

**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 - ____

**VERIFIED COMPLAINT
UNDER SECTION 337 OF THE TARIFF ACT OF 1930**

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Appendix J	References Cited in the Certified File History of the '466 Patent

I. INTRODUCTION

1. Complainant Juul Labs, Inc. (hereinafter, “JLI”) requests that the United States International Trade Commission institute an investigation into violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

2. JLI is the clear market leader in the U.S. electronic nicotine delivery system (“ENDS”) device market. Unfortunately, infringement of JLI’s intellectual property is rampant, with dozens of entities found to be manufacturing, importing, selling, or selling for importation articles that infringe JLI’s patents. Indeed, this Complaint is JLI’s second request to the Commission to institute an investigation into Section 337 violations by ENDS manufacturers and distributors. *See Certain Electronic Nicotine Delivery Systems and Components Thereof*, Investigation Docket No. 337-3346, filed on October 3, 2018 and amended on October 26, 2018.

3. JLI’s allegations in this Complaint are based on the unlawful importation into the United States, sale for importation into the United States, and sale within the United States after importation of certain cartridges for ENDS and components thereof—such as the mouthpiece, storage compartment, and heater—that infringe one or more of five U.S. patents owned by JLI. Cartridges are also known as nicotine delivery “pods.” Many of these cartridges are direct copies of JLI’s cartridges and are expressly marketed as compatible with JLI’s ENDS devices, and can be used with other ENDS devices as well. All of the accused products infringe the asserted patents.

4. Specifically, JLI alleges that these products infringe one or more of the following patent claims (independent claims shown in bold underline):

U.S. Patent No.	Short Name	Asserted Claims
10,058,129	’129 Patent	<u>1</u> , 2, 3, 5, 6, 7, 8, <u>12</u> , 13, 16, 17, 18, <u>19</u> , 20, 22

U.S. Patent No.	Short Name	Asserted Claims
10,104,915	'915 Patent	10, 15, 17, <u>29</u> , 30, 31, 32
10,111,470	'470 Patent	<u>1</u> , 2, 3, 4, 7, 8, 10, 11
10,117,465	'465 Patent	<u>1</u> , 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, <u>20</u>
10,117,466	'466 Patent	<u>1</u> , 4, 5, 6, 7, 8, 10, 12, 14, 16, 17, 18, 19, <u>20</u> , 21, <u>22</u> , 23

5. The '129 Patent, '915 Patent, '470 Patent, '465 Patent, and '466 Patent are collectively referred to herein as the "Asserted Patents," and the above-listed claims of the Asserted Patents are collectively referred to herein as the "Asserted Claims."

6. The proposed Respondents fall into 17 groups, named according to their primary infringing product:

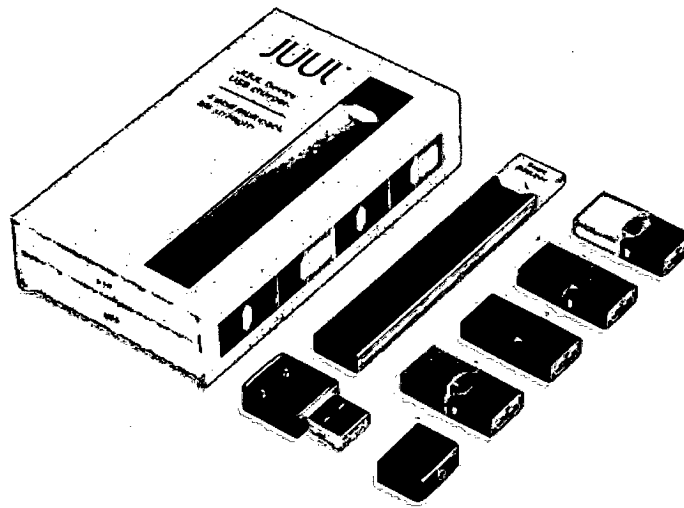
<u>Respondent Group</u>	<u>Respondents</u> (collectively "Respondents")	<u>Infringing Product(s)</u>
X Pod Group	United Wholesale LLC ("United Wholesale") Saddam Aburoumi	X Pods
Loon Pod Group	Maduro Distributors, Inc. ("Maduro")	Loon Pods
Iced Pod Group	DripTip Vapes LLC ("DripTip") Ziip Lab S.A. ("Ziip Labs") Ziip Lab Co., Ltd. ("Ziip China") Shenzhen Yibo Technology Co., Ltd. ("Yibo")	Iced Pods
Atom Pod Group	DripTip	Atom Pods
ViV Pod Group	Vapor 4 Life Holdings, Inc. ("Vapor4Life") DripTip	ViV Pods
Airbender ZPod Group	Vaperz LLC ("Vaperz") Ziip Labs Ziip China Yibo DripTip The ZFO ("ZFO") The Electric Tobacconist, LLC ("Electric Tobacconist")	Airbender ZPods
JC01 Pod Group	Shenzhen OVNS Technology Co., Ltd. ("OVNS") MistHub, LLC ("MistHub") ZFO Lan & Mike International Trading Inc. ("VaporDNA")	JC01 Pods

