods, Iced Pods, Eonsmoke Pods (also known as Eon Pods), Loon Pods, Mr. Fog Pods, Cali Pods, Delicious Pods, ViV Pods, Unique Pods, I-pods, Jewel pods, Amo pods, Vape Heads pods, OG pods, Pods pods, Cigma pods, Salteez pods, Magic Pods, Sonic pods, and Pür Pods. Motion Exhibit 1, Ziip Stipulation ¶ 5. Twist stipulated to infringement by its Sea100 Pods, Sea Pods, Buz Pods, and Eonsmoke Pods. Motion Exhibit 3, Twist Stipulation ¶ 5. Vape4U stipulated to infringement by its Zalt Pods, Just Pods, and Ultimate Pods (formerly UltraMax pods). Motion Exhibit 4, Vape4U Stipulation ¶ 5. Vaperz stipulated to infringement by its Airbender Pods and Ziip pods. Motion Exhibit 5, Vaperz Stipulation ¶ 5. Vaportronix stipulated to infringement by its VQ Pods. Motion Exhibit 6, Vaportronix Stipulation ¶ 5. V4L stipulated to infringement by its Phix Pods, Smoke Infinix Pods, Suorin iShare Pods, Bombz Pods, ViV Pods, Ziip Pods, Plus Pods, Eonsmoke Pods, VQ Pods, and Kangertech U Boat Pods. Motion Exhibit 7, V4L Stipulation ¶ 5. In addition, Dr. Collins offered infringement analysis for each of the accused products on a claim-by-claim and limitation-by-limitation basis. Motion Exhibit 47, Exhibit C.

Based on the parties' stipulations and the unrebutted expert testimony of Dr. Collins, there is no dispute of material fact that the accused products infringe claims 1-3, 5-8, 12, 13, 16-20, and 22 of the '129 patent. Staff agrees that each of the accused products directly infringes the asserted claims of the '129 patent. Staff Resp. at 24-36. Accordingly, summary determination is thus appropriate with respect to direct infringement by each of the respondents except for Maduro with respect to all asserted claims of the '129 patent.

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C. The '915 Patent

Juul asserts that the accused products directly infringe claims 10, 15, 17, and 29-32 of the '915 patent. Claims 10, 15, and 17 depend directly or indirectly from claim 1, which recites:

1. A cartridge comprising:

a storage compartment configured to hold a vaporizable material, the storage compartment having a non-circular cross section, the storage compartment having a top end and a bottom end opposite the top end along a first dimension, wherein the non-circular cross section includes two short sides and two long sides, the two short sides being shorter than the two long sides to result in the non-circular cross section, and wherein the storage compartment comprises a plastic material;

an aerosol outlet disposed proximate to the top end of the storage compartment;

a heater chamber disposed proximate to the bottom end of the storage compartment, the heater chamber comprising a heating element configured to aerosolize the vaporizable material, when the vaporizable material is present, to form an aerosol;

a first electrical contact and a second electrical contact each configured and disposed to couple and complete an electrical circuit with a third electrical contact and a fourth electrical contact in a receptacle of a vaporizer device body, the electrical circuit configured to provide power to the heating element when the vaporizer device body is present;

an aerosol channel within the storage compartment, the aerosol channel extending from the heater chamber to the aerosol outlet, the aerosol channel configured so that the aerosol, when the aerosol is present, is inhalable through the aerosol channel;

a first exterior wall extending between the top end and the bottom end;

a second exterior wall extending between the top end and the bottom end, wherein the first exterior wall and the second exterior wall are respectively intersected by the two short sides of the non-circular cross section;

a first locking gap disposed within six millimeters from the bottom end of the storage compartment and formed within the first exterior wall, the first locking gap configured to engage with a first locking detent within the receptacle of the vaporizer device body when the vaporizer device body is present, wherein a height of a first interior wall of the vaporizer device body comprising the first locking detent is at least thirteen

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millimeters; and

a second locking gap disposed within six millimeters from the bottom end of the storage compartment and formed within the second exterior wall, the second locking gap configured to engage with a second locking detent within the receptacle of the vaporizer device body when the vaporizer device body is present, wherein a height of a second interior wall of the vaporizer device body comprising the second locking detent is at least thirteen millimeters.

Claim 10 depends from claim 9, which adds a limitation to claim 1 requiring that “the first electrical contact comprises a first surface exposed at the bottom end of the storage compartment, and wherein the second electrical contact comprises a second surface exposed at the bottom end.” Claim 10 adds a limitation requiring that “the first surface and the second surface are disposed in a plane that is substantially parallel to the bottom end of the storage compartment.” Claim 15 depends directly from claim 1, adding a limitation requiring “a wick configured to draw the vaporizable material towards the heating element.” Claim 17 also depends directly from claim 1, adding a limitation requiring that “the non-circular cross section is substantially perpendicular to the first dimension, and wherein the storage compartment is elongated relative to the non-circular cross section along the first dimension.”

