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MIKE SARIEDDINE

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MIKE SARIEDDINE,
an individual

Plaintiff,

vs.

D&A DISTRIBUTION, LLC (dba
STRICTLY E-CIG)
a Georgia limited liability company;
ELECTRONIC CIGARETTES, INC.
(dba WHOLESALE VAPOR)
a New York corporation;
LA VAPOR, INC.
a California corporation;
MADVAPES HOLDINGS, LLC
a North Carolina limited liability
company;
RRV ENTERPRISES LLC (dba
VAPOR WORLD)
an Oklahoma limited liability company;
SHENZHEN IVPS TECHNOLOGY
CO., LTD
a Chinese corporation;
SHENZHEN SMOK TECHNOLOGY
CO., LTD
a Chinese corporation;
VAPETRIK, LLC (dba RIP TRIPPER)
a North Carolina limited liability
company;

Case: 2:17-cv-2390

COMPLAINT FOR

- 1. Federal Trademark Infringement**
- 2. False Designation of Origin 15 U.S.C.**
- 3. Common Law Trademark Infringement**
- 4. California Statutory Unfair Competition**
- 5. California Common Law Unfair Competition**
- 6. Breach of Contract**
- 7. Contributory Trademark Infringement**

DEMAND FOR JURY TRIAL

LAN & MIKE INTERNATIONAL
TRADING INC. (dba VaporDNA)
a California corporation;
VAPOR AUTHORITY, INC.
a California corporation;
VAPOR RANGE, INC.
a California corporation; and
VAPRO SUPPLY, LLC
a Texas limited liability company; and
E-CIG GALLERY WHOLESALE
AND DISTRIBUTION, INC.
a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

Plaintiff, Mike Saredidine (“Saredidine” or “Plaintiff”) by and through its undersigned counsel, states as follows for his complaint against Defendants Shenzhen IVPS Technology Co., Ltd (“IVPS”) and Shenzhen Smok Technology Co. Ltd. (“Smok”) (collectively, the “Smok Defendants”) and D&A Distribution, LLC, Electronic Cigarettes, Inc., LA Vapor, Inc., MadVapes Holdings, LLC, RRV Enterprises, LLC (dba Vapor World), Vapetrik, LLC (dba Rip Trippers), Lan & Mike International Trading Inc. (“VaporDNA”), Vapor Authority, Inc., Vapor Range, Inc., Vapro Supply, LLC., and E-Cig Gallery Wholesale Distribution, Inc. (collectively, the “Retail Defendants”, and all Defendants, together with Does 1-10, are collectively referred to as the “Defendants”), and alleges as follows:

I. INTRODUCTION

1. This action arises out of Defendants’ intentional and willful decisions to ignore Saredidine’s federal and common law trademark rights in its Alien Vape e-liquid products, Defendants’ unfair competition in violation of the Lanham Act, and Smok’s intentional and willful breach of a signed settlement agreement

1 between Smok and Saredidine.

2 2. Since at least as early as May 2011, Plaintiff has manufactured and sold
3 high quality electronic cigarette products to consumers under its federally
4 registered ALIEN VAPE® trademarks.

5 3. In 2016, the Smok Defendants began to market and sell e-liquid
6 vaporizer products under the infringing brand name “Alien Kit.”

7 4. In August 2016, Saredidine notified the Smok Defendants of their
8 infringement. In October 2016, Saredidine and Smok entered into a binding
9 settlement agreement to co-promote and sell Saredidine’s “Alien Vape”-branded e-
10 liquid products (the “Settlement Agreement”) (attached hereto as **Exhibit 1**) in
11 exchange for a license to Smok to continue using the Alien Kit name on its
12 products.

13 5. The terms of the Settlement Agreement also prevented Smok from
14 advertising or selling any new products using the word “Alien” in their name.

15 6. Nevertheless, in January 2017, in direct violation of the Settlement
16 Agreement, Smok began to market and sell a new e-liquid vaporizer product under
17 the name “Alien Baby” and failed to meet any of its other obligations in the signed
18 Settlement Agreement.

19 7. As soon as he discovered this infringement of his Alien Vape mark,
20 Saredidine repeatedly notified Smok of the infringement and breach of their
21 Settlement Agreement, both informally and through his attorney.

22 8. After repeated appeals for compliance and threats of legal action, Smok
23 finally changed the name of their Alien Baby product to “AL85”.

24 9. Despite Saredidine’s federal and common law trademark rights and
25 Smok changing the name of the product, the Retail Defendants continue to
26 advertise and sell the Smok AL85 vaporizer product under the infringing name
27 “Alien Baby”.

28 10. Accordingly, due to the Defendants’ collective blatant and willful

1 infringement, Sarieddine has no choice but to file this lawsuit seeking damages that
2 it has suffered as a result of the Defendants' unfair competition, trademark
3 infringement, and breach of contract.

4 **II. JURISDICTION AND VENUE**

5 11. This Court has subject matter jurisdiction over Sarieddine's Lanham Act
6 claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1367, and 1338(a).

7 12. This Court has supplemental jurisdiction over Sarieddine's pendent state
8 law claims pursuant to 28 U.S.C. § 1367 in that the state law claims are integrally
9 interrelated with Sarieddine's federal claims and arise from a common nucleus of
10 operative facts such that the administration of Sarieddine's state law claims with its
11 federal claims furthers the interest of judicial economy.

12 13. This Court has personal jurisdiction over the Smok Defendants because
13 they do substantial business and sales in this District, and advertise, distribute,
14 offer for sale, and sell the infringing products in this District. The Smok
15 Defendants have purposefully availed themselves and directed their business at
16 opportunities in this District. The Smok Defendants have committed tortious acts
17 in this District against Plaintiff, whose principal place of business is in this District.
18 Additionally, Defendant Shenzhen Smok Technology Co. Ltd. signed a settlement
19 agreement with Plaintiff, which includes a forum selection clause naming
20 California's state and federal courts as the sole and exclusive forum for resolution
21 of disputes over the Settlement Agreement.

22 14. This Court has personal jurisdiction over LA Vapor, Inc., VaporDNA,
23 Vapor Authority, Inc., Vapor Range, Inc., and E-Cig Gallery Wholesale and
24 Distribution, Inc. (the "California Defendants") because the California Defendants
25 are located in this District, do substantial business and sales in this District, and
26 advertise, distribute, offer for sale, and sell the infringing products in this District.
27 The California Defendants have purposefully availed themselves and directed their
28 business at the opportunities of this District. The California Defendants have

1 committed tortious acts in this District against Plaintiff, whose principle place of
2 business is located in this District.

