



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1286]

Certain Oil-Vaping Cartridges, Components Thereof, and Products Containing the Same; Notice of a Commission Final Determination Finding Glo Extracts in Default; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to find Glo Extracts of Los Angeles, California in default and issue a limited exclusion order (“LEO”) barring entry of certain oil-vaping cartridges, components thereof, and products containing the same that are imported by or on behalf of six respondents: Glo Extracts; BulkCarts.com of Canton, Michigan; Greenwave Naturals LLC (“Greenwave Naturals”) of Austin, Texas; Cartridgesforsale.com of Ypsilanti, Michigan; HW Supply, LLC (“HW Supply”) of Ypsilanti, Michigan; and Obsidian Supply, Inc. (“Obsidian Supply”) of Irvine, California (collectively, the “Defaulting Respondents”). The Commission has also determined to issue cease and desist orders (“CDOs”) against the Defaulting Respondents. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Paul Lall, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2043. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On November 10, 2021, the Commission instituted this investigation based on a complaint filed by Smoore Technology Limited (“Smoore” or “Complainant”). 86 FR 62567-69 (Nov. 10, 2021) (“Notice of Institution”). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain oil-vaping cartridges, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 10,357,623; 10,791,762; and 10,791,763; and U.S. Registered Trademark No. 5,633,060 (“the ’060 mark”).
Id.

The Commission’s notice of investigation named the following entities as respondents: Glo Extracts; Cartridgesforsale.com; HW Supply; BulkCarts.com; Greenwave Naturals; Obsidian Supply; BBTank USA, LLC (“BBTank”) of Lambertville, Michigan; BoldCarts.com of Tempe, Arizona; Bold Crafts, Inc. (“Bold Crafts”) of Irvine, California; Blinc Group Holdings, LLC of New York, New York; Jonathan Ray Carfield (“Jonathan Carfield”), d/b/a AlderEgo Wholesale, AlderEgo Holdings, Inc. and AlderEgo Group, Limited a/k/a AVD Holdings Limited of Guangdong, China; Hanna Carfield (“Hanna Carfield”) of Tacoma, Washington; Next Level Ventures, LLC (“Next Level Ventures”) of Seattle, Washington; Advanced Vapor Devices, LLC of Los Angeles, California; avd710.com of Seattle, Washington; AlderEgo Group Limited (“AEG”) of Hong Kong; A&A Global Imports, Inc. (“A&A Global”) of Vernon, California; Bulk Natural, LLC (“Bulk Natural”) of Portland Oregon; Brand King, LLC (“Brand King”) of Sacramento, California; ZTCSSMOKE USA Inc. (“ZTCSSMOKE”) of Niceville, Florida; headcandysmokeshop.com and Head Candy Enterprise Ltd. (together “Head Candy”) both of Canada; Green Tank Technologies Corp. of Canada; Canary Packaging Inc (“Canary Packaging”) of Canada; Canary LA (“Canary LA”) of Signal Hill, California; dcalchemy.com and DC Alchemy, LLC (together “Alchemy”) both of Phoenix, Arizona; International Vapor Group, LLC (“International Vapor”) of Miami Lakes, Florida; Ygreeninc.com and Ygreen Inc.

(together (“Ygreen”) both of Walnut, California; Atmos Nation LLC (“Atmos”) of Davie, Florida; shopbvv.com (“shopbvv.com”) of Naperville, Illinois; Best Value Vacs, LLC (“Best Value Vacs”) of Naperville, Illinois; Royalsupplywholesale.com (“Royalsupplywholesale”) of San Francisco, California; Customcanabisbranding.com (“Customcanabisbranding”) of San Francisco, California; CLK Global, Inc. (“CLK”) of San Francisco, California; iKrusher, Inc., d/b/a iKrusher.com, of Arcadia, California; and The Calico Group Inc. of Austin, Texas. The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation. *Id.*