Claim 29 is an independent claim, which recites:

29. A cartridge having a top end and a bottom end opposite the top end along a first dimension, the cartridge configured for insertion into a receptacle of a vaporizer device body, the vaporizer device body having a third electrical contact and a fourth electrical contact in the receptacle, the vaporizer device body also having a first locking detent and a second locking detent within the receptacle, the vaporizer device body also having a first interior wall and a second interior wall within the receptacle, each of the first interior wall and the second interior wall being at least thirteen millimeters in height, the first interior wall and the second interior wall respectively comprising the first locking detent and the second locking detent, the cartridge comprising:

a flexible storage compartment configured to hold a vaporizable material, the flexible storage compartment having a non-circular cross section having two short sides and two long sides, the two short sides being

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shorter than the two long sides to result in the non-circular cross section, the flexible storage compartment comprising a plastic material;

an aerosol outlet proximate to the top end;

a heater chamber proximate to the bottom end, the heater chamber comprising a heating element configured to aerosolize the vaporizable material;

a channel in fluid communication with the heater chamber and the aerosol outlet;

a first electrical contact disposed proximate to the bottom end and configured to couple with the third electrical contact;

a second electrical contact disposed proximate to the bottom end and configured to couple with the fourth electrical contact, the coupling of the first electrical contact with the third electrical contact and the second electrical contact with the fourth electrical contact completing an electrical circuit configured to provide power to the heating element;

a first exterior wall between the top end and the bottom end, the first exterior wall intersected by one of the two short sides of the non-circular cross section, the first exterior wall having a first locking gap within six millimeters from the bottom end and configured to engage with the first locking detent; and

a second exterior wall between the top end and the bottom end, the second exterior wall intersected by an other of the two short sides of the non-circular cross section, the second exterior wall having a second locking gap within six millimeters from the bottom end and configured to engage with the second locking detent.

Claims 30-32 depend from claim 29, adding limitations regarding the non-circular cross section, the first and second locking gap, and the first and second exterior walls.

The parties agreed to constructions for two claim terms in the '915 patent, construing "locking gap" to mean "a channel, divot pit, opening, or hole that can engage a detent," and construing "locking detent" to mean "a projection that can engage a locking gap." *See* Order No. 28 (May 15, 2019) (suspending *Markman* hearing in light of parties' agreement).

Each of the respondents has stipulated to infringement of all of the asserted claims of the '915 patent. Ziip stipulated to infringement by its Ziip Pods, Plus Pods, Airbender Pods, Iced

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Pods, Eonsmoke Pods (also known as Eon Pods), Loon Pods, Mr. Fog Pods, Cali Pods, Delicious Pods, ViV Pods, Unique Pods, I-pods, Jewel pods, Amo pods, Vape Heads pods, OG pods, Pods pods, Cigma pods, Salteez pods, Magic Pods, Sonic pods, and Pūr Pods. Motion Exhibit 1, Ziip Stipulation ¶ 6. Maduro stipulated to infringement by its Loon Pods. Motion Exhibit 2, Maduro Stipulation ¶ 5. Twist stipulated to infringement by its Sea100 Pods, Sea Pods, Buz Pods, and Eonsmoke Pods. Motion Exhibit 3, Twist Stipulation ¶ 6. Vape4U stipulated to infringement by its Zalt Pods, Just Pods, and Ultimate Pods (formerly UltraMax pods). Motion Exhibit 4, Vape4U Stipulation ¶ 6. Vaperz stipulated to infringement by its Airbender Pods, Ziip pods, and JC01 pods. Motion Exhibit 5, Vaperz Stipulation ¶ 6. Vaportronix stipulated to infringement by its VQ Pods. Motion Exhibit 6, Vaportronix Stipulation ¶ 6. V4L stipulated to infringement by its Phix Pods, Smoke Infinix Pods, Suorin iShare Pods, Bombz Pods, ViV Pods, Ziip Pods, Plus Pods, Eonsmoke Pods, VQ Pods, and Kangertech U Boat Pods. Motion Exhibit 7, V4L Stipulation ¶ 6. In addition, Mr. Alarcon offered infringement analysis for each of the accused products on a claim-by-claim and limitation-by-limitation basis. Motion Exhibit 46, Exhibit C.

Based on the parties' stipulations and the unrebutted expert testimony of Mr. Alarcon, there is no dispute of material fact that the accused products infringe claims 10, 15, 17, and 29-32 of the '915 patent. Staff agrees that each of the accused products directly infringes the asserted claims of the '915 patent. Staff Resp. at 24-36. Accordingly, summary determination is thus appropriate with respect to direct infringement by each of the Respondents with respect to all asserted claims of the '915 patent.

D. The '470 Patent

Juul asserts that the accused products directly infringe claims 1-4, 7, 8, 10, and 11 of the '470 patent. Claim 1 recites:

1. A cartridge for use with a vaporizer device, the cartridge comprising:

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- a storage compartment configured to hold a vaporizable material, the storage compartment having a distal end and a proximal end opposite the distal end, the storage compartment having a compartment side extending between the distal end and the proximal end;
- a mouthpiece enclosing the proximal end of the storage compartment, the mouthpiece having a mouthpiece side adjacent to the compartment side, a first end of the mouthpiece terminating in an edge disposed adjacent to a location between the distal end and the proximal end of the storage compartment, the mouthpiece having a notch in the mouthpiece side, the notch extending away from the edge of the mouthpiece toward a second end of the mouthpiece that is opposite the first end of the mouthpiece, wherein the notch exposes a region of the compartment side;
- a wicking material proximate to the distal end of the storage compartment, the wicking material disposed to contact the vaporizable material; and
- a heating element proximate to the distal end of the storage compartment, the heating element in contact with the wicking material, the heating element configured to generate an aerosol from the vaporizable material.

