

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

**Before the Honorable Doris Johnson Hines
Administrative Law Judge**

In the Matter of

**CERTAIN VAPORIZER DEVICES,
CARTRIDGES USED THEREWITH,
AND COMPONENTS THEREOF**

Inv. No. 337-TA-1372

**COMPLAINANT'S RESPONSE
TO RESPONDENT'S CONTINGENT MOTION TO CERTIFY
A REQUEST FOR JUDICIAL ENFORCEMENT OF A SUBPOENA**

(Motion Number 1372-022)

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[REDACTED]

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I. INTRODUCTION

Complainant NJOY, LLC (“NJOY”) respectfully submits that Respondent JUUL Labs. Inc.’s (“JLI”) Motion No. 1372-022 should be denied-in-part.

JLI asks “first” that a separate motion filed by Complainant NJOY, LLC (“NJOY”) be denied. Br. 1. This request should be denied and any related argumentation should be disregarded as procedurally improper.

JLI asks “second” for the ALJ to certify a request for judicial enforcement of JLI’s subpoena to R.J. Reynolds Vapor Company (“RJR”) “to the extent the Administrative Law Judge and the Commission grant NJOY’s request to certify judicial enforcement of its subpoena.” Br. 1. NJOY does not oppose JLI’s motion insofar as it seeks native CAD files from RJRV or testimony on Deposition Topic No. 26, which appear to be narrow and specific requests. Br. 12. However, NJOY opposes the remainder of JLI’s requests on two grounds. First, JLI’s requests are overbroad, vague, and unreasonable. Granting JLI’s requests as written would serve only to delay and complicate discovery. Second, JLI’s attempt to tie its motion and relief to NJOY’s independent motion is improper. JLI alone bears the burden to show the purpose, relevance, and reasonableness of its requests. Moreover, tying the two motions together would enable JLI to continue to delay and disrupt enforcement of NJOY’s subpoenas.

NJOY respectfully requests that the Administrative Law Judge i) disregard JLI’s arguments opposing NJOY’s motion to enforce, ii) deny JLI’s motion in part, and iii) treat JLI’s motion independently from NJOY’s motion.

II. LEGAL STANDARDS

Commission Rule 210.32(g) governs the enforcement of subpoenas and provides that:

In order to obtain judicial enforcement of a subpoena issued under paragraphs (a)(3) or (c)(2) of this section, the administrative law judge shall certify to the Commission, on motion or sua sponte, a

request for such enforcement. The request shall be accompanied by copies of relevant papers and a written report from the administrative law judge **concerning the purpose, relevance, and reasonableness of the subpoena.**

(emphasis added).

III. ARGUMENT

A. JLI's Arguments Opposing NJOY's Motion to Enforce Are Procedurally Improper and Should Be Disregarded

JLI argues, inter alia, that there is not enough time to enforce NJOY's subpoena and that NJOY has not been diligent in seeking discovery. *E.g.*, Br. at 6-10. These arguments are in opposition to NJOY's independent motion to enforce and have no bearing on JLI's motion or requested relief.

JLI's opposition arguments are procedurally improper and should be disregarded by the ALJ. Per 19 C.F.R. § 210.15(c), a nonmoving party may respond to a motion within ten days after service. Per G.R. 5.5, a moving party may reply within three business days of the deadline for filing a response. Permitting JLI to include opposition arguments in a separate motion would i) create two parallel sets of papers making the same arguments and ii) give JLI the last word in reply to NJOY's motion.

To the extent JLI raises these arguments in opposition to NJOY's motion, NJOY will address them in a reply brief.

B. JLI's Motion Should Be Denied-in-Part Because JLI's Requests Are Unreasonable

As noted above, NJOY does not oppose JLI's request for RJRV's native CAD files or Deposition Topic No. 26. The remainder of JLI's requests, however, are vague, overbroad, and unreasonable. Such requests, if granted, would serve only to delay discovery.

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