

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN CIGARETTES AND
PACKAGING THEREOF

Investigation No. 337-TA-643

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

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U.S. INTERNATIONAL TRADE COMMISSION
2008 SEP 21 PM 4:35

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

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

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-1999. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On April 4, 2008, the Commission instituted this investigation, based on a complaint filed by Philip Morris USA Inc. (“PM USA”) of Richmond, VA, naming Alcesia; Emarket Systems Ltd. (d.b.a. all-discount-cigarettes.com); Jamen Chong (d.b.a. asiadfs.com); Tri-kita (d.b.a. cheapcigarettes4all.com); Mr. Eduard Lee (d.b.a. cigarettesonlineshop.com); Zonitech Properties Limited (d.b.a. cigline.net); Zonitech Properties Limited (d.b.a. shopping-heaven.com); Cendano (d.b.a. galastore.com); Ms. Svetlana Trevinska (d.b.a. save-on-cigarettes.com); LMB Trading SA (d.b.a. k2smokes.ch); G.K.L. International SRL (d.b.a. all-cigarettes-brandsxom); G.K.L. International SRL (d.b.a. smokerjim.net); and Best Product Solution Ltd. as respondents. The complaint alleges violations of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the importation into the United States of certain cigarettes and packaging thereof that infringe registered trademarks owned by PM USA. Subsequent to institution all respondents but Alcesia were found in default.

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

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

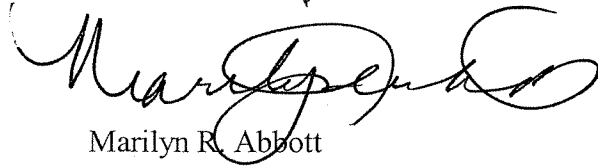
Having examined the record of this investigation, including the ALJ’s summary ID, the Commission has determined to affirm the ALJ’s finding that Alcesia has violated section 337 by selling for importation into the United States gray market cigarettes that infringe PM USA’s Marlboro®, Parliament®, and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

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

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

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-50).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Marilyn R. Abbott". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Marilyn R. Abbott
Secretary to the Commission

Issued: September 21, 2009

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN CIGARETTES AND
PACKAGING THEREOF**

Inv. No. 337-TA-643

GENERAL EXCLUSION ORDER

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) based on the unlawful importation and sale of certain cigarettes and packaging thereof that infringe United States Trademark Registration Nos. 68,502, 378,340, and 894,450, which cover the "Marlboro," "Parliament" and "Virginia Slims" marks.

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, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is necessary (1) to prevent circumvention of an exclusion order limited to products of named persons and (2) because there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing cigarettes and packaging thereof bearing the trademarks at issue.

The Commission has further determined that the public interest factors enumerated in 19

U.S.C. § 1337(d) do not preclude issuance of the general exclusion order, and that the bond during the Presidential review period shall be in the amount of 100% of the entered value of the cigarettes in question bearing Marlboro®, Parliament®, and Virginia Slims® trademarks.

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

(1) Marlboro®, Parliament®, or Virginia Slims® branded cigarettes and packaging thereof manufactured for sale and use outside the United States that (a) infringe one or more of the following U.S. Trademark Reg. Nos. 68,502, 378,340, and 894,450 and (b) are materially different from cigarettes manufactured by or under authority of Philip Morris USA, Inc. for sale and use in the United States, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from warehouse for consumption, except if imported by, under license from, or with the permission of the trademark owner, or as provided by law, until such date as the trademarks are abandoned, canceled, or rendered invalid or unenforceable. This paragraph shall apply to cigarettes and packaging thereof exported, shipped, sold, purchased, or imported by any and all persons.

(2) Notwithstanding paragraph 1 of this Order, the aforesaid cigarettes and packaging thereof excludeable under paragraph 1 of this Order 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 100% of the entered value of Marlboro®, Parliament®, and Virginia Slims® branded cigarettes 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.* 43251) 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 60 days after the date of receipt of this Order.

(3) Notwithstanding paragraphs 1 and 2 of this Order, the aforesaid cigarettes and packaging thereof are entitled to entry into the United States for consumption, without payment of bond, if, upon importation, they accompany a person arriving in the United States and the U.S. Customs and Border Protection (“CBP”) is satisfied that they are being imported for the arriving person’s personal use rather than for commercial purposes.

(4) In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to cigarettes and packaging thereof bearing the Marlboro®, Parliament®, and Virginia Slims® trademarks 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) Complainant Philip Morris USA Inc. shall file a written statement with the Commission, made under oath, each year on the anniversary of the issuance of this Order stating whether Philip Morris USA Inc. continues to use each of the aforesaid trademarks in commerce in the United States in connection with cigarettes and packaging thereof, whether any of the aforesaid trademarks has been abandoned, canceled, or rendered invalid or unenforceable, and whether Philip Morris USA Inc. continues to satisfy the economic requirements of Section 337(a)(2).

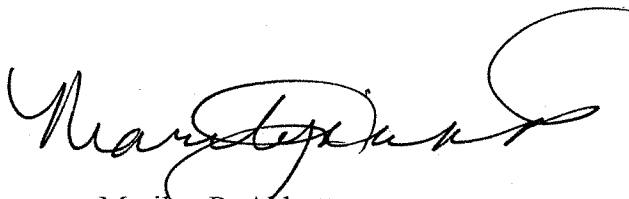
(6) The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.76).

(7) The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and CBP.

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

(8) At the discretion of CBP and pursuant to procedures it establishes, persons seeking to import cigarettes and packaging 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 this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

By Order of the Commission.

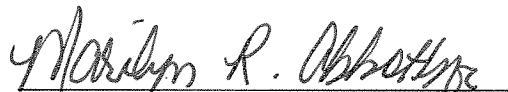
A handwritten signature in black ink, appearing to read "Marilyn R. Abbott", with a large, sweeping flourish at the end.

Marilyn R. Abbott
Secretary to the Commission

Issued: September 21, 2009

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF COMMISSION FINAL DETERMINATION OF VIOLATION OF SECTION 337; TERMINATION OF INVESTIGATION; ISSUANCE OF GENERAL EXCLUSION ORDER** has been served by hand upon the Commission Investigative Attorney Rett V. Snotherly, Esq., and the following parties as indicated, on September 22, 2009.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
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