<u>Respondent Group</u>	<u>Respondents</u> <u>(collectively “Respondents”)</u>	<u>Infringing Product(s)</u>
VQ Pod Group	Vaportronix, LLC (“Vaportronix”) ZFO	VQ Pods
Fuma Pod Group	Fuma Vapor, Inc. (“Fuma”) ZFO	Fuma / Fumo Pods
Zalt Pod Group	Vape4U LLC (“Vape4U”) ZFO	Zalt Pods
Magic Mist Pod Group	ParallelDirect LLC (“ParallelDirect”)	Magic Mist Pods
J Pod Group	Shenzhen Haka Flavor Technology Co., Ltd. (“Haka”) Shenzhen OCIGA Technology Co., Ltd. (“OCIGA”) Lizard Juice, LLC (“Lizard”)	J Pods / Ref Pods
Edge Pod Group	ZFO Electric Tobacconist	Edge Pods
5-Star Universal Pod Group	Sarvasva LLC (“Sarvasva”)	5-Star Universal Pods
Blankz Pod Group	Electric Tobacconist VaporDNA	Blankz Pods
Sex Pod Group	Noah Dovberg	Sex Pods
Sea100 Pod Group	Twist Vapor Franchising, LLC (“Twist”) ZFO	Sea100 Pods

JLI’s Beginnings: Filling a Gap in the ENDS Market

7. Since its founding in 2007, JLI has sought to provide a satisfying alternative to combustible cigarettes by developing its ENDS products. JLI’s mission—to switch adult smokers from cigarettes—was the driving force behind its product development.

8. As graduate students at Stanford University’s Product Design program in the mid-2000s, the founders of JLI, James Monsees and Adam Bowen, applied their background in design and engineering to the challenge of finding a better alternative to cigarettes. As cigarette smokers at the time, Monsees and Bowen saw a gap in the alternative smoking environment, which then included, for example, nicotine vaping and heat-not-burn systems, for adults who wanted to make the switch from combustible cigarettes. These early ENDS were often overly complex to use and failed to provide the experience traditional cigarette smokers expected.



Physical Exhibit 1 – Representative JUUL Starter Kit

9. Monsees and Bowen set out to change that. They knew that, to succeed where other ENDS had failed, they needed to develop a product that was different from a cigarette in design, but similar in convenience, simplicity, and satisfaction. Monsees and Bowen leveraged their design and scientific know-how to develop a real alternative for adult smokers. The resulting innovations ultimately led to the introduction in June 2015 of the branded JUUL system (“JUUL system” or “Domestic Articles”), which includes the nicotine-delivery cartridges or “pods” (“JUULpods”) and the ENDS device body (“JUUL device”). Many of these innovations became the subject of patent filings, including those patents asserted in this Investigation.

10. Smoking is the most prevalent addiction in the United States and the number one cause of preventable death worldwide. Exhibit 1 (SSA Article - Global Statistics on Addictive Behaviours); Exhibit 2 at 1-4 (CDC - Quitting Smoking); Exhibit 3 at 1-2 (FDA - 2018 Strategic Policy Roadmap); Exhibit 4 at 1-3 (CDC - Fast Facts Smoking & Tobacco). Tobacco kills half of its users, totaling more than seven million people worldwide each year. Exhibit 5 at 1 (Am. Cancer Society Position Statement on E-Cigarettes); Exhibit 6 at 1 (WHO Tobacco Fact Sheet). The toxic chemical compounds in tobacco products—and particularly in the smoke created by