3 15. This Court has personal jurisdiction over D&A Distribution, LLC,
4 Electronic Cigarettes, Inc., MadVapes Holdings, LLC, RRV Enterprises, LLC (dba
5 Vapor World), Vapetrik, LLC (dba Rip Trippers), and Vapro Supply, LLC (the
6 “Out-of-state Defendants”) because the Out-of-state Defendants do substantial
7 business and sales in this District and advertise, distribute, offer for sale, and sell
8 the infringing products in this District. The Out-of-state Defendants have
9 purposefully availed themselves and directed their business at the opportunities of
10 this District. The Out-of-state Defendants have committed tortious acts in this
11 District against Plaintiff, whose principle place of business is located in this
12 District.

13 16. Venue is proper in this District under 28 U.S.C. § 1391.

14 **III. PARTIES**

15 17. Plaintiff Mike Saredine is an individual residing in the county of Los
16 Angeles, California.

17 18. Upon information and belief, Defendant D&A Distribution, LLC is a
18 Georgia limited liability company with an address of 202 Bourne Blvd., Ste 180,
19 Savannah, GA 31408.

20 19. Upon information and belief, Defendant Electronic Cigarettes, Inc. is a
21 New York corporation with an address of 279 Front St., Binghamton, NY 13905.

22 20. Upon information and belief, Defendant LA Vapor Inc. is a California
23 corporation with an address of 1305 John Reed Court, City of Industry, CA 91745.

24 21. Upon information and belief, Defendant Madvapes Holdings, Inc. is a
25 North Carolina corporation with an address of 130 Oak Park Drive, Ste A,
26 Mooresville, NC 28117.

27 22. Upon information and belief, Defendant RRV Enterprises LLC is an
28 Oklahoma limited liability company with an address of 2121 S. Portland Ave.,

1 Oklahoma City, OK 73108.

2 23. Upon information and belief, Defendant Shenzhen IVPS Technology Co.
3 Ltd. is a Chinese corporation with an address of 3rd Floor, No. 15, Kejibei 2nd
4 Road, Nanshan District, Shenzhen, China.

5 24. Upon information and belief, Defendant Shenzhen Smok Technology Co.
6 Ltd. is a Chinese corporation with an address of 3rd Floor, No. 15, Kejibei 2nd
7 Road, Nanshan District, Shenzhen, China.

8 25. Upon information and belief, Defendant Vapetrik, LLC is a North
9 Carolina limited liability company with an address of 5448 Apex Peakway #147,
10 Apex, NC 27502-3924.

11 26. Upon information and belief, Defendant VaporDNA is a California
12 corporation with an address of 20435 Gramercy Place, Ste 101, Torrance, CA
13 90501.

14 27. Upon information and belief, Defendant Vapor Authority, Inc. is a
15 California corporation with an address of 9187 Clairemont Mesa Blvd., Ste 596,
16 San Diego, CA 92122.

17 28. Upon information and belief, Defendant Vapor Range, Inc. is a
18 California corporation with an address of 15210 S. Western Ave., Gardena, CA
19 90249.

20 29. Upon information and belief, Defendant Vapro Supply, LLC is a Texas
21 limited liability company with an address of 4150 Freidrich Lane, Ste G, Austin,
22 TX 78744-1052.

23 30. Upon information and belief, Defendant E-Cig Gallery Wholesale and
24 Distribution, Inc. is a California corporation with an address of 9273 Research Dr,
25 Irvine, CA 92618

26 31. Plaintiff is ignorant of the true names and capacities of the defendants
27 sued as Does 1 to 10, inclusive, and therefore sues these defendants by such
28 fictitious names. Plaintiff will amend this complaint to allege their true names and

capacities when ascertained.

IV. FACTS COMMON TO ALL CLAIMS FOR RELIEF

Plaintiff's Successful Alien Vape® Brand and Trademarks

32. Since at least as early as May 2011, Plaintiff first began selling high quality e-cigarette products, and later e-liquid products and vaporizers, in California and other states, and has invested tremendous time and resources into marketing and promoting these goods under the trademark ALIEN VAPE®.

33. Plaintiff advertises its goods on its website at www.alienvape.com, among other forms of advertising and promotion.

34. The ALIEN VAPE® Marks are inherently distinctive, and have developed widespread brand recognition among consumers in California and other states as the source of high-quality e-liquid products.

35. As a result of Plaintiff's high-quality products, extensive advertising and promotion of the brand, and continuous and widespread use in California and other states, the ALIEN VAPE® Marks are extremely strong, distinctive, and have acquired extensive and valuable goodwill with consumers as an identifier of superior quality e-liquid products.

36. Plaintiff owns two United States federal trademark registrations for the ALIEN VAPE® Marks:

- U.S. Trademark Registration No. 4997336 for the mark ALIEN VAPE® for “Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid) comprised of propylene glycol; Electronic cigarette liquid (e-liquid) comprised of vegetable glycerin; Electronic cigarettes; Oral vaporizers for smokers” in International Class 34; and
- U.S. Trademark Registration No 4517249 for the mark ALIEN VAPE. VAPE JUST GOT REAL!® (and “alien head” design) for “Electronic cigarettes vaporizers for alternative smoking” in International Class 34

1 (collectively, the “ALIEN VAPE® Registrations”)

2 37. The ALIEN VAPE® Registrations are prima facie evidence that the
3 ALIEN VAPE® Marks are valid, and that Plaintiff is entitled to the exclusive use
4 of the marks in commerce throughout the United States for the goods listed in the
5 registrations.

6 38. Plaintiff also has extensive common law rights in the ALIEN VAPE®
7 Marks due to his continuous use of the marks in commerce in California and in
8 other U.S. states since at least as early as May 2011.

9 39. The ALIEN VAPE® Marks have become well-known with Plaintiff’s
10 customers, and have developed substantial goodwill and association in the mind of
11 the consumer, due to Plaintiff’s extensive marketing, promotion, and use of the
12 ALIEN VAPE® Marks for nearly six years. On the basis of the inherent
13 distinctiveness of the ALIEN VAPE®, the public differentiates Plaintiff’s products
14 from others on the market.

15 **Smok’s Infringement of Plaintiff’s Trademarks and Settlement Agreement**

16 40. Sometime in 2016, the Smok Defendants began selling an e-cigarette
17 device kit using the brand name “Alien Kit,” which is a highly similar trademark to
18 Plaintiff’s ALIEN VAPE® Marks.

19 41. Around August 2016, Plaintiff discovered that the Smok Defendants
20 were selling the Alien Kit products.