Claims 2-4, 7, 8, 10, and 11 depend from claim 1, adding limitations regarding electrical contacts, the mouthpiece, and the storage compartment.

Each of the respondents has stipulated to infringement of all of the asserted claims of the '470 patent. Ziip stipulated to infringement by its Ziip Pods, Plus Pods, Airbender Pods, Iced Pods, Eonsmoke Pods (also known as Eon Pods), Loon Pods, Mr. Fog Pods, Cali Pods, Delicious Pods, ViV Pods, Unique Pods, I-pods, Jewel pods, Amo pods, Vape Heads pods, OG pods, Pods pods, Cigma pods, Salteez pods, Magic Pods, Sonic pods, and Pūr Pods. Motion Exhibit 1, Ziip Stipulation ¶ 7. Maduro stipulated to infringement by its Loon Pods. Motion Exhibit 2, Maduro Stipulation ¶ 6. Twist stipulated to infringement by its Sea100 Pods, Sea Pods, Buz Pods, and Eonsmoke Pods. Motion Exhibit 3, Twist Stipulation ¶ 7. Vape4U stipulated to infringement by its Zalt Pods, Just Pods, and Ultimate Pods (formerly UltraMax pods). Motion Exhibit 4, Vape4U Stipulation ¶ 7. Vaperz stipulated to infringement by its Airbender Pods and Ziip pods. Motion Exhibit 5, Vaperz Stipulation ¶ 7. Vaportronix stipulated to infringement by its VQ

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Pods. Motion Exhibit 6, Vaportronix Stipulation ¶ 7. V4L stipulated to infringement by its Phix Pods, Smoke Infinix Pods, Suorin iShare Pods, Bombz Pods, ViV Pods, Ziip Pods, Plus Pods, Eonsmoke Pods, VQ Pods, and Kangertech U Boat Pods. Motion Exhibit 7, V4L Stipulation ¶ 7. In addition, Mr. Alarcon offered infringement analysis for each of the accused products on a claim-by-claim and limitation-by-limitation basis. Motion Exhibit 46, Exhibit D.

Based on the parties' stipulations and the unrebutted expert testimony of Mr. Alarcon, there is no dispute of material fact that the accused products infringe claims 1-4, 7, 8, 10, and 11 of the '470 patent. Staff agrees that each of the accused products directly infringes the asserted claims of the '470 patent. Staff Resp. at 24-36. Accordingly, summary determination is thus appropriate with respect to direct infringement by each of the Respondents with respect to all asserted claims of the '470 patent.

E. The '465 Patent

Juul asserts that the accused products directly infringe claim 20 of the '465 patent and that the Respondents' sale and importation of the accused products indirectly infringes claims 1-7 and 9-19 of the '465 patent.

Claim 1 of the '465 patent recites:

1. An apparatus comprising:

a cartridge having a non-cylindrical shape, the cartridge comprising:

a heater chamber having a first side and a second side opposite the first side;

a first heater contact comprising a first exposed heater contact tab and a first fixation site, the first fixation site disposed proximate to the first side, the first heater contact having a first surface defining at least a portion of the first side;

a second heater contact comprising a second exposed heater contact tab and a second fixation site, the second fixation site disposed

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proximate to the second side, the second heater contact having a second surface defining at least a portion of the second side;

a wick;

a resistive heating element in contact with the wick, the resistive heating element attached to the first fixation site and the second fixation site, the heater chamber comprising at least a portion of the resistive heating element and at least a portion of the wick, wherein the resistive heating element is suspended between the first fixation site and the second fixation site, and wherein the resistive heating element is configured to generate an aerosol from a vaporizable material within the heater chamber; and

a plastic enclosure further defining the heater chamber, the plastic enclosure configured to receive the first surface and the second surface; and

a device body having a non-cylindrical shape, the device body comprising:

a cartridge receptacle configured to insertably receive the cartridge, the heater chamber disposed within the cartridge receptacle when the cartridge is insertably received within the cartridge receptacle;

a first receptacle contact positioned to electrically couple with either of the first exposed heater contact tab or the second exposed heater contact tab when the cartridge is insertably received within the cartridge receptacle; and

a second receptacle contact positioned to electrically couple with either of the first exposed heater contact tab or the second exposed heater contact tab when the cartridge is insertably received within the cartridge receptacle.

Claims 2-7 and 9-19 depend from claim 1, adding limitations regarding the heater chamber, heater element, wick, heater contact, mouthpiece, and cartridge. Claim 20 is a separate independent claim, which recites:

20. A cartridge for insertion into a receptacle of a vaporizer device body, the cartridge having a non-cylindrical shape, the cartridge comprising:

a heater chamber having a first side and a second side opposite the first side, the heater chamber configured to be disposed within the receptacle when the cartridge is inserted into the receptacle;

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- a first heater contact comprising a first exposed heater contact tab and a first fixation site, the first fixation site disposed proximate to the first side, the first heater contact having a first surface defining at least a portion of the first side, the first exposed heater contact tab positioned and configured to electrically couple with either of a first receptacle contact within the receptacle or a second receptacle contact within the receptacle when the cartridge is inserted into the receptacle;
- a second heater contact comprising a second exposed heater contact tab and a second fixation site, the second fixation site disposed proximate to the second side, the second heater contact having a second surface defining at least a portion of the second side, the second exposed heater contact tab positioned and configured to electrically couple with either of the first receptacle contact or the second receptacle contact when the cartridge is inserted into the receptacle;
- a wick;
- a resistive heating element in contact with the wick, the resistive heating element attached to the first fixation site and the second fixation site, the heater chamber comprising at least a portion of the resistive heating element and at least a portion of the wick, wherein the resistive heating element is suspended between the first fixation site and the second fixation site, and wherein the resistive heating element is configured to generate an aerosol from a vaporizable material within the heater chamber; and
- a plastic enclosure further defining the heater chamber, the plastic enclosure configured to receive the first surface and the second surface.