setting tobacco on fire—are directly and primarily responsible for the illness and death caused by cigarettes. Exhibit 3 at 3. Smoking not only steals valuable years of life but significantly increases national healthcare costs. Exhibit 7 at 5 (Levy - Potential Deaths Averted in USA by Replacing Cigarettes with E-Cigarettes); Exhibit 8 (CMS - Historical Statistics). The Centers for Disease Control estimates that smoking costs the country \$14 billion in *monthly* health care costs and \$11 billion monthly in lost productivity. Exhibit 9 at 1-4 (CDC - Economic Trends in Tobacco).

11. Not surprisingly, roughly 70% of adult smokers report that they want to give up smoking. Exhibit 2 at 2-3. But the average smoker will attempt to give up the habit more than 30 times before successfully doing so for at least one year. Exhibit 10 at 5-7 (Chaiton - Estimating the Number of Quit Attempts It Takes to Quit Smoking Successfully in a Longitudinal Cohort of Smokers). Importantly, smoking cessation fails over 90% of the time without some form of support. *Id.* at 3-7.

12. ENDS technology represents a potential solution. Recent studies show that switching from cigarettes to an ENDS can reduce exposure to toxic byproducts by up to 99%. Exhibit 11 at 1-3 (NASPH - Consequences of E-Cigarettes); Exhibit 3 at 4-7. One 2017 study lead by researchers from the Oncology Department at Georgetown University Medical Center estimated that 6.6 million premature deaths could be averted over the next decade if all smokers switched to an ENDS. Exhibit 7 at 3. Relatedly, healthcare analysts estimate that for every 1% of cigarette smokers who switch to ENDS, lifetime cost-savings to Medicaid programs would be \$2.8 billion. Exhibit 12 at 1 (Policy Study - Expected Savings to Medicaid from Substituting Electronic for Tobacco Cigarettes). Notably, the FDA and other health organizations have concluded that nicotine, while highly addictive, does not itself directly cause the cancer, lung or

heart diseases associated with combusted cigarette smoking. Exhibit 13 at 2 (Gottlieb - A Nicotine-Focused Framework for Public Health) (“Nicotine . . . is not directly responsible for the tobacco-caused cancer, lung disease, and heart disease that kill hundreds of thousands of Americans each year.”).

The JUUL System: A Runaway Success

13. Within a few years of the launch of the JUUL system, JLI became the recognized market leader in the ENDS device and cartridge refill market. Exhibit 14 at 1-3 (CNBC Article - “Popular E-Cigarette Juul’s Sales Have Surged Almost 800 Percent Over the Past Year”); Exhibit 15 (Bloomberg Article – “E-Cigarette Maker Juul Labs Is Raising \$1.2 Billion”); Exhibit 16 (Bloomberg Article – “Imperial Takes on Juul as Big Tobacco Faces Upstart Rival”). After a slow start for a then-unknown company, JLI’s products began to gain significant word-of-mouth momentum. By the summer of 2016, the market share for the JUUL system began to grow steadily—and then exponentially. As shown in the table below, JLI is now responsible for over 95% of the growth in the ENDS cartridge refill market in the United States. Confidential Exhibit 17 at ¶ 10, App. 5 (Danaher Decl.); Confidential Exhibit 18 at 3 (Nielsen 4-Week Sell-Through US); Confidential Exhibit 19 at 3 (IRI 4-Week Sell-Through US).