The Commission terminated multiple respondents based on consent orders, settlement, and/or withdrawal of the complaint. *See* Order No. 9 (Dec. 16, 2021) (Head Candy), *unreviewed by* Comm’n Notice (Jan. 10, 2022); Order No. 10 (Dec. 20, 2021) (ZTCSSMOKE), *unreviewed by* Comm’n Notice (Jan. 11, 2022); Order Nos. 12 and 13 (Dec. 21, 2021) (Alchemy, CLK, Royalsupplywholesale, and Customcanabisbranding), *unreviewed by* Comm’n Notice (Jan. 11, 2022); Order No. 15 (Jan. 10, 2022) (Ygreen), *unreviewed by* Comm’n Notice (Feb. 4, 2022); Order Nos. 16 and 17 (Jan. 18, 2022) (Cannary Packaging and Cannary LA), *unreviewed by* Comm’n Notice (Feb. 15, 2022); Order No. 17 (Jan. 21, 2022) (International Vapor), *unreviewed by* Comm’n Notice (Feb. 15, 2022); Order No. 20 (Feb. 23, 2022) (BBTank), *unreviewed by* Comm’n Notice (Mar. 18, 2022); Order No. 29 (June 7, 2022) (Best Value Vacs and shopbvv.com), *unreviewed by* Comm’n Notice (June 22, 2022); Order Nos. 33 and 34 (July 5, 2022) (Atmos, AEG, Hanna Carfield, and Jonathan Carfield), *unreviewed by* Comm’n Notice (Aug. 2, 2022); Order No. 46 (Jan. 31, 2023) (The Calico Group), *unreviewed by* Comm’n Notice (Mar. 3, 2023). On March 23, 2022, Smoore filed an amended complaint consistent with Order No. 20.

On July 28, 2022, the Chief Administrative Law Judge (“CALJ”) issued an order pursuant to Commission Rule 210.16 directing the six non-participating respondents—

Cartridgesforsale.com; Glo Extracts; HW Supply, LLC; Obsidian Supply, Inc.; BulkCarts.com; and Greenwave Naturals LLC—to show cause why they should not be found in default and why judgment should not be rendered against them for failing to respond to the amended complaint and amended Notice of Institution. Order No. 38 (July 28, 2022).

The CALJ held an evidentiary hearing from August 1-5, 2022 with the following participating respondents: The Blinc Group Inc.; Bold Crafts; Greentank; iKrusher; Next Level Ventures; AVD; avd710.com; Bulk Natural; Brand King; and A&A Global. On August 19, 2022, Smoore filed an initial post-hearing brief (“Smoore Post-hearing Br.”). See EDIS Doc. No. 778377 (Aug. 19, 2022). In its post-hearing brief, Smoore requested a limited exclusion order and cease and desist orders against respondents found to violate section 337 and/or found to be in default. Smoore Post-hearing Br. at 82-87.

On November 2, 2022, the CALJ issued another order pursuant to Commission Rule 210.16 directing the same six non-participating respondents to show cause why they should not be found in default and why judgment should not be rendered against them for failing to respond to the amended complaint and amended notice of investigation. Order No. 40 (Nov. 2, 2022). The order directed the non-participating respondents to make any showing of good cause by no later than November 16, 2022. *Id.* at 2. It also directed Smoore to ensure that copies of the order were served on the non-participating respondents and to file proof of service on EDIS. *Id.* No party responded to Order No. 40.

On November 7, 2022, Smoore filed with the Commission proof of service for four respondents: Greenwave Naturals LLC; HW Supply, LLC; BulkCarts.com; and Obsidian Supply, Inc. See EDIS Doc. ID 783960 (11/07/2022 Letter).

On January 23, 2023, the CALJ issued an initial determination (“ID”) finding five of the six non-participating respondents in default: 1) Cartridgesforsale.com; 2) HW Supply, LLC; 3)

Obsidian Supply, Inc.; 4) BulkCarts.com; and 5) Greenwave Naturals LLC. *See* Order No. 42 at 2-3 (Jan. 23, 2023), *unreviewed by* Comm'n Notice (Feb. 14, 2023), at 1. The ID noted that four respondents were actually served and a fifth, Cartridgesforsale.com, was constructively served through its operating entity, HW Supply, LLC, on November 4, 2022. Order No. 42 at 2. It further found that Smoore “has not provided proof that the sixth respondent, Glo Extracts, was served with Order No. 40.” *Id.* (citing EDIS Doc. ID 786724 (12/21/2022 Letter), Exs. 2 and 3 (showing return of service package to sender Smoore)). The ID declined to find Glo Extracts in default because it was not properly served with the show-cause order. *Id.*