Each of the respondents has stipulated to infringement of all of the asserted claims of the '465 patent. Ziip stipulated to infringement by its Ziip Pods, Plus Pods, Airbender Pods, Iced Pods, Eonsmoke Pods (also known as Eon Pods), Loon Pods, Mr. Fog Pods, Cali Pods, Delicious Pods, ViV Pods, Unique Pods, I-pods, Jewel pods, Amo pods, Vape Heads pods, OG pods, Pods pods, Cigma pods, Salteez pods, Magic Pods, Sonic pods, and Pūr Pods. Motion Exhibit 1, Ziip Stipulation ¶ 8. Maduro stipulated to infringement by its Loon Pods. Motion Exhibit 2, Maduro Stipulation ¶ 7. Twist stipulated to infringement by its Sea100 Pods, Sea Pods, Buz Pods, and Eonsmoke Pods. Motion Exhibit 3, Twist Stipulation ¶ 8. Vape4U stipulated to infringement by its Zalt Pods, Just Pods, and Ultimate Pods (formerly UltraMax pods). Motion Exhibit 4,

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Vape4U Stipulation ¶ 8. Vaperz stipulated to infringement by its Airbender Pods and Ziip pods. Motion Exhibit 5, Vaperz Stipulation ¶ 8. Vaportronix stipulated to infringement by its VQ Pods. Motion Exhibit 6, Vaportronix Stipulation ¶ 8. V4L stipulated to infringement by its Phix Pods, Smoke Infinix Pods, Suorin iShare Pods, Bombz Pods, ViV Pods, Ziip Pods, Plus Pods, Eonsmoke Pods, VQ Pods, and Kangertech U Boat Pods. Motion Exhibit 7, V4L Stipulation ¶ 8. In addition, Dr. Collins offered infringement analysis for each of the products on a claim-by-claim and limitation-by-limitation basis. Motion Exhibit 47, Exhibit D. Dr. Collins also identified evidence of induced and contributory infringement by each of the respondents. Motion Exhibit 47, Collins Expert Report ¶¶ 150-58 (Maduro), 164-72 (Ziip), 178-86 (V4L), 192-200 (Vaperz), 206-14 (Vaportronix), 220-28 (Vape4U), 234-42 (Twist), 243 (summary).

Based on the parties' stipulations and the unrebutted expert testimony of Dr. Collins, there is no dispute of material fact that the accused products infringe claims 1-7 and 9-20 of the '465 patent. Staff agrees that each of the accused products directly infringes claim 20 of the '465 patent. Staff Resp. at 24-36. Staff further agrees that each of the Respondents indirectly infringes claims 1-7 and 9-19 of the '465 patent by importing and selling the accused products. *Id.* at 36-47.⁵ Accordingly, summary determination is thus appropriate with respect to indirect infringement by each of the Respondents with respect to claims 1-7 and 9-19 the '465 patent, and direct infringement by each of the Respondents with respect to claim 20 the '465 patent.

F. The '466 Patent

Juul asserts that the accused products directly infringe claims 20-21 of the '466 patent and that the Respondents' sale and importation of the accused products indirectly infringes

⁵ Staff identifies a discrepancy in Juul's motion as to whether the Vaperz JC01 cartridge is accused of infringing the '465 patent. Staff Resp. at 44. Vaperz did not stipulate to infringement of the '465 patent with respect to the JC01 cartridge and Dr. Collins did not address the JC01 cartridge in his infringement analysis for the '465 patent. Accordingly, the finding of infringement with respect to the '465 patent does not include the Vaperz JC01 cartridge.

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claims 1, 4-8, 10, 12, 14, and 16-19 and 22-23 of the '466 patent.

Claim 1 of the '466 patent recites:

1. An apparatus comprising:

a cartridge having a longitudinal dimension along a first axis passing from a top end of the cartridge to a bottom end of the cartridge, the top end of the cartridge opposite the bottom end of the cartridge, the cartridge having a first transverse dimension perpendicular to the longitudinal dimension, the cartridge having a second transverse dimension perpendicular to the longitudinal dimension, the second transverse dimension shorter than the first transverse dimension, the cartridge having second degree rotational symmetry about the first axis such that the cartridge is symmetrical about a 180° rotation around the first axis, the cartridge comprising:

a storage compartment configured to hold a vaporizable material;

a heating chamber disposed proximate to the bottom end of the cartridge, the heating chamber comprising a heating element configured to heat the vaporizable material to generate an aerosol;

a first electrical contact exposed proximate to the bottom end of the cartridge; and

a second electrical contact exposed proximate to the bottom end of the cartridge; and

a vaporization device body comprising:

a power supply;

a receptacle configured to receive and couple to the cartridge such that the bottom end of the cartridge is inserted into a bottom end of the receptacle in a first orientation or a second orientation, the first orientation and the second orientation resulting from the 180° rotation of the cartridge about the first axis, the receiving and coupling comprising the bottom end of the cartridge and the heating chamber being inserted into the receptacle;

a third electrical contact disposed within the receptacle; and

a fourth electrical contact disposed within the receptacle;

wherein the third electrical contact is configured to electrically couple to the first electrical contact and the fourth electrical contact is configured to electrically couple to the second electrical contact to