Appendix 5: U.S. ENDS Pod Market Retail Unit Sales Growth 2018

4-Week Unit Sales by End Date

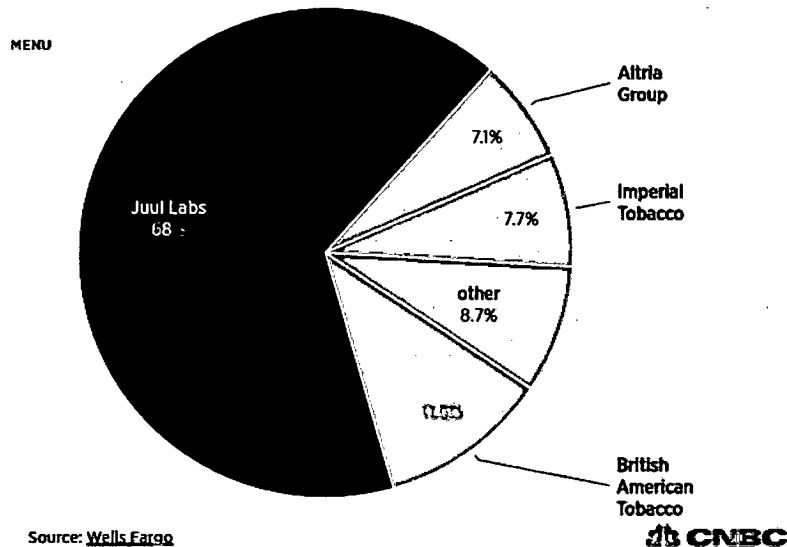
	Nielsen			IRI		
	Apr 21	Sep 8	Share of Growth	Apr 22	Sep 9	Share of Growth
Total Market	36,002,645	55,773,039	100%	29,546,883	50,793,955	100%
Juul	22,618,886	41,501,172	95.5%	14,964,158	35,166,120	95.1%
Vuse	6,385,922	6,172,595	-1.1%	7,204,900	7,409,312	1.0%
MarkTen	3,677,300	4,240,285	2.8%	2,904,168	3,230,237	1.5%
Logic	1,785,167	2,018,023	1.2%	1,928,841	1,876,006	-0.2%
Blu	1,062,360	1,461,127	2.0%	1,305,209	1,937,225	3.0%
Other	473,010	379,837	-0.5%	1,239,607	1,175,055	-0.3%

14. Today, the JUUL system is the leading alternative for adult smokers, and analysts are calling it a “runaway success.” Exhibit 15 at 1-2. As one commentator stated: “It’s no secret that [JLI] has dominated the [ENDS device] market over the past year, but just how much it has dominated is eye-popping.” Exhibit 14 at 1. Similarly, a Wells Fargo analysis of Nielsen data recently reported that JLI’s effective annual dollar sales of ENDS skyrocketed 783% in the 52-week period ending June 16, 2018, reaching \$942.6 million. *Id.* at 2. Even more recently, JLI’s sales of ENDS have surged by 882%—boosting JLI’s United States market share of ENDS to 68%. *Id.*

15. As shown in the graphic below, JLI has captured the majority share of the United States’ ENDS market. Exhibit 14 at 3. Its share continues to grow in size. For example, as of early September 2018, JLI’s market share by volume of the U.S. ENDS cartridge refill market is about 72%. Confidential Exhibit 17 at App. 3.

Juul dominates the U.S. e-cigarette market

Juul Labs represented 68 percent of dollar market share in the four-week period ended June 16, 2018, according to Nielsen data.



<https://www.cnbc.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-past-year.html>.

Proliferation of JUULpod Copies and Other Infringing Cartridges

16. JLI's market share and innovative products have led to competition from copyists—like Respondents—who hope to profit by stealing JLI's intellectual property. These entities produce cartridges that are nearly identical to JLI's patented cartridges, which they then import and sell in the United States. These infringing cartridges may be used with various ENDS devices—many of which are themselves copies of JLI's ENDS devices—or they may be expressly designed and marketed as compatible with JLI's ENDS devices.

17. Indeed, those in the industry have noted the rapid proliferation of "Juul-compatible" cartridges that are taking advantage of the JUUL system's success. Exhibit 20 at 1 (Vaper City Blog Entry - "Top Juul-Compatible Pods on the Market") (stating that "[e]ver since the Juul device burst onto the vape market, companies have been churning out...Juul-compatible pods to keep up with the trend.") Respondents market these JUULpod look-alikes at a fraction of the price of the JUULpods, without the same attention to quality control that JLI employs. *See*,

e.g., Exhibit 21 at 1 (Web Printout of Vaperz's Store Showing All Airbender ZPods for Sale) (selling Airbender ZPods that are marketed as "Airbender Pods for JUUL"); Exhibit 22 at 1 (Web Printout of Vape4U's Store Showing All Zalt Pods for Sale) (selling Zalt Pods that are marketed as "Juul Compatible Pods" and noting that these are "[t]he absolute cheapest prefilled pods for the Juul system on the market!"). While JLI manufactures, through the use of contract manufacturers, its liquid nicotine formulation and fills its cartridges under tight quality controls here in the United States, on information and belief, each Respondent maintains its liquid nicotine formulation manufacturing and cartridge filling operations in China, operating without necessarily complying with FDA regulations and operating under unspecified quality control procedures.