21 42. Plaintiff brought the infringement to the attention of the Smok
22 Defendants and discussed the issue with Smok’s Sales Manager, Elaine Tang, over
23 the phone. Plaintiff and Smok then entered into settlement negotiations over the
24 next two months.

25 43. In exchange for a license to continue using the Alien name on its Alien
26 Kit products, Smok signed a Settlement Agreement with Plaintiff in which Smok
27 agreed, among other things, to:

- 28
- Respect and never challenge Plaintiff’s Alien trademarks;

- Spend a minimum of \$15,000 per month for 18 months purchasing Plaintiff's Alien Vape-branded e-liquids;
- Advertise Plaintiff's Alien Vape-branded e-liquid products on the front page of Smok's website, online stores, on Smok's social media accounts, and through Smok's marketing emails to customers;
- Never to adopt any new trademarks anywhere in the world that include the term "Alien" or any confusingly-similar term, or to use the term "Alien" in connection with any new products, aside from their use of the word in their existing "Alien Kit" product;
- To pay attorneys' fees to Plaintiff if is the prevailing party for any litigation that relates to the Settlement Agreement.

44. Over the next few months, Plaintiff was forced to contact multiple Smok employees on numerous occasions, requesting that Smok simply comply with the terms of the Settlement Agreement. These requests included numerous pleas for Smok personnel to:

- Place the initial monthly order of Alien Vape e-liquids agreed upon in the settlement;
- Place subsequent monthly orders of Alien Vape e-liquids or pay the substitute amounts agreed upon in the settlement;
- To display Plaintiff's banner advertisement on the front page on the Smok website www.smoktech.com;
- To send the agreed-upon email marketing messages to Smok's customer mailing list;
- To share Plaintiff's images to Smok's social media followers.

45. The Settlement Agreement also contains a provision (Section 7.1) wherein if Smok fails to meet the minimum required purchase for two consecutive months, Smok would pay Plaintiff the full value of the monthly purchase over the 18-month term within 30 days. The monetary value of this provision, \$15,000 over

1 17 months, is a total of USD \$255,000.

2 46. Additionally, Section 7.1 also provides that if Smok breaches the terms
3 of the Agreement dealing with Smok's advertisement of Plaintiff's products, Smok
4 agreed to pay Plaintiff \$5,000 per month in which they failed to satisfy those
5 requirements. Smok failed to uphold the terms of the agreement in every month
6 since signing. Therefore, the monetary value of \$5,000 per month over 18 months
7 is a total of USD \$90,000.

8 47. Smok personnel have continually requested adjustments to the already-
9 signed contract, and demanded that Plaintiff pay for expenses related to sending
10 emails to Smok's mailing list and other concessions that were not contemplated in
11 the Settlement Agreement.

12 48. To date, only a single monthly payment of \$15,000 has been made to
13 Plaintiff (in November 2016).

14 49. It has been over four months since Smok's last payment, triggering the
15 clause for Smok to pay Plaintiff out \$255,000 for the remaining 17 months.

16 50. Together, with the \$90,000 Smok owes Plaintiff for its failure to
17 advertise and promote pursuant to the Settlement Agreement, Smok owes Plaintiff
18 \$345,000 for breach of those two clauses alone.

19 51. Additionally, in early January 2017, Plaintiff became aware that Smok
20 planned to launch a new e-cigarette product, the Alien Baby, a clear violation of
21 Section 3.2 of the Settlement Agreement.

22 52. Plaintiff sent multiple emails to Smok personnel pleading with them not
23 to advertise or release this infringing new product that would also clearly breach
24 the Settlement Agreement.

25 53. On January 5, 2017, Plaintiff and Smok discussed the possible terms of a
26 partnership regarding Smok's use of the Alien Baby name over WeChat and
27 Skype.

28 54. While those negotiations were ongoing and despite Plaintiff's pleas, the

1 Smok Defendants moved forward with the advertisement of the upcoming “Alien
2 Baby” product on their website and on social media.

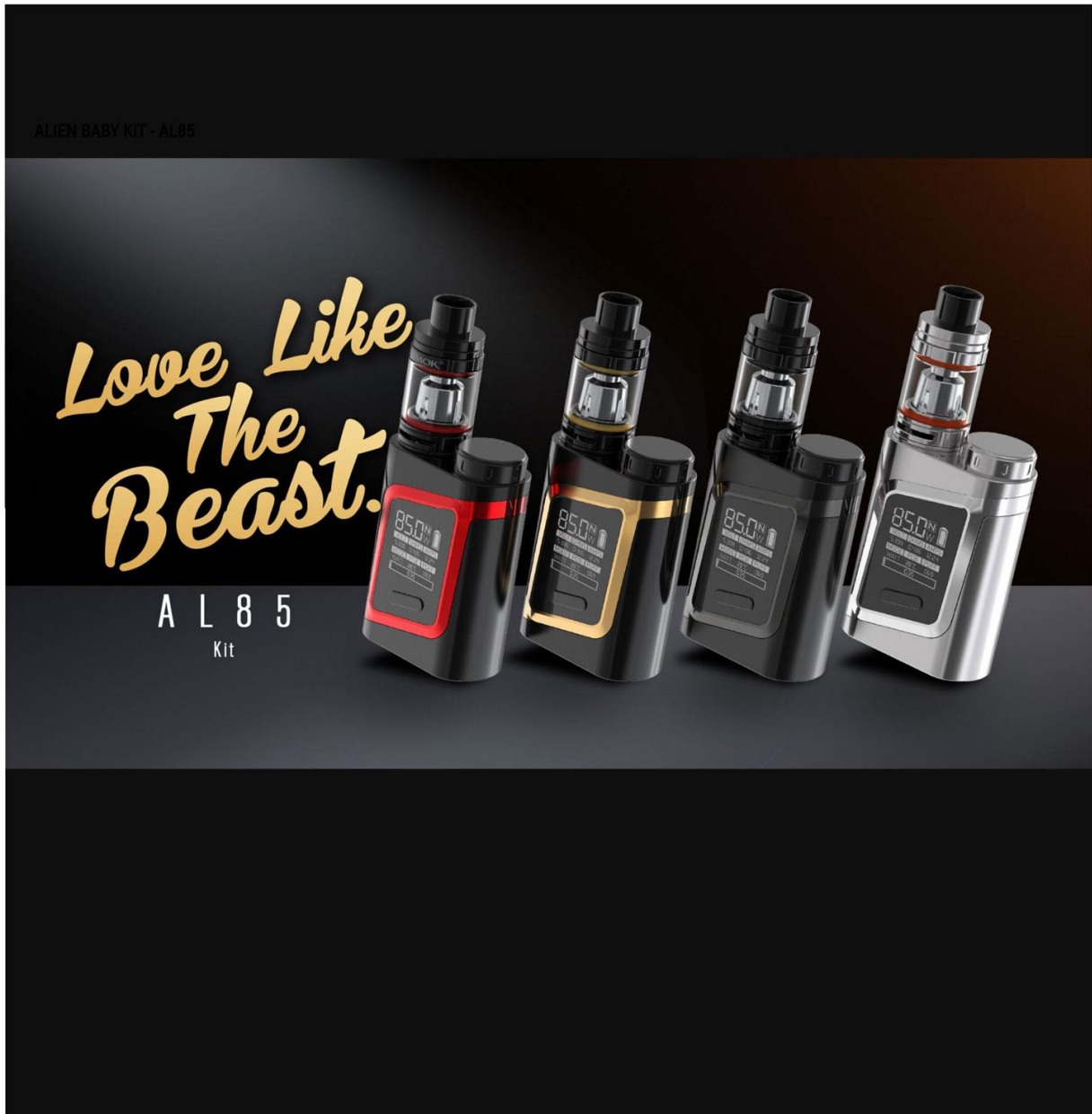
3 55. Throughout early January 2017, Plaintiff continued to alert Smok
4 personnel that the infringing Alien Baby name was on their website and social
5 media. Smok personnel eventually responded, claiming that they had removed the
6 infringing images, and renamed the Alien Baby product to “AL85”.