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complete an electrical circuit when the cartridge is coupled to the receptacle in the first orientation;

wherein the third electrical contact is configured to electrically couple to the second electrical contact and the fourth electrical contact is configured to electrically couple to the first electrical contact to complete the electrical circuit when the cartridge is coupled to the receptacle in the second orientation;

wherein the electrical circuit comprises the heating element, the power supply, the first electrical contact, the second electrical contact, the third electrical contact, and the fourth electrical contact, and wherein the electrical circuit is configured to provide current to the heating element when the cartridge is coupled to the receptacle in either the first orientation or the second orientation.

Claims 4-8, 10, 12, 14, and 16-19 depend from claim 1, adding limitations regarding electrical contacts, a wick, a mouthpiece, the composition of the vaporizable material, a rechargeable battery, the dimensions of the cartridge, and the heating chamber. Claim 20 is a separate independent claim, which recites:

20. A cartridge configured to be received by and coupled to a receptacle of a vaporization device body in a first orientation or a second orientation such that a bottom end of the cartridge is inserted into a bottom end of the receptacle, the cartridge having a longitudinal dimension along a first axis passing between a top end of the cartridge to the bottom end of the cartridge, the top end of the cartridge opposite the bottom end of the cartridge, the cartridge having a first transverse dimension substantially perpendicular to the longitudinal dimension, the cartridge having a second transverse dimension substantially perpendicular to the longitudinal dimension, the second transverse dimension shorter than the first transverse dimension, the cartridge having second degree rotational symmetry about the first axis such that the cartridge is symmetrical about a 180° rotation around the first axis, the cartridge comprising:

a storage compartment configured to hold a vaporizable material;

a heating chamber disposed proximate the bottom end of the cartridge such that the heating chamber is within the receptacle when the cartridge is inserted within the receptacle, the heating chamber comprising a heating element configured to heat the vaporizable material to generate an aerosol;

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a first electrical contact exposed proximate to the bottom end of the cartridge; and

a second electrical contact exposed proximate to the bottom end of the cartridge;

wherein the first electrical contact is configured to electrically couple to a third electrical contact within the receptacle and the second electrical contact is configured to electrically couple to a fourth electrical contact within the receptacle to complete an electrical circuit when the cartridge is coupled to the receptacle in the first orientation;

wherein the first electrical contact is configured to electrically couple to the fourth electrical contact and the second electrical contact is configured to electrically couple to the third electrical contact to complete the electrical circuit when the cartridge is coupled to the receptacle in the second orientation;

wherein the first orientation and the second orientation result from the 180° rotation of the cartridge about the first axis;

wherein the electrical circuit comprises the heating element, a power supply within the vaporization device body, the first electrical contact, the second electrical contact, the third electrical contact, and the fourth electrical contact; and

wherein the electrical circuit is configured to provide current to the heating element when the cartridge is coupled to the receptacle in either the first orientation or the second orientation.

Claim 21 depends from claim 20, adding a limitation that “the heating chamber is disposed between the storage compartment and the bottom end of the cartridge.” Claim 22 is another separate independent claim with limitations similar to claim 1 but specifying that the power supply is a battery. Claim 23 depends from claim 22, adding a limitation that “the heating chamber is disposed between the storage compartment and the bottom end of the cartridge.”

Each of the respondents has stipulated to infringement of all of the asserted claims of the '466 patent. Ziip stipulated to infringement by its Ziip Pods, Plus Pods, Airbender Pods, Iced Pods, Eonsmoke Pods (also known as Eon Pods), Loon Pods, Mr. Fog Pods, Cali.Pods, Delicious Pods, ViV Pods, Unique Pods, I-pods, Jewel pods, Amo pods, Vape Heads pods, OG pods, Pods

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Pods, Cigma pods, Salteez pods, Magic Pods, Sonic pods, and Pūr Pods. Motion Exhibit 1, Ziip Stipulation ¶ 9. Maduro stipulated to infringement by its Loon Pods. Motion Exhibit 2, Maduro Stipulation ¶ 8. Twist stipulated to infringement by its Sea100 Pods, Sea Pods, Buz Pods, and Eonsmoke Pods. Motion Exhibit 3, Twist Stipulation ¶ 9. Vape4U stipulated to infringement by its Zalt Pods, Just Pods, and Ultimate Pods (formerly UltraMax pods). Motion Exhibit 4, Vape4U Stipulation ¶ 9. Vaperz stipulated to infringement by its Airbender Pods and Ziip pods. Motion Exhibit 5, Vaperz Stipulation ¶ 9. Vaportronix stipulated to infringement by its VQ Pods. Motion Exhibit 6, Vaportronix Stipulation ¶ 9. V4L stipulated to infringement by its Phix Pods, Smoke Infinix Pods, Suorin iShare Pods, Bombz Pods, ViV Pods, Ziip Pods, Plus Pods, Eonsmoke Pods, VQ Pods, and Kangertech U Boat Pods. Motion Exhibit 7, V4L Stipulation ¶ 9. In addition, Mr. Alarcon offered infringement analysis for each of the products on a claim-by-claim and limitation-by-limitation basis. Motion Exhibit 46, Exhibit E. Mr. Alarcon also identified evidence of induced and contributory infringement by each of the Respondents. Motion Exhibit 46, Alarcon Expert Report ¶¶ 300-65.