JLI's Leadership: Setting Corporate Responsibility Standards

18. JLI markets only to adult smokers and takes great pains to combat youth use. Indeed, JLI maintains that no non-nicotine user, especially youth, should ever use its product or any other product designed to deliver nicotine. In this regard, JLI is dedicated to raising the standard for responsibility in the ENDS industry, committing an initial investment of at least \$30 million for independent research, youth and parent education, and community engagement efforts. Further, JLI proactively adopted a 21+ "age-gate" nationwide that limits online purchases of JUUL products via JLI's e-commerce site to adults 21 and older, despite a majority of states permitting sales to 18-year olds. JLI has partnered with an industry leading age verification service to complete a public-records search to determine whether a purchaser is 21 years of age or older. If the system cannot immediately verify age, the user is required to upload a photo I.D. And JLI continually strengthens its online age verification system, most recently implementing a request to input the last four digits of a consumer's social security number to enhance

verification. In addition, JLI adopted a comprehensive marketing code—particularly on social media—under which JLI adheres to strict guidelines to ensure that its marketing and sales are directed *only* toward adult smokers.

19. In contrast, each Respondent appears to make only half-hearted attempts, if any, to prevent youth adoption—the single most important challenge facing the industry. *See* Exhibit 23 (Web Printout of FDA Press Release Regarding Preventing Youth Access to Flavored Nicotine Products). Respondents’ cartridge products are easily purchased online after simply checking an unverified box or filling out a basic unverified form. *See, e.g.,* The ZFO at thezfo.com; The Loon at theloonmn.com; DripTip at driptipvapes.com. And in contrast to JLI’s simple, adult-oriented flavors such as Mango and Virginia Tobacco, many of the Respondents sell cartridges in a variety of flavors having obvious, if not deliberate, youth appeal, such as “Pink Frosted Yellow Cakes,” “Berry Lemonade,” and “Green Apple Candy.” *See, e.g.,* Exhibits 21, 22. On information and belief, Respondents lack any meaningful or formalized program for preventing minors from purchasing their low-cost products. Without safeguards, including age-verification and policing, Respondents’ products are ending up in the hands of underage users. Indeed, it is this very behavior that FDA seeks to address, most recently in Commissioner Gottlieb’s November 15, 2018 statement on proposed new steps to protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes. *See* <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm625884.htm>. In that statement, Dr. Gottlieb announced a new policy framework where all flavored ENDS products (other than tobacco, mint and menthol flavors or non-flavored products) will be sold in age-restricted, in-person locations and, if sold online, will be sold under heightened practices for age verification. *Id.*

20. Given the encroachment on JLI's intellectual property, the importance of continued availability of high-quality ENDS, and the immediate need for corporate responsibility in this burgeoning industry—particularly as to youth prevention—JLI seeks as relief: (i) a permanent limited exclusion order under 19 U.S.C. § 1337(d) barring from entry into the United States the Accused Products that infringe the Asserted Patents, (ii) a permanent cease-and-desist order under 19 U.S.C. § 1337(f) prohibiting Respondents and their affiliates, subsidiaries, successors, and assigns from importing, marketing, distributing, repairing, providing warranty services, selling, offering for sale, or selling after importation into the United States ENDS products including devices, cartridges, and all components thereof, that infringe the Asserted Patents, and (iii) any other relief deemed appropriate by the Commission.

21. Further, JLI requests that the Commission impose a bond on Respondents' importation of infringing products during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j) to prevent further injury to JLI and its domestic industry relating to the Asserted Patents.

II. THE PARTIES

A. The Complainant

22. JLI is 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. JLI was incorporated in 2007, beginning as a small start-up consumer-products company. Since its founding in 2007, however, JLI matured into an FDA-regulated enterprise, dedicating significant resources to its capacities in the United States both in terms of assets and personnel. The Domestic Articles were first brought to market in June 2015 by JLI's predecessor corporate entity, Pax Labs, Inc. ("Pax"). On June 30, 2017, Pax was renamed Juul Labs, Inc., making Juul Labs, Inc. the direct successor-in-interest of the original Pax Labs. Juul Labs, Inc.