7 56. Despite purportedly having renamed the “Alien Baby” product to
8 “AL85”, Smok continues to use the infringing “Alien Baby” name.

9 57. At least as late as January 4, 2017, the text of the URL for the AL85 page
10 and the meta-tag description of the AL85 product page on Smok’s website contains
11 the infringing “Alien Baby” name. This is shown from the printout of the AL85
12 product page below:

1/4/2017

Alien Baby Kit - AL85 - SMOK® Being with you for all great vaping time!



<http://www.smoktech.com/kit/alien-baby-al85>

1/8

58. On January 5, 2017, Smok sent a marketing email to customers announcing their new product, using the infringing "Alien Baby" name:

Alien Vape Mail - [AD]Alien Baby - AL85 Kit



Alien Vape <info@alienvape.com>

[AD]Alien Baby - AL85 Kit

2 messages

SMOK <service@smoktech.com>
Reply-To: service@smoktech.com
To: info@alienvape.com

Thu, Jan 5, 2017 at 7:24 PM

SMOK®

ALIEN BABY - AL85 KIT

Love Like The Beast

Alien Baby - AL85 Kit, consists of AL85 mod and TFV8 Baby tank features with delicate design, smooth streamline and integrated functional buttons. You would enjoy thoughtful experience and innovative design from SMOK when its 85W output power combines with Cloud Beast TFV8 Baby tank.

Vaping, just enjoy it.

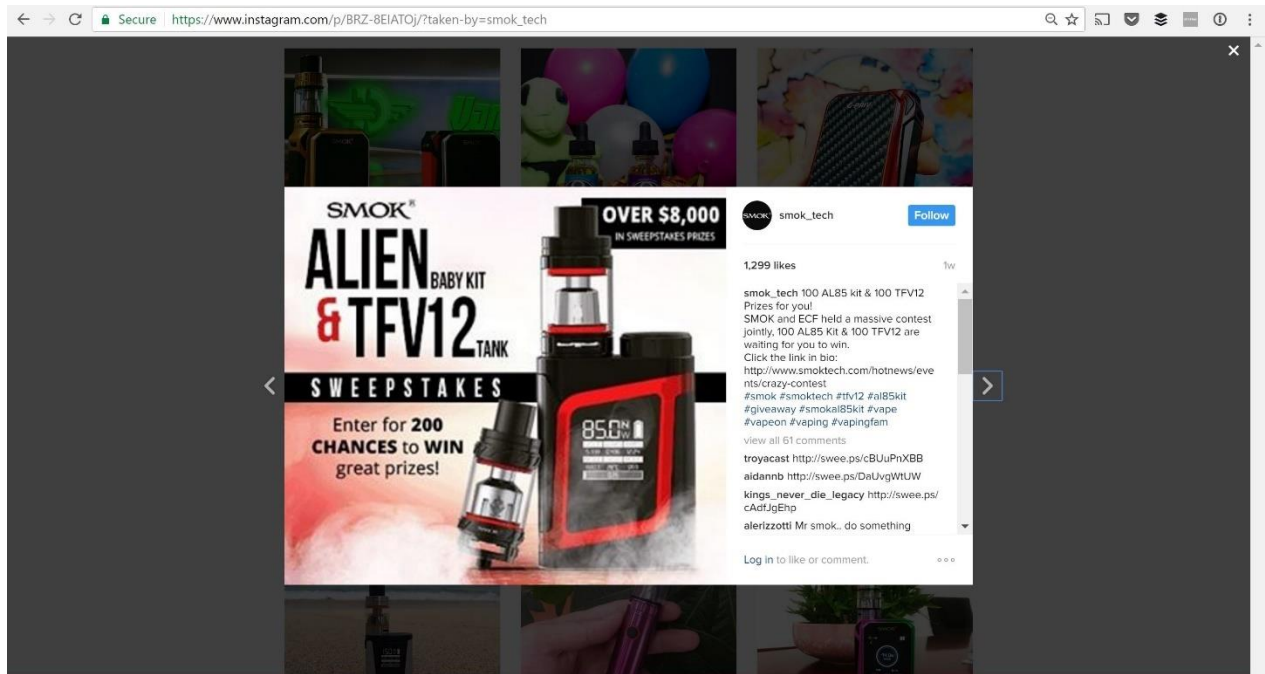


LOVE LIKE THE BEAST

Alien Baby Kit, consists of AL85 mod and TFV8 Baby tank features with delicate design, smooth streamline and integrated functional buttons. You would enjoy thoughtful experience and innovative design from SMOK when its 85W output power combines with Cloud Beast TFV8 Baby tank. Vaping, just enjoy it.