Based on the parties' stipulations and the unrebutted expert testimony of Mr. Alarcon, there is no dispute of material fact that the accused products infringe claims 1, 4-8, 10, 12, 14, and 16-21 and 22-23 of the '466 patent. Staff agrees that each of the accused products directly infringes claims 20 and 21 of the '466 patent. Staff Resp. at 24-36. Staff further agrees that each of the respondents indirectly infringes claims 1, 4-8, 10, 12, 14, and 16-19 and 22-23 of the '466 patent by importing and selling the accused products. *Id.* at 36-47.⁶ Accordingly, summary determination is thus appropriate with respect to indirect infringement by each of the respondents

⁶ Staff identifies a discrepancy in Juul's motion as to whether the Vaperz JC01 cartridge is accused of infringing the '466 patent. Staff Resp. at 44. Vaperz did not stipulate to infringement of the '466 patent with respect to the JC01 cartridge and Mr. Alarcon did not address the JC01 cartridge in his infringement analysis for the '466 patent. Accordingly, the finding of infringement with respect to the '466 patent does not include the Vaperz JC01 cartridge.

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with respect to claims 1, 4-8, 10, 12, 14, and 16-19 and 22-23 of the '466 patent, and direct infringement by each of the respondents with respect to claims 20 and 21 of the '466 patent.

V. DOMESTIC INDUSTRY

Juul claims a domestic industry in the JUUL system, an electronic nicotine delivery system comprising the JUUL device and charger and JUULpod cartridges.

A. Legal Standards

In patent-based proceedings under section 337, a complainant must establish that an industry exists in the United States “relating to the articles protected by the patent.” 19 U.S.C. § 1337(a)(2). Under Commission precedent, the domestic industry requirement of section 337 consists of an “economic prong” and a “technical prong.” *See, e.g., Alloc, Inc. v. Intl Trade Comm’n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003). To meet the technical prong, the complainant must establish that it practices at least one claim of the asserted patent. *Certain Point of Sale Terminals and Components Thereof*, Inv. No. 337-TA-524, Order No. 40 at 17-18 (Apr. 11, 2005). “The test for satisfying the ‘technical prong’ of the industry requirement is essentially [the] same as that for infringement, *i.e.*, a comparison of domestic products to the asserted claims.” *Alloc*, 342 F.3d at 1375.

With respect to the “economic prong,” subsection (3) of Section 337(a) provides:

For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned –

- (A) significant investment in plant and equipment;
- (B) significant employment of labor or capital; or
- (C) substantial investment in its exploitation, including engineering, research and development, or licensing.

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19 U.S.C. § 1337(a)(3). “Given that these criteria are listed in the disjunctive, satisfaction of any one of them will be sufficient to meet the domestic industry requirement.” *Certain Solid State Storage Drives, Stacked Electronics Components, and Products Containing Same* (“*Solid State Storage Drives*”), Inv. No. 337-TA-1097, Comm’n Op. at 7-8 (June 20, 2018) (citing *Certain Variable Speed Wind Turbines & Components Thereof*, Inv. No. 337-TA-376, USITC Pub. No. 3003, Comm’n Op. at 15 (Nov. 1996)).

B. Technical Prong

Juul contends that the JUUL system practices asserted claims 1-3, 5-8, 12, 13, 16-20, and 22 of the ’129 patent; claims 10, 15, 17, and 29-32 of the ’915 patent; claims 1-4, 7, 8, 10, and 11 of the ’470 patent; claims 1-7 and 9-20 of the ’465 patent; and claims 1, 4-8, 10, 12, 14, and 16-23 of the ’466 patent. Each of the respondents has stipulated to the practice of these claims by the JUUL system. *See* Motion Exhibit 1 ¶¶ 11-15, Exhibit 2 ¶¶ 10-13, Exhibit 3 ¶¶ 11-15, Exhibit 4 ¶¶ 11-15, Exhibit 5 ¶¶ 11-15, Exhibit 6 ¶¶ 11-15, Exhibit 7 ¶¶ 11-15. In addition, Mr. Alarcon analyzed the JUUL system on a claim-by-claim and limitation-by-limitation basis with respect to the ’915 patent, the ’470 patent, and the ’466 patent. Motion Exhibit 46, Exhibit F, Exhibit G, Exhibit H. Dr. Collins analyzed the JUUL system on a claim-by-claim and limitation-by-limitation basis with respect to the ’129 patent and the ’465 patent. Motion Exhibit 47, Exhibit E, Exhibit F.

Based on the parties’ stipulations and the unrebutted expert testimony of Mr. Alarcon and Dr. Ross, there is no dispute of material fact that the JUUL system practices asserted claims 1-3, 5-8, 12, 13, 16-20, and 22 of the ’129 patent; claims 10, 15, 17, and 29-32 of the ’915 patent; claims 1-4, 7, 8, 10, and 11 of the ’470 patent; claims 1-7 and 9-20 of the ’465 patent; and claims 1, 4-8, 10, 12, 14, and 16-23 of the ’466 patent. Staff agrees that JUUL system practices each of the asserted claims of the asserted patents. Staff Resp. at 47-48. Accordingly, summary

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determination is thus appropriate with respect to the technical prong of the domestic industry requirement with respect to each asserted patent.

