

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

HEALTHIER CHOICES MANAGEMENT
CORP.,

Plaintiff,

v.

R.J. REYNOLDS VAPOR COMPANY,

Defendant.

Civil Action No. 1:23-cv-813

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Healthier Choices Management Corp. (“Healthier Choices”), by and through its undersigned counsel, brings this action for patent infringement against Defendant R.J. Reynolds Vapor Company (“RJR Vapor”) (“Defendant”) and alleges as follows:

NATURE OF ACTION

1. This is a civil action for patent infringement of U.S. Patent No. 9,538,788 (“the ’788 patent”), arising under the United States patent laws, Title 35, United States Code §§ 1, *et seq.*

2. The inventions claimed in the ’788 patent are the result of significant investment, research, and development by Healthier Choices. RJR Vapor’s products, including its Vuse vapor products infringe one or more claims of the ’788 patent.

3. With this lawsuit, Healthier Choices seeks to be compensated for RJR Vapor’s use of its patented technology.

THE PARTIES

4. Healthier Choices is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 3800 North 28th Way, Suite 1, Hollywood, Florida 33020.

5. Upon information and belief, RJR Vapor is a North Carolina corporation with its principal place of business located at 401 North Main Street, Winston-Salem, North Carolina 27101.

6. Upon information and belief, RJR Vapor is a wholly-owned subsidiary of Reynolds American Inc., which in turn is a wholly-owned subsidiary of British American Tobacco, p.l.c., a publicly-traded company on the London Stock Exchange and headquartered in London, England.

JURISDICTION AND VENUE

7. This action arises under the Patent Laws of the United States, Title 35 of the United States Code, and this Court has subject matter jurisdiction over Healthier Choices' patent infringement claims under 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over RJR Vapor because it is incorporated in North Carolina and its principal place of business is located in this District. Personal jurisdiction is also proper because RJR Vapor has committed and continues to commit acts of patent infringement within this District by, *inter alia*, making, using, selling, offering for sale, importing, advertising, and/or promoting products in this District that infringe one or more claims of the '788 patent.

9. Venue is proper in this District under 28 U.S.C. § 1400(b) because RJR Vapor resides in this District and has its principal place of business in this District. RJR Vapor also has a regular and established place of business in this District and has committed acts of patent infringement in this District.

THE '788 PATENT

10. The '788 patent is entitled "Electronic Cigarette," and was duly and legally issued by the United States Patent & Trademark Office ("PTO") on January 10, 2017. A true and correct copy of the '788 patent is attached hereto as Exhibit A.

11. Healthier Choices is the assignee of the entire right, title, and interest in the '788 patent, including the right to sue for and collect past damages, by way of assignments from the named inventors Gilbert Cyphert, Xuandong Huang, and Edwin Balder, which were recorded at the PTO on August 26, 2015, at Reel 036425, Frame 0959, on May 2, 2017, at Reel 042387, Frame 0130, and on May 19, 2017, at Reel 042501, Frame 0299.

12. Pursuant to 35 U.S.C. § 282, the '788 patent is presumed valid and enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

13. Independent Claim 1 of the '788 patent recites the following:

1. An electronic cigarette, comprising:

a casing comprising a first chamber and a second chamber, the two chambers located sequentially within the casing;

a battery located in the first chamber;

a fluid containing member located in the second chamber;

a heating assembly located in the second chamber, the heating assembly comprising a bulb containing a heating wire in communication with the battery;

a fluid passageway communicating between the fluid containing member and the heating assembly;

a tube element communicating between the first and second chambers, with a first distal end of the tube element located in the first chamber, and a second distal end of the tube element located in the second chamber and affixed to the bulb, the tube element providing an air passage between the first and second chambers;

a sealing element forming a partition between the first and second chambers; and

an air inlet provided on an external wall of the casing;

wherein the heating wire heats the bulb, and wherein the bulb heats fluid introduced to and coming in contact with the bulb through the fluid passageway.

(Exhibit A, '788 patent, 8:59-9:14).