59. Additionally, an Instagram post made on or around March 8, 2017 on Smok's official smok_tech account contains the infringing name, advertising a sweepstakes giveaway featuring the AL85, but referring to the device as the "Alien

Baby Kit”:



60. Also on or around March 9, 2016, the official Smok Instagram Account profile contained a link to an e-cigarette online discussion forum thread that clearly used the infringing “Alien Baby” name in the URL, in connection with a giveaway of the AL85 e-cigarette devices. See screenshot below:



smok_tech

Follow

1,766 posts

113k followers

258 following

SMOK TECHNOLOGY Customer Service:

support@smoktech.com Promotion:

marketing@smoktech.com Wholesale:

manager@smoktech.com | Newest: 100 AL85 kit & 100

TFV12 for you [www.e-cigarette-](http://www.e-cigarette-forum.com/forum/threads/winning-is-back-again-massive-8000-of-smok-alien-baby-kits-up-for-grabs.792047)

[forum.com/forum/threads/winning-is-back-again-massive-8000-of-smok-alien-baby-kits-up-for-grabs.792047](http://www.e-cigarette-forum.com/forum/threads/winning-is-back-again-massive-8000-of-smok-alien-baby-kits-up-for-grabs.792047)



1 61. These uses of the “Alien Baby” name constitute not only a blatant
2 infringement of Plaintiff’s registered ALIEN VAPE® Marks, but also a willful
3 breach of the Settlement Agreement signed by Smoke just months before.

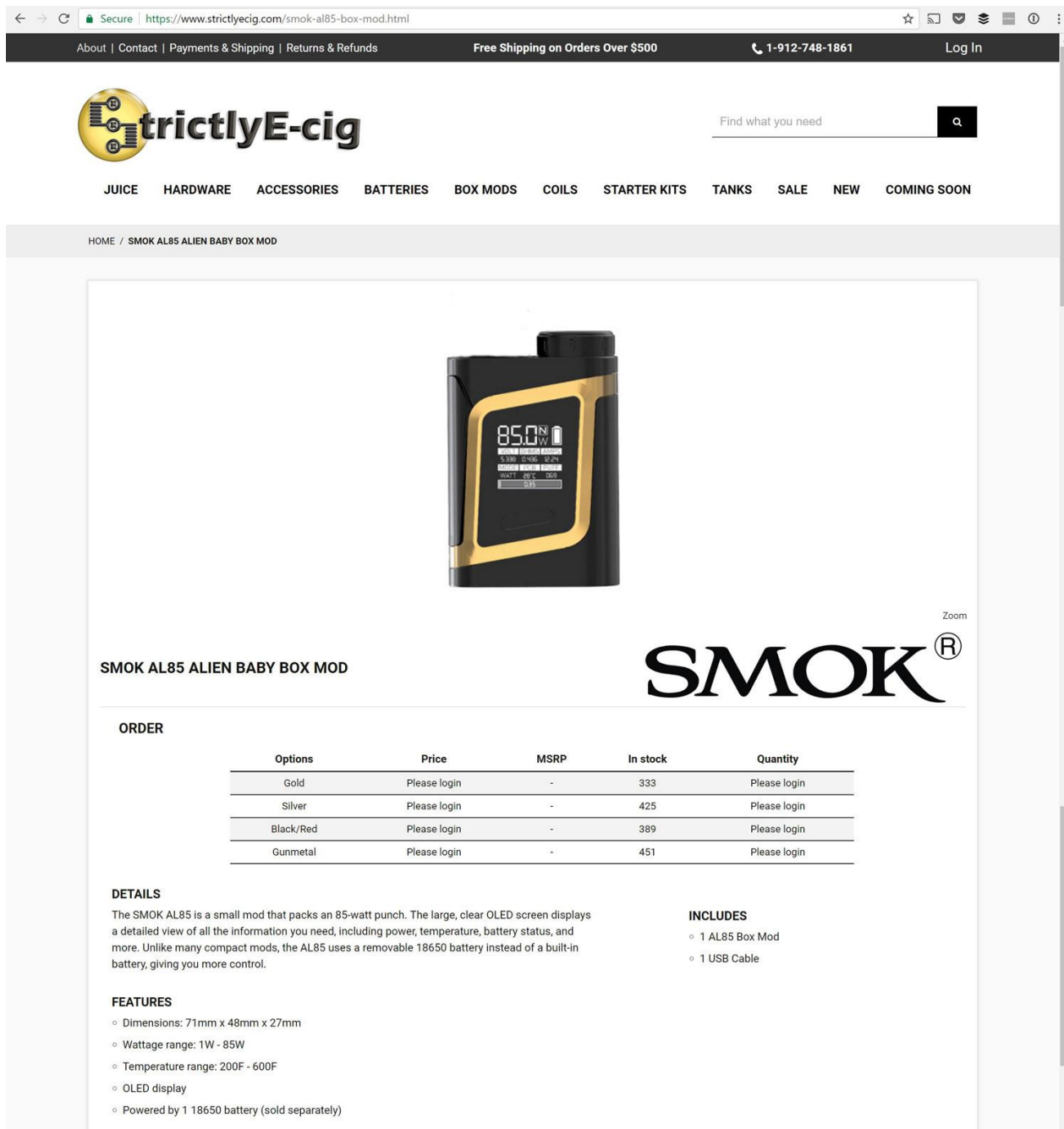
4 62. On February 6, 2017, Smok informed Plaintiff that Smok would no
5 longer be allowed to sell e-liquid products, due to a notice from the “Industry and
6 Trade Commerce Bureau”. However, Section 7.1 of the Settlement Agreement
7 explicitly provides that if Smoke does not purchase and advertise Plaintiff’s e-
8 liquid products, it will pay Plaintiff a total of \$20,000 per month. Furthermore, the
9 contract contains no Force Majeure or other similar clauses excusing Smok’s
10 performance.

11 **Infringement by Retail Defendants**

12 63. On March 9, Smok informed Plaintiff that they had notified retailers that
13 Smok had ceased usage of the “Alien Baby” name in connection with the AL85
14 product.

15 64. Despite this, numerous e-cigarette retailers and reviewers continue to
16 refer to the AL85 device as the “Alien Baby” or “Baby Alien”, a clear
17 infringement of Plaintiff’s trademark rights to “Alien” for vaporizers and e-
18 cigarette products. Screenshots of representative examples of this infringement on
19 the Retail Defendants’ websites and marketing emails are shown below:
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Secure | <https://www.strictlyecig.com/smok-al85-box-mod.html> ☆

About | Contact | Payments & Shipping | Returns & Refunds Free Shipping on Orders Over \$500 1-912-748-1861 Log In

strictlyE-cig Find what you need

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HOME / SMOK AL85 ALIEN BABY BOX MOD

SMOK AL85 ALIEN BABY BOX MOD

SMOK®

ORDER

| Options | Price | MSRP | In stock | Quantity |
|-----------|--------------|------|----------|--------------|
| Gold | Please login | - | 333 | Please login |
| Silver | Please login | - | 425 | Please login |
| Black/Red | Please login | - | 389 | Please login |
| Gunmetal | Please login | - | 451 | Please login |

DETAILS

The SMOK AL85 is a small mod that packs an 85-watt punch. The large, clear OLED screen displays a detailed view of all the information you need, including power, temperature, battery status, and more. Unlike many compact mods, the AL85 uses a removable 18650 battery instead of a built-in battery, giving you more control.