C. Economic Prong

Juul claims a domestic industry based on its significant employment of labor and capital with respect to the JUUL system. Juul cites to the declaration of its Chief Financial Officer, Tim Danaher, which was attached to the complaint. Complaint, Confidential Exhibit 17 (Nov. 19, 2018). Juul further submits an expert report prepared by Carla S. Mulhern, providing economic analysis of its domestic industry. Motion Exhibit 50.

Juul identifies [REDACTED] U.S.-based employees at the time of the filing of the complaint in September 2018, who are all working on the JUUL system. Motion Exhibit 50, Mulhern Expert Report ¶ 110. Juul identifies several categories of employees that qualify under subsection (a)(3)(B): R&D and Engineering employees who designed and developed the JUUL system; Global Supply Chain employees who manage the existing manufacturing processes for the JUUL system; a Quality Control team in San Francisco [REDACTED]; [REDACTED]; and a customer support and warranty team that manages the implementation of Juul's warranty program. Complaint, Confidential Exhibit 17 (Danaher Decl.) ¶¶ 11, 33, 54-56. Ms. Mulhern counts [REDACTED] employees involved with engineering, [REDACTED] in global supply/customer support, [REDACTED] in product/R&D, and [REDACTED] in the category of quality & regulatory. Motion Exhibit 50, Mulhern Expert Report ¶ 110. In 2018, Juul's investments in labor with respect to these employees totaled [REDACTED]. *Id.* (Mulhern Expert Report), Exhibit 34. Because certain asserted claims relate only to cartridges and not to devices, Juul has offered a sales-based allocation [REDACTED], based on the share of Juul's revenue attributable to JUULpods. Memorandum at 48-49; Motion Exhibit 50 (Mulhern Expert Report), Exhibit 11.

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Juul submits that these investments are both quantitatively and qualitatively significant. Memorandum at 44-49. In particular, Juul submits that the qualifying employees are [REDACTED] of its domestic headcount and [REDACTED] of its domestic labor compensation. *Id.* at 49. Moreover, approximately [REDACTED] of Juul's employees are based in the United States. *Id.* at 46. Juul submits that the work of these employees was critical to bringing the Juul system to market. *Id.* at 44-46.

Each of the respondents, except for Vaportronix,⁷ has stipulated to Juul's satisfaction of the economic prong of domestic industry. Motion Exhibit 49, Domestic Industry Stipulation (Jun. 7, 2019). Staff agrees that Juul has satisfied the economic prong of the domestic industry requirement under subsection (a)(3)(B). Staff Resp. at 48-49.

Based on the parties' stipulations and the un rebutted evidence and expert testimony of Ms. Mulhern, there is no dispute of material fact that Juul has satisfied the economic prong of the domestic industry requirement with respect to the JUUL system. The evidence shows that Juul's labor expenditures are both quantitatively and qualitatively significant under subsection (a)(3)(B). Accordingly, summary determination is thus appropriate with respect to Juul's satisfaction of the domestic industry requirement.

VI. CONCLUSION

For the reasons discussed above, Motion Docket No. 1141-036 is hereby GRANTED.

Accordingly, it is my initial determination that:

- The importation requirement is satisfied for each of the accused products.
- The accused Ziip Pods, Plus Pods, Airbender Pods, Iced Pods, Eonsmoke Pods (also known as Eon Pods), Loon Pods, Mr. Fog Pods, Cali Pods, Delicious Pods, ViV Pods, Unique Pods, I-pods, Jewel pods, Amo pods, Vape Heads pods, OG pods, Pods pods, Cigma pods, Salteez pods, Magic Pods, Sonic pods, and Pūr Pods; Twist Sea100 Pods, Sea Pods, Buz Pods, and Eonsmoke Pods; Vape4U Zalt Pods, Just Pods, and Ultimate Pods (formerly UltraMax pods); Vaperz Airbender Pods and Ziip

⁷ Vaportronix filed a response to the motion, noting that it did not stipulate to the satisfaction of the economic prong, but did not contest any of Juul's domestic industry evidence.

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Pods; Vaportronix VQ Pods; and V4L Phix Pods, Smoke Infinix Pods, Suorin iShare Pods, Bombz Pods, ViV Pods, Ziiip Pods, Plus Pods, Eonsmoke Pods, VQ Pods, and Kangertech U Boat Pods'129 patent claims 1-3, 5-8, 12, 13, 16-20, and 22.