14. The '788 patent is valid and enforceable.

RJR VAPOR'S INFRINGING VUSE PRODUCT

15. Upon information and belief, RJR Vapor has and continues to infringe the '788 patent by making, using, selling, and offering for sale in the United States including in this judicial district, and importing into the United States Vuse Alto vape pens and Vuse Alto pre-filled liquid pods that embody or use the invention claimed in the '788 patent.

16. At least RJR Vapor's Vuse Alto model products infringe one or more claims of the '788 patent, as described in the Count below. The Vuse Alto products include Vuse Alto vape pens and chargers as well as Vuse Alto pre-filled liquid pods, which are

specifically designed for use with the Vuse Alto vape pen. RJR Vapor also refers to the pre-filled liquid pods as “flavor packs,” “flavor pods,” or “ePod flavor pods.”

17. The Vuse Alto vape pen and charger is a battery-powered vape pen that includes a rechargeable lithium battery and a USB charging port. RJR Vapor sells the Vuse Alto vape pens separately in a package that includes the rechargeable vape pen and a USB charger.



Vuse Alto Vape Pen and USB Charger Packaging

18. RJR Vapor sells the pre-filled liquid pods individually or in multi-packs including, e.g., packages including two pods, four pods, or five four-pod packs.





Vuse Alto Pre-Filled Liquid Pod Packaging

19. RJR Vapor also sells the Vuse Alto vape pens and chargers together with pre-filled liquid pods packaged as a kit.



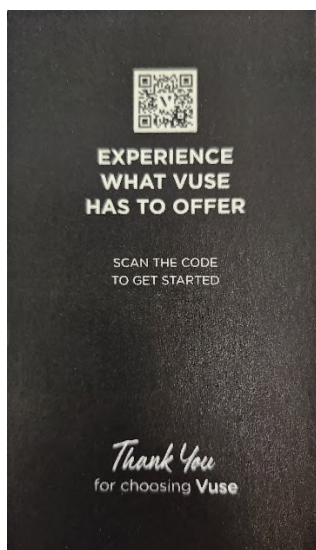
Vuse Alto Vape Pen and Flavor Pod Kit Packaging

20. The product packaging and labeling for RJR Vapor’s Vuse Alto states: “Liquids Blended in the USA,” and “Made in China.”

21. Upon information and belief, RJR Vapor has been and is inducing infringement of the ’788 patent by actively and knowingly inducing others to make, use, sell, offer for sale or import into the United States Vuse Alto vape pens and Vuse Alto pre-filled liquid pods that RJR Vapor knows infringes the ’788 patent. RJR Vapor has had knowledge of the ’788 patent since at least the filing of this lawsuit and knew or should

have known that the use of the Vuse Alto system by its customers directly infringes the '788 patent.

22. RJR Vapor instructs customers how to use the Vuse Alto system by, *inter alia*, providing customers with a QR code on its Alto packaging that includes the statement “Scan the Code to Get Started.” Upon information and belief, the QR code links to <https://vusevapor.com/customer/account/login/>, which requires users to register in order to “get access to exclusive content and savings.” Upon information and belief, the content provided by RJR Vapor includes product information including information on how to use the Vuse Alto system inducing actual infringement of the '788 patent. In addition, this complaint informs RJR Vapor that its actions induce infringement of the '788 patent.



QR Code in Packaging of RJR Vapor’s Vuse Alto All-In-One Kit

23. Upon information and belief, RJR Vapor’s distributors, retailers, end users, customers, and/or resellers of the Vuse Alto system operate or use, and/or instruct customers how to operate or use the Vuse Alto system in the United States in a way that

directly infringes the '788 patent.

24. Upon information and belief, RJR Vapor has been and is continuing to contributorily infringe the '788 patent by selling or offering to sell Vuse Alto vape pens and Vuse Alto pre-filled liquid pods, knowing them to be especially made or especially adapted for practicing the invention of the '788 patent and not a staple article or commodity of commerce suitable for substantial non-infringing use. This complaint informs RJR Vapor of its infringement of the '788 patent.