INCLUDES

- 1 AL85 Box Mod
- 1 USB Cable

FEATURES

- Dimensions: 71mm x 48mm x 27mm
- Wattage range: 1W - 85W
- Temperature range: 200F - 600F
- OLED display
- Powered by 1 18650 battery (sold separately)

22 source: D&A Distribution, LLC (dba Strictly E-Cig)

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www.wholesalevapor.com/regulated-devices-c-2_9/smok-al85-mod-p-1255.html

Welcome Guest! Would you like to [log yourself in?](#)

US DOLLAR ENGLISH FINANCING REGISTER CART

Wholesale Vapor .COM

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Product 32/39

< Prev Next >

Smok AL85 Mod

★★★★★

[Login for price](#)

[Login for price](#)

Products Description Additional Information Reviews (0)

*This is for the AL85 mod only. Tank not included.

AL85 Mod

Size: 71*48*27mm

Weight: 120g

Power Range: 1-85w

Voltage Range: 0.35v-8.0v

Resistance Range: 0.10Ω-3.00Ω (VW mode)/0.060Ω-3.00Ω (TC mode)

Temperature Range: 200-600°F/100-315°C

Smok Alien Baby-AL85 Kit comes with:

1pc AL85 Mod

1pc USB Charge/Upgrade Cable

1pc User Manual

Spare Parts

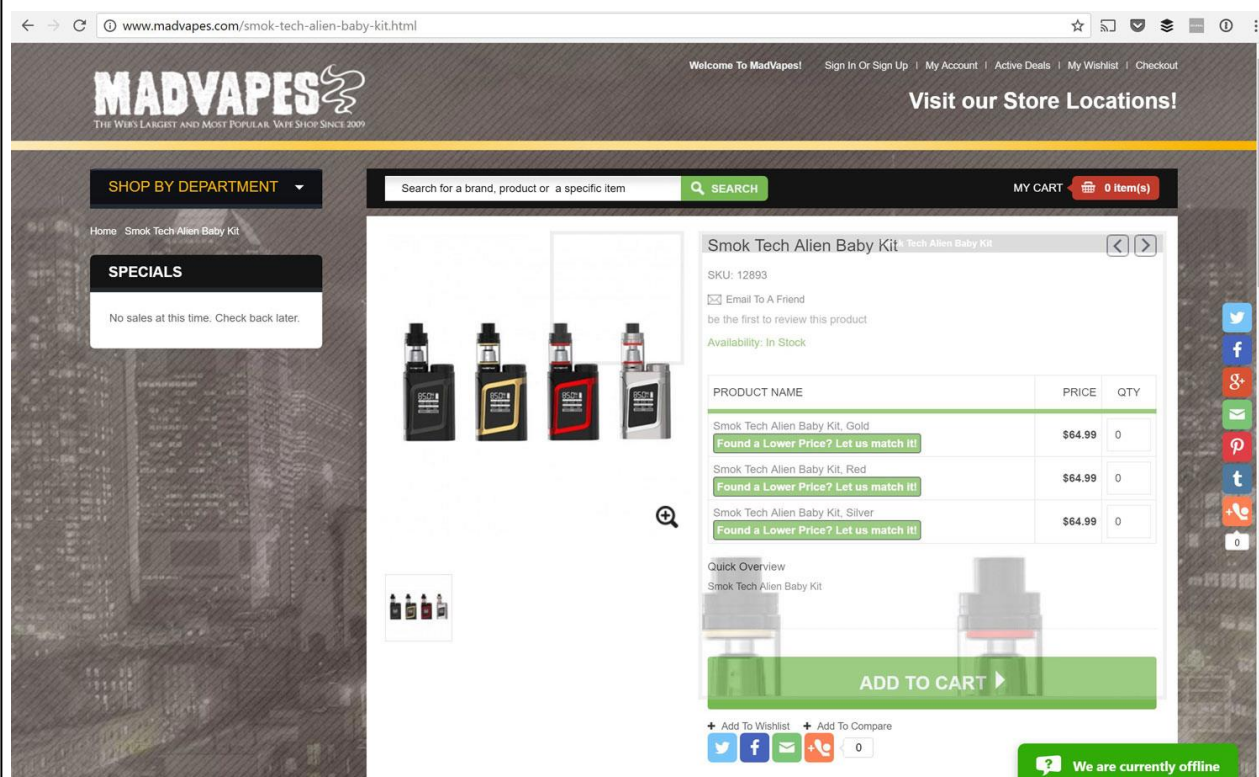
*This is for the AL85 mod only. Tank not included.

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source: Electronic Cigarettes, Inc. (dba Wholesale Vapor)



source: LA Vapor, Inc.



source: MadVapes Holdings, LLC

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The screenshot shows the Vaporworld website interface. At the top, there's a navigation bar with a green banner announcing a new rewards program. Below this is a dark blue bar with 'Welcome, GUEST' and a phone number. The main header features the 'VAPORWORLD' logo, a search bar, and a 'VIEW CART / \$0.00' button. A horizontal menu lists various product categories: E LIQUID, MODS, TANKS, COILS, KITS, BATTERIES, ACCESSORIES, NEW, APPAREL, SALE, BULK, and INFO. The main content area displays the 'SMOK AL85 - ALIEN BABY KIT' for \$54.99, with 3 product reviews. It offers several color options, most of which are out of stock. Below the main product image are smaller images of accessories. To the right, there are 'ADD TO CART' and 'ADD TO WISHLIST' buttons. A 'RELATED PRODUCTS' section at the bottom right shows two other items: 'Efest Pro C1 Charger' and 'Drip Co 60ml E-Liquid - Caramel Cone'.