- The accused Ziiip Pods, Plus Pods, Airbender Pods, Iced Pods, Eonsmoke Pods (also known as Eon Pods), Loon Pods, Mr. Fog Pods, Cali Pods, Delicious Pods, ViV Pods, Unique Pods, I-pods, Jewel pods, Amo pods, Vape Heads pods, OG pods, Pods pods, Cigma pods, Salteez pods, Magic Pods, Sonic pods, and Pūr Pods; Maduro Loon Pods; Twist Sea100 Pods, Sea Pods, Buz Pods, and Eonsmoke Pods; Vape4U Zalt Pods, Just Pods, and Ultimate Pods (formerly UltraMax pods); Vaperz Airbender Pods, Ziiip pods, and JC01 pods; Vaportronix VQ Pods; and V4L Phix Pods, Smoke Infinix Pods, Suorin iShare Pods, Bombz Pods, ViV Pods, Ziiip Pods, Plus Pods, Eonsmoke Pods, VQ Pods, and Kangertech U Boat Pods infringe '915 patent claims 10, 15, 17, and 29-32.
- The accused Ziiip Pods, Plus Pods, Airbender Pods, Iced Pods, Eonsmoke Pods (also known as Eon Pods), Loon Pods, Mr. Fog Pods, Cali Pods, Delicious Pods, ViV Pods, Unique Pods, I-pods, Jewel pods, Amo pods, Vape Heads pods, OG pods, Pods pods, Cigma pods, Salteez pods, Magic Pods, Sonic pods, and Pūr Pods; Maduro Loon Pods; Twist Sea100 Pods, Sea Pods, Buz Pods, and Eonsmoke Pods; Vape4U Zalt Pods, Just Pods, and Ultimate Pods (formerly UltraMax pods); Vaperz Airbender Pods and Ziiip pods; Vaportronix VQ Pods; and V4L Phix Pods, Smoke Infinix Pods, Suorin iShare Pods, Bombz Pods, ViV Pods, Ziiip Pods, Plus Pods, Eonsmoke Pods, VQ Pods, and Kangertech U Boat Pods infringe '470 patent claims 1-4, 7, 8, 10, and 11.
- The accused Ziiip Pods, Plus Pods, Airbender Pods, Iced Pods, Eonsmoke Pods (also known as Eon Pods), Loon Pods, Mr. Fog Pods, Cali Pods, Delicious Pods, ViV Pods, Unique Pods, I-pods, Jewel pods, Amo pods, Vape Heads pods, OG pods, Pods pods, Cigma pods, Salteez pods, Magic Pods, Sonic pods, and Pūr Pods; Maduro Loon Pods; Twist Sea100 Pods, Sea Pods, Buz Pods, and Eonsmoke Pods; Vape4U Zalt Pods, Just Pods, and Ultimate Pods (formerly UltraMax pods); Vaperz Airbender Pods and Ziiip pods; Vaportronix VQ Pods; and V4L Phix Pods, Smoke Infinix Pods, Suorin iShare Pods, Bombz Pods, ViV Pods, Ziiip Pods, Plus Pods, Eonsmoke Pods, VQ Pods, and Kangertech U Boat Pods infringe '465 patent claims 1-7 and 9-20.
- The accused Ziiip Pods, Plus Pods, Airbender Pods, Iced Pods, Eonsmoke Pods (also known as Eon Pods), Loon Pods, Mr. Fog Pods, Cali Pods, Delicious Pods, ViV Pods, Unique Pods, I-pods, Jewel pods, Amo pods, Vape Heads pods, OG pods, Pods pods, Cigma pods, Salteez pods, Magic Pods, Sonic pods, and Pūr Pods; Maduro Loon Pods; Twist Sea100 Pods, Sea Pods, Buz Pods, and Eonsmoke Pods; Vape4U Zalt Pods, Just Pods, and Ultimate Pods (formerly UltraMax pods); Vaperz Airbender Pods and Ziiip pods; Vaportronix VQ Pods; and V4L Phix Pods, Smoke Infinix Pods, Suorin iShare Pods, Bombz Pods, ViV Pods, Ziiip Pods, Plus Pods, Eonsmoke Pods, VQ Pods, and Kangertech U Boat Pods infringe '466 patent claims 1, 4-8, 10, 12, 14, and 16-23.

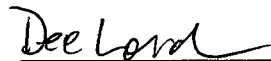
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- The domestic industry requirement is satisfied with respect to each asserted patent based on Juul's significant employment of labor in the United States for the JUUL system, including JUULpods.

Pursuant to Commission Rule 210.42(h), this initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to Commission Rule 210.43(a), or the Commission, pursuant to Commission Rule 210.44, orders, on its own motion, a review of the initial determination or certain issues contained herein. 19 C.F.R. § 210.42(d).

This order is being issued with a confidential designation, and pursuant to Ground Rule 1.10, each party shall submit to the Administrative Law Judge a statement as to whether or not it seeks to have any portion of this order deleted from the public version within seven (7) days. *See* 19 C.F.R. § 210.5(f). A party seeking to have a portion of the order deleted from the public version thereof must attach to its submission a copy of the order with red brackets indicating the portion(s) asserted to contain confidential business information.⁸ The parties' submissions under this subsection need not be filed with the Commission Secretary but shall be submitted by paper copy to the Administrative Law Judge and by e-mail to the Administrative Law Judge's attorney advisor.

SO ORDERED.

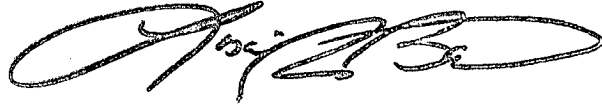


Dee Lord
Administrative Law Judge

⁸ Redactions should be limited to avoid depriving the public of the basis for understanding the result and reasoning underlying the decision. Parties who submit excessive redactions may be required to provide an additional written statement, supported by declarations from individuals with personal knowledge, justifying each proposed redaction and specifically explaining why the information sought to be redacted meets the definition for confidential business information set forth in Commission Rule 201.6(a). 19 C.F.R. § 201.6(a).

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, **Cortney Hoecherl, Esq.**, and the following parties as indicated, on **September 11, 2019**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
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On Behalf of Complainants Juul Labs, Inc:

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

Inv. No. 337-TA-1141

Certificate of Service – Page 2

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