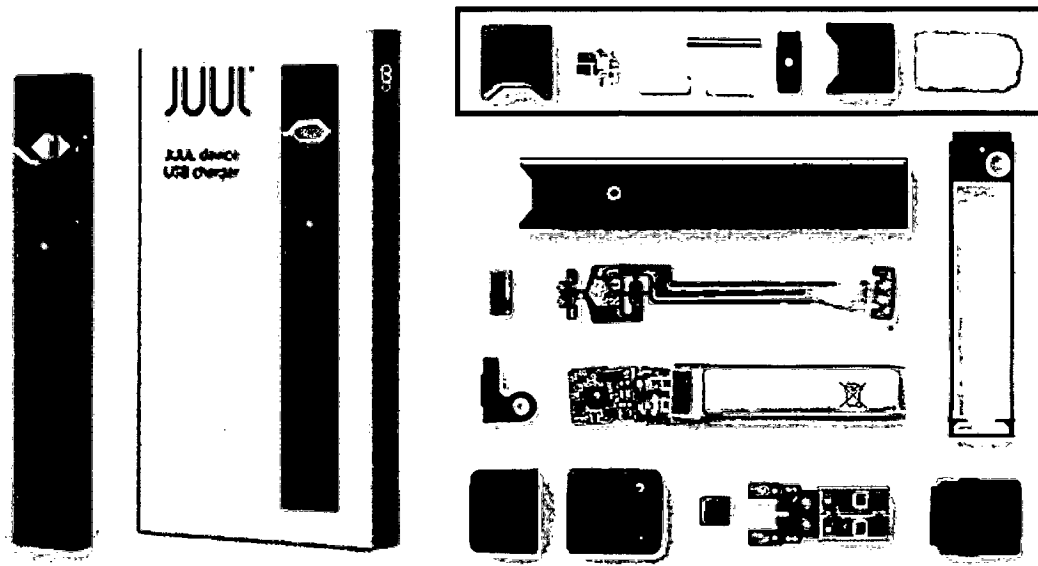
then spun off certain products (other than the JUUL system), personnel, and resources into a new, distinct corporate entity named Pax Labs, Inc. (New Pax). New Pax focuses on other vaporization fields that do not involve the vaporization of nicotine liquid formulations.



The JUUL System

23. Three core concepts drove the development of the JUUL system: (i) an elegant design to replace the cigarette iconography of the “round white burning stick”; (ii) a simple user interface requiring no buttons, switches, or complex instructions; and (iii) reliable performance. And the liquid nicotine formulation of the JUUL system was specially formulated to mimic nicotine satisfaction similar to that of cigarettes.

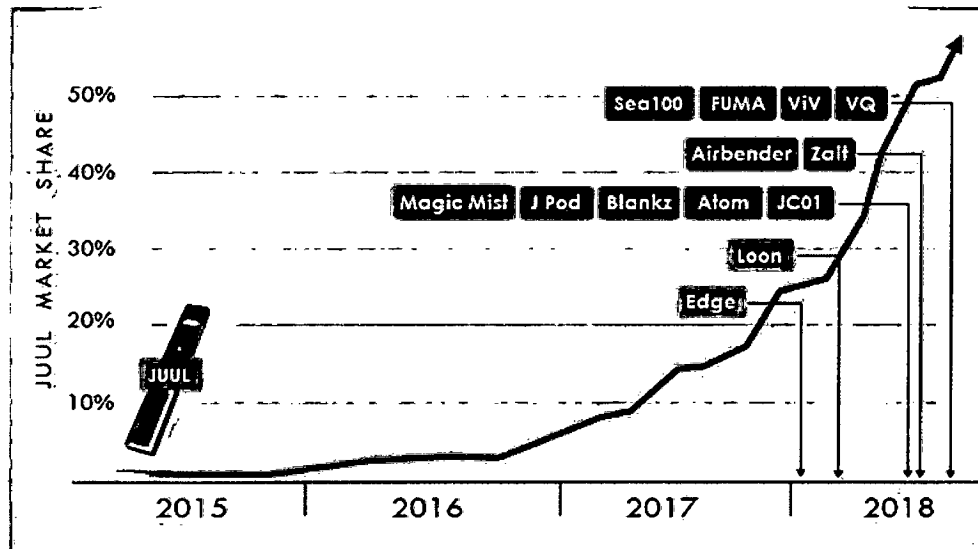
24. Years of research and development, leading to multiple innovations in ENDS technology, resulted in JLI’s market-leading product, the JUUL system: an elegant, intuitive cartridge-based device that delivers a satisfying experience to help adult smokers switch from combustible cigarettes. By way of illustration, certain elements of the JUUL system are shown below, including the JUUL device (far left), JUULpod (certain components of which are included in the red box), its packaging, and various other system components.