18 source: RRV Enterprises LLC (dba Vaporworld)

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Secure | <https://www.vapordna.com/SMOK-AL85-TFV8-Baby-Beast-Starter-Kit-p/smka85.htm>

FREE US SHIPPING ON ALL ORDERS OVER \$49* BONUS CHUBBY GORILLA UNICORN BOTTLE WITH EVERY ORDER!* GET 10% OFF WHEN YOU SIGN UP FOR OUR NEWSLETTER*

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Home > Devices > Variable Voltage / Variable Wattage Vaporizers > High Performance VV/VW Vaporizers >

SMOK AL85 ALIEN BABY TFV8 BABY BEAST STARTER KIT

List Price: \$79.99
Our Price: \$59.99
Savings: \$20.00

Stock Status: In Stock

Earn 2% back with VAPORDNA Reward Program >

Product Code: SMKA85

CHOOSE YOUR OPTIONS:

Choose Your Device Finish

Click to view another Choose Your Device Finish

First, Select Choose Yo

Save on Replacement Coils

None

Save on Flavor of the Week

None

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Like 15 Share

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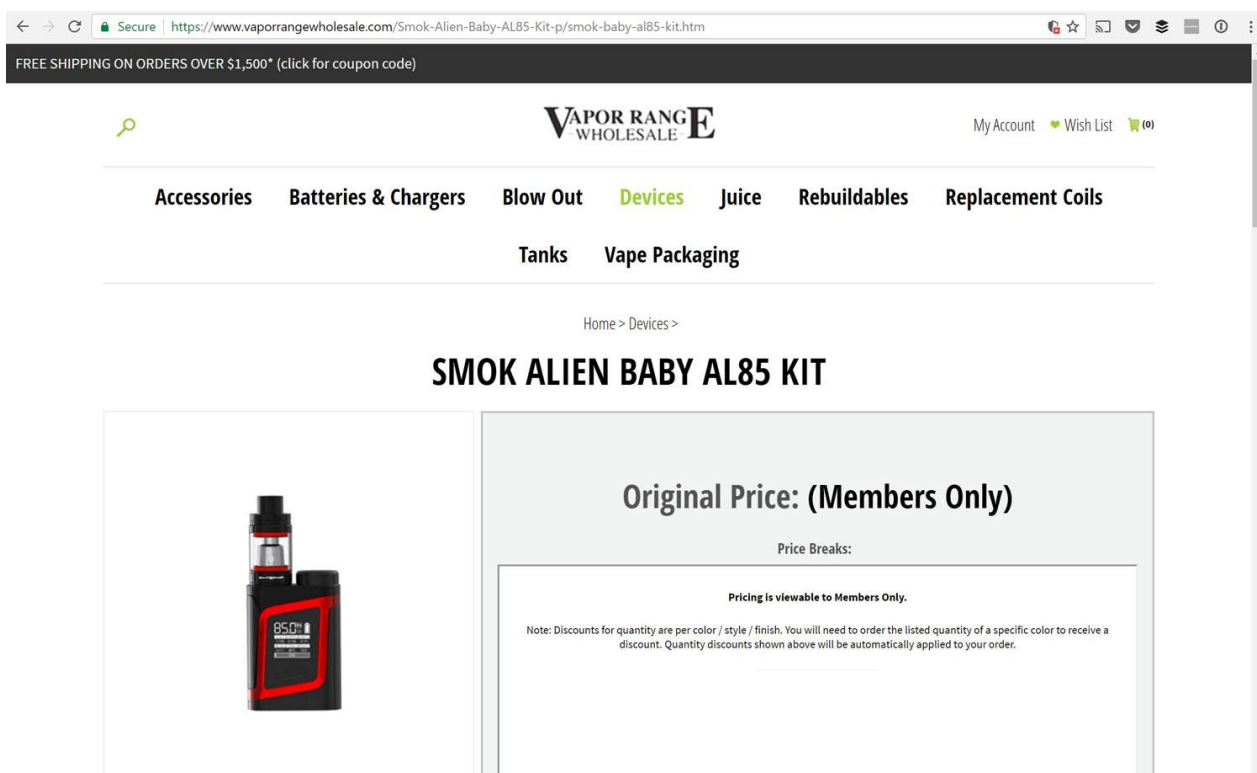
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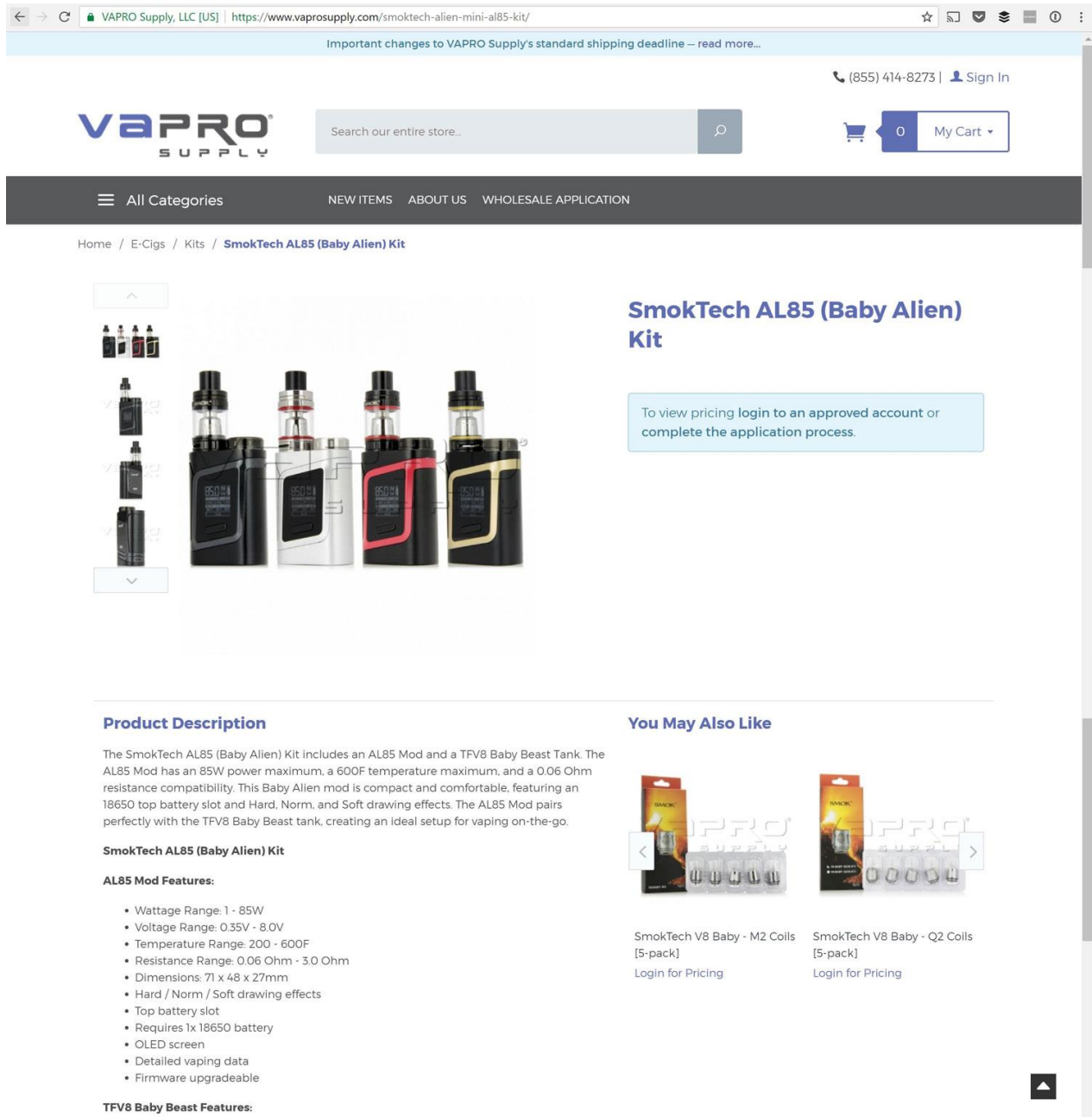
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Home / E-Cigs / Kits / **SmokTech AL85 (Baby Alien) Kit**

SmokTech AL85 (Baby Alien) Kit

To view pricing login to an approved account or complete the application process.