25. As shown below, the Vuse Alto pre-filled liquid pods are specifically designed to be used together with a Vuse Alto vape pen, separately, as is apparent, neither the Vuse Alto vape pen nor the pre-filled liquid pods are suitable for substantial non-infringing use.



Vuse Alto Vape Pen and Pre-Filled Liquid Pod

COUNT I **INFRINGEMENT OF U.S. PATENT NO. 9,538,788**

26. Healthier Choices repeats and realleges each preceding paragraph as if fully set forth herein.

27. RJR Vapor has been and is directly infringing, literally or under the doctrine

of equivalents, at least claim 1 of the '788 patent by making, using, selling, or offering for sale in the United States, or importing into the United States, including within this judicial district vape systems, including vape pens and liquid pods for use therewith, including those sold under the name Vuse Alto, including Vuse Alto vape pens and Vuse Alto pre-filled liquid pods, in violation of 35 U.S.C. § 271(a).

28. Upon information and belief, RJR Vapor has had knowledge of the '788 patent at least through the filing of this Complaint.

29. Upon information and belief, RJR Vapor has been and is inducing infringement of the '788 patent by actively and knowingly inducing others to make, use, sell, offer for sale, or import into the United States, including within this judicial district vape systems, including vape pens and liquid pods for use therewith that embody or use the invention claimed in the '788 patent, including those sold under the name Vuse Alto, including Vuse Alto vape pens and Vuse Alto pre-filled liquid pods, in violation of 35 U.S.C. § 271(b).

30. Upon information and belief, RJR Vapor has been and is contributing to the infringement of the '788 patent selling or offering to sell Vuse Alto vape pens and Vuse Alto pre-filled liquid pods, knowing them to be especially made or especially adapted for practicing the invention of the '788 patent and not a staple article or commodity of commerce suitable for non-infringing use, in violation of 35 U.S.C. § 271(c).

31. Upon information and belief, RJR Vapor's infringement has been and continues to be knowing, intentional, and willful.

32. RJR Vapor's acts of infringement of the '788 patent have caused and will continue to cause Healthier Choices damages for which Healthier Choices is entitled to compensation pursuant to 35 U.S.C. § 284.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Healthier Choices hereby demands trial by jury in this Action for all issues and claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Healthier Choices respectfully requests the Court to enter judgment in its favor and grant the following relief:

- a) Entry of judgment under 35 U.S.C. § 271(a) that RJR Vapor and the manufacture, importation, offer for sale, sale, and/or use of RJR Vapor's Vuse Alto system, whether literally or under the doctrine of equivalents, have infringed at least one claim of the '788 patent;
- b) Entry of judgment under 35 U.S.C. § 271(b) that RJR Vapor's manufacture, importation, offer for sale, sale, and/or use of RJR Vapor's Vuse Alto system actively induces and/or contributes to the infringement of at least one claim of the '788 patent, either literally or under the doctrine of equivalents;
- c) Entry of judgment under 35 U.S.C. § 271(c) that RJR Vapor's manufacture, importation, offer for sale, sale, and/or use of RJR Vapor's Vuse Alto system actively induces and/or contributes to the infringement of at least one claim of the '788 patent, either literally or under the doctrine of equivalents;

- d) Ordering RJR Vapor to account and pay damages adequate to compensate Healthier Choices for RJR Vapor's infringement of the '788 patent, including pre-judgment and post-judgment interest and costs and supplement damages for any continuing post-verdict or post-judgment infringement;
- e) Ordering an accounting for any infringing sales not presented at trial and an award by the Court of additional damages for any such infringing sales, including a continuing royalty for post-trial infringing sales;
- f) Awarding Healthier Choices its costs and expenses incurred in this Action;
- g) Granting Healthier Choices such other and further equitable relief which may be requested and to which Healthier Choices is entitled; and
- h) Granting such further relief as the Court deems appropriate.

Dated: September 26, 2023

Respectfully submitted,

/s/ Kurt E. Lindquist II

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North Carolina State Bar No. 10973

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