The JUUL system, packaging, and components

B. Respondents

25. In contrast to JLI, Respondents are mostly bit players and recent entrants in the ENDS market. Seeing an opportunity to capture some of JLI's success with minimal investment, Respondents blatantly emulated the distinctive design of the JUULpods and JUUL system.



Cascade of Copy-Cats Entering Market Starting in 2018

26. On information and belief, Respondents copied JLI's innovative design and other patented features to steal JLI's domestic market share by importing into the United States—often at lower prices—infringing products such as cartridges and components thereof that include JLI's patented technology.

1. X Pod Group

a) United Wholesale LLC (“United Wholesale”)

27. On information and belief, Respondent United Wholesale is a Connecticut limited liability company with its principal place of business at 73 Linden St., Glastonbury, CT 06033. Exhibit 24 (Company Records for United Wholesale LLC).

28. On information and belief, Respondent United Wholesale has engaged and continues to engage in the development, importation, distribution, and/or sale of the X Pod products in the United States. The packaging of the X Pod product states “Designed by United Wholesale CT USA.” Exhibit 25 at 2 (X Pod Photographs). Mr. Ibrahim Eideh, testifying on behalf of United Wholesale in a separate litigation (Case No. 3:18-cv-01396-KAD in D. Conn.) stated that he was involved in the design, importation, and sale in the United States of X Pod products. Exhibit 26 (Eideh Deposition) at 176:21-179:1, 181:16-182:12, 184:13-187:4. Mr. Eideh also stated during his deposition that the X Pod products were manufactured in a factory in China. *Id.* at 38:7-40:6, 45:9-52:11.

b) Saddam Aburoumi

29. On information and belief, Respondent Saddam Aburoumi is an individual residing at 193 Homestead Street, Unit D3, Manchester, CT 06042. Confidential Exhibit 27 (Personal information report for Saddam Aburoumi).

30. On information and belief, Mr. Aburoumi has engaged and continues to engage in the development, importation, distribution, and/or sale of the X Pod products in the United States. Mr. Ibrahim Eideh, testifying on behalf of United Wholesale in a separate litigation (Case No. 3:18-cv-01396-KAD in D. Conn.) stated that Mr. Aburoumi was his partner and was involved in the design, importation, and sale in the United States of X Pod products. Exhibit 26 at 176:21-179:1, 181:16-182:12, 184:13-187:4. Mr. Eideh also stated that the X Pod products distributed by Mr. Aburoumi were from the same source in China as the X Pods distributed by United Wholesale. *Id.* at 35:2-36:10.

2. Loon Pod Group

a) *Maduro Distributors, Inc. (“Maduro”)*

31. On information and belief, Respondent Maduro is a Minnesota corporation with its principal place of business at 245 E. Roselawn Ave. #24, Maplewood, MN 55117. Exhibit 28 (Business Records of Maduro Distributors, Inc.); Exhibit 29 (Loon Trademark Registration for Maduro Distributors, Inc.). On information and belief, Maduro owns and operates www.theloonmn.com. Exhibit 30 (WHOIS Report for theloonmn.com).

32. On information and belief, Respondent Maduro’s Loon Pods are marketed to consumers in the United States. Exhibit 31 (Web Printout of Maduro’s Store Selling Loon Pods Starter Kit); Exhibit 32 (Web Printout of Maduro’s Store Showing All Loon Pods for Sale); Exhibit 33 (Web Printout of Loon Product Store Locator). These products are expressly marketed as “compatible with other major brands.” Exhibit 31. On information and belief, Maduro produces its Loon Pods in China. Exhibit 34 at 2-3 (Loon Pod Photographs).