



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1381]

Certain Disposable Vaporizer Devices and Components and Packaging Thereof; Notice of a Commission Determination Not to Review Initial Determination Terminating the Investigation; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 58) issued by the chief administrative law judge (“CALJ”) granting a motion filed by complainants R.J. Reynolds Tobacco Company and R.J. Reynolds Vapor Company (“RJR”) to terminate the investigation in its entirety based on withdrawal of the complaint. 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, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On December 15, 2023, the Commission instituted this investigation based on a complaint filed on behalf of RJR. 88 FR 88111-12 (Dec. 15, 2023). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“Section 337”), based upon the importation into the United States, the sale for importation, or sale within the United States after importation of certain disposable vaporizer devices and

components and packaging thereof by reason false advertising, false designation of origin, and unfair competition, the threat or effect of which is to destroy or substantially injure an industry in the United States. The Commission’s notice of investigation (“NOI”) named the following respondents: Flawless Vape Shop Inc. and Flawless Vape Wholesale & Distribution Inc., both of Anaheim, CA (collectively, the “Flawless Vape respondents”); Affiliated Imports, LLC of Pflugerville, TX; American Vape Company, LLC a/k/a American Vapor Company, LLC of Pflugerville, TX; Breeze Smoke, LLC of West Bloomfield, MI; Dongguan (Shenzhen) Shikai Technology Co., Ltd. of Shenzhen, China; EVO Brands, LLC of Wilmington, DE; Guangdong Qisitech Co., Ltd. of Dongguan City, China; iMiracle (Shenzhen) Technology Co. Ltd. of Shenzhen, China; Magellan Technology Inc. of Buffalo, NY; Pastel Cartel, LLC of Pflugerville, TX; Price Point Distributors Inc. d/b/a Prince Point NY of Farmingdale, NY; PVG2, LLC of Wilmington, DE; Shenzhen Daosen Vaping Technology Co., Ltd. of Shenzhen, China; Shenzhen Fumot Technology Co., Ltd. of Shenzhen, China; Shenzhen Funyin Electronic Co., Ltd. of Shenzhen, China; Shenzhen Han Technology Co., Ltd. of Shenzhen, China; Shenzhen Innokin Technology Co., Ltd. of Shenzhen, China; Shenzhen IVPS Technology Co., Ltd. of Shenzhen, China; Shenzhen Noriyang Technology Co., Ltd. of Shenzhen, China; Shenzhen Weiboli Technology Co. Ltd. of Shenzhen, China; SV3 LLC d/b/a Mi-One Brands of Phoenix, AZ; They, LLC d/b/a Element Vape of El Monte, CA; Vapeonly Technology Co. Ltd. of Shenzhen, China; and VICA Trading Inc. d/b/a Vapesourcing of Tustin, CA. *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation. *Id.*

On May 13, 2024, the Commission granted RJR’s motion to amend the complaint and NOI to correct the mailing address associated with the Flawless Vape respondents. *See* Order No. 19 (April 18, 2024), *unreviewed by* Comm’n Notice (May 13, 2024).

On June 13, 2024, the Commission granted RJR’s motion to amend the complaint and NOI to add the following four entities as respondents in the investigation: (1) Capital Sales Company of Hazel Park, MI; (2) Ecto World, LLC d/b/a Demand Vape of Buffalo, NY; (3)

Hong Kong IVPS International Ltd. of Wanchai, Hong Kong; and (4) KMT Services LLC d/b/a KMT Distribution of Hazel Park, MI. *See* Order No. 27 (May 20, 2024), *unreviewed by* Comm'n Notice (June 13, 2024).

On November 5, 2024, the Commission found the Flawless Vape respondents to be in default. *See* Order No. 42 (Oct. 7, 2024), *unreviewed by* Comm'n Notice (Nov. 5, 2024).

On January 10, 2025, RJR filed a motion to terminate this investigation based on a withdrawal of the complaint. ID at 1. On January 15, 2025, the respondents remaining in the investigation filed a response stating they do not oppose the motion to terminate but requested that the CALJ “reconsider the ITC’s law concerning terminations with prejudice or recommend that the Commission do so.” *Id.* at 1-2. In the alternative, respondents requested “that any termination be subject to” certain conditions “that may help to alleviate the extreme financial burdens” they have faced and “may face again.” *Id.* at 2. On the same day, OUII filed a response stating that it supported RJR’s motion to terminate. *Id.*

On January 17, 2025, the CALJ requested additional briefing to provide a more detailed explanation of the relevant authority governing respondents’ request for termination with conditions. *Id.* (citing Order No. 57). On January 31, 2025, Respondents filed a supplemental brief requesting that the CALJ impose six conditions on RJR with respect to any future complaint filed by RJR: 1) any new investigation should be assigned to the CALJ; 2) the same staff from OUII should be assigned; 3) public interest should be delegated to the CALJ; 4) respondents’ counsel should be allowed to retain all documents, including documents designated as confidential under the administrative protective order, for twelve months after termination; 5) any future complaint on substantially similar claims filed within twelve months should be confined to the issues in the pre-hearing briefs already filed; and 6) if a new complaint is filed within twelve months, the parties should be permitted to renew the same motions *in limine*. *Id.* at 2, 4. On February 14, 2025, both RJR and OUII filed supplemental briefs. *Id.* at 2.

On March 7, 2025, the CALJ issued the subject ID (Order No. 58) terminating the investigation without prejudice. The ID first finds that termination with prejudice is not permitted under Section 337(b)(1). *Id.* at 4 (citing *Certain Bar Clamps, Bar Clamp Pads, & Related Packaging, Display, & Other Materials*, Inv. No. 337-TA-429, Comm’n Op., 2001 WL 36114993, at *2 (Feb. 13, 2001)). The ID also rejects each of the six conditions respondents requested to be included with any termination order, finding, in particular, that the Commission can evaluate the merits of any future complaint when, and if, such a complaint is filed.

On March 14, 2025, Respondents filed a petition for review, requesting the same conditions for termination presented to the CALJ. On March 21, 2025, RJR and OUII each filed a response.

The Commission has determined not to review the subject ID (Order No. 58). In light of respondents’ arguments before the CALJ, we note that it would be premature at this time for the Commission to decide the effect, if any, of this termination on a future complaint that might be filed. Accordingly, the Commission need not and does not now decide what action it may take, or what conditions may apply, should RJR file a complaint based on the same or similar alleged violations of section 337 by these respondents in the future. Nor does the Commission now decide whether and how, if a new investigation were instituted based on the same or similar allegations, the record from the instant investigation may be used in such future investigation. However, we note that “during the investigation of any refiled complaint, the facts and circumstances may make it appropriate for the presiding ALJ or the Commission to adopt some or all of the record of the original investigation” and “the parties may not necessarily be forced to duplicate procedures and filings that occurred in the original investigation.” *Certain Bar Clamps, Bar Clamp Pads, and Related Packaging, Display, and Other Materials*, Inv. No. 337-TA-429, Comm’n Op. at 7 (Feb. 13, 2001). Moreover, “[t]he investigation of any refiled complaint could thus result in a determination of no violation of section 337 relief ... owing at

least in part to the complainant's conduct in withdrawing and then refileing its complaint." *Id.* at 8.

The investigation is terminated in its entirety.

The Commission vote for this determination took place on April 8, 2025.

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: April 8, 2025.

Lisa Barton,

Secretary to the Commission.

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