On February 1, 2023, the CALJ issued the final ID finding no violation of section 337 by the participating respondents with regard to the asserted patent claims. The final ID stated that it did not find Glo Extracts in default because Smoore did not show that Glo Extracts was properly served with Order No. 40 to show cause. ID at 103 (citing Order No. 42 at 2). The ID further found that “Smoore has not shown that Glo Extracts was served with Smoore’s motion for summary determination.” *Id.* (citing EDIS Doc. ID 772026 at Certificate of Service (does not list Glo Extracts); EDIS Doc. ID 772501 at Certificate of Service (does not list Glo Extracts)). The ID determined that “[b]ecause Glo Extracts was not given notice and an opportunity to be heard on Smoore’s motion for summary determination, the motion is denied as to Glo Extracts.” *Id.* (citing 19 U.S.C. 1337(c)). The ID made no additional findings as to the other Defaulting Respondents or as to the ’060 mark, which was only asserted against the Defaulting Respondents. The ID included the CALJ’s recommended determination on remedy and bonding (“RD”). The RD recommended that, should the Commission find a violation, issuance of a limited exclusion order and cease and desist orders would be appropriate. ID at 105-108. The RD also recommended imposing no bond for covered products imported during the period of Presidential review because Smoore failed to meet its burden to establish a need for a bond. *Id.* at 108-09.

On February 13, 2023, Smoore filed a petition for review of the final ID and the participating respondents filed a contingent petition for review of the ID. On February 21, 2023, the parties, including OUII, filed responses to the petitions.

On April 24, 2023, the Commission issued a notice of its determination finding no violation of section 337 as to the asserted patent claims. *See* 88 FR 26332-35 (Apr. 28, 2023). The Commission also determined to review all findings and orders as to Glo Extracts and requested briefing from the parties on whether Smoore has been able to serve Glo Extracts with the Amended Complaint and Notice of Investigation, Smoore's motion for summary determination, and any of the Orders from this investigation, including the ALJ's show-cause order (Order No. 40). *Id.* at 26332. The Commission also requested written submissions from the parties on the issue under review, and requested briefing from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding. *Id.* at 26334-35.

On May 8, 2023, Smoore and OUII filed submissions in response to the Commission's notice, arguing that the public interest does not preclude issuance the requested LEO and CDOs. Smoore also sought a bond during the period of Presidential review in the amount of one hundred percent (100%) of the entered value of the infringing articles. With respect to the Commission's review of findings and orders as to Glo Extracts, OUII argued that Smoore was not properly served with the show cause order (Order No. 40) and therefore could not be found to be in default. In contrast, Smoore argued that the Commission should find Glo Extracts to be in default because Smoore had properly served Glo Extracts with the Amended Complaint, Notice of Investigation, Smoore's motion for summary determination, and Orders from this investigation. On May 15, 2023, Smoore filed a reply to OUII's response.

Having examined the record of this investigation, including the parties' submissions, the Commission has determined to find Glo Extracts in default. Specifically, the Commission finds

that the conditions set forth in section 337(g)(1)(A)-(E) (19 U.S.C. 1337(g)(1)(A)-(E)) have been satisfied, and section 337(g)(1) directs the Commission, upon request, to issue an LEO or a CDO or both against a respondent found in default, based on the allegations regarding a violation of section 337 in the complaint, which are presumed to be true, unless after consideration of the public interest factors in section 337(g)(1), it finds that such relief should not issue. As discussed in the attached opinion, Smoore made multiple attempts to serve the show cause order on Glo Extracts. Assuming for the sake of argument that there was no service of the show cause order on Glo Extracts, the Commission waives Rule 201.16 requiring service in view of the particular circumstances here. *See* 19 CFR 201.4(b). Concurrent with this notice, the Commission is issuing an opinion with further explanation of its determination.

The Commission has further determined pursuant to subsection 337(g)(1) that the appropriate remedy in this investigation is: (1) an LEO prohibiting the unlicensed entry of certain oil-vaping cartridges, components thereof, and products containing the same that are imported by or on behalf of the Defaulting Respondents that infringe the '060 mark; and (2) CDOs against all of the Defaulting Respondents. The Commission has also determined that the public interest factors enumerated in subsection 337(g)(1) do not preclude the issuance of the LEO and CDOs. The Commission has further determined that the bond during the period of Presidential review pursuant to section 337(j) (19 U.S.C. 1337(j)) shall be in the amount of one hundred percent (100%) of the entered value of the infringing articles. The investigation is terminated.

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(s) 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).

The Commission's vote for this determination took place on July 13, 2023.

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.

Issued: July 13, 2023.

Lisa Barton,
Secretary to the Commission.

[FR Doc. 2023-15247 Filed: 7/18/2023 8:45 am; Publication Date: 7/19/2023]