Product Description

The SmokTech AL85 (Baby Alien) Kit includes an AL85 Mod and a TFV8 Baby Beast Tank. The AL85 Mod has an 85W power maximum, a 600F temperature maximum, and a 0.06 Ohm resistance compatibility. This Baby Alien mod is compact and comfortable, featuring an 18650 top battery slot and Hard, Norm, and Soft drawing effects. The AL85 Mod pairs perfectly with the TFV8 Baby Beast tank, creating an ideal setup for vaping on-the-go.

SmokTech AL85 (Baby Alien) Kit

AL85 Mod Features:

- Wattage Range: 1 - 85W
- Voltage Range: 0.35V - 8.0V
- Temperature Range: 200 - 600F
- Resistance Range: 0.06 Ohm - 3.0 Ohm
- Dimensions: 71 x 48 x 27mm
- Hard / Norm / Soft drawing effects
- Top battery slot
- Requires 1x 18650 battery
- OLED screen
- Detailed vaping data
- Firmware upgradeable

TFV8 Baby Beast Features:

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SmokTech V8 Baby - Q2 Coils [5-pack]
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source: Vapro Supply, LLC

White with Black Alien Kit - Hitting the vape industry by "storm"

1 message
E-Cig Gallery Wholesale and Distribution <orders@e-ciggallery.com>
Reply-To: orders@e-ciggallery.com
To: [REDACTED]

Fri, Feb 3, 2017 at 4:28 PM

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You want it, we've got it. Quality and convenience that your shop needs. Get all of your hardware and e-liquid in one place.



source: E-Cig Gallery Wholesale and Distribution, Inc.

65. Defendant Vapetrik, LLC (dba Rip Trippers) operates a YouTube channel in which they review e-cigarette products.

66. The Rip Trippers YouTube channel contains a video published February 3, 2017, named "The SMOK AL85 Quick Glance! Its The Baby Alien Starter Kit!", in which the AL85 kit from Smok is reviewed (the "Video")¹.

67. In the description of the Video, there are links to www.bevapehappy.com and www.vapordna.com to purchase. The links, <https://www.bevapehappy.com/?rfsn=167690.4700b> and <http://www.vapordna.com/?Click=106881> are "affiliate" links that attribute sales of the AL85 product to Vapetrik, LLC. Vapetrik, LLC then receives a commission for each sale of the AL85 product. The code following the main URLs in each of these links is Vapetrik, LLC's affiliate code, used to track sales made when a user visits the site through that link.

¹ <https://www.youtube.com/watch?v=7CP9SBuhohQ>.

Consumer Confusion

68. Evidence of actual consumer confusion abounds, as Plaintiff has received numerous emails from Smok's customers asking about the Alien Kit and Alien Baby devices, and about vaporizers in general, which Plaintiff does not currently sell (but plans to start selling again soon).

69. Examples of this confusion from customer emails include (emphasis added, and all typos and errors left in their original format):

- November 1, 2016 – “I bought **one of your vapes, 220 Watt gold and black** at eb vape attic in Philipsburg PA. I went to twist the top piece off (the part containing the juice) and the part that connects the box and the top piece twisted and came with it and pulled the wire. I am unsure why this happened and so is the owner of the shop. I paid near to \$300 and didn't have it for three months. **They told me to contact you about this problem** to see if I could get the problem fixed.”
(Demonstrating confusion both by the consumer and the retailer as to the source of the “Alien”-branded e-cigarette product).
- Dec 28, 2016 – “I have only had my Allen [sic] mod for 1 day and it is already tasting metallic . .why is this?? The coil can't be burn pur already!!!”
- Jan 20, 2017 – “I bought the **Smok Alien 220W** tc from you but the only thing is the screen is very very dim but it's at 100% contrast and you can only see the screen if your in the dark with the lights off. I love my Smok Alien but it makes it difficult to see what anything on it is. So, is there anyway I could make it a lot brighter to look what it's supposed to look like?!”
- Feb 7, 2017 – “Hello, I have a complaint. I purchased my vape on Black Friday. I love this vape but it has a defect. Something is wrong with the charging portal. Can someone please assist me with this matter? I feel it cost too much to have this issue. Thank you”

- 1 • Feb 15, 2017 – “I just bought my vape used, and I am trying to charge it. It
2 says its charging, and I left it plugged in for 4 hours, but it still says low
3 battery. Is this a battery issue or a mod issue?”
- 4 • Feb 17, 2017 – “I bought an alien mod a few weeks ago and I have never
5 dropped my mod ever and It kept reading ohms too low and I opened up the
6 top part with the proper screw and there is a wire snapped I have the
7 warranty card could I get a new one? Thanks.”
- 8 • Feb 17, 2017 – “I would like to ask if it's possible **to send smok alien vape**
9 to a country that has Vape's as an prohibited item in anyway ??”
- 10 • Feb 20, 2017 – “Hi I bought an alien 220w tc. I love the product except the
11 tank leaks all the time it's installed properly and it closes all the way. I'm
12 very unhappy with this I bought it less then a month ago I still have the
13 receipt I don't over fill the tank of anything. [...] But I don't want to spend
14 more money and none of them match my mod, I hope there is something you
15 can do because of know **I would not recommend your product** nor will I
16 buy another tank to have the same exact problem!”
17 (Demonstrating the harm that the customer association with Smok’s
18 infringement is causing to Plaintiff’s brand).
- 19 • Feb 21, 2017 – “Hi I brought one of your 220 w alien vape I looking to get a
20 tank and coil that goes up to the 220w are able to point me in the right
21 direction please”
- 22 • Feb 25, 2017 – “Hello, So I have the **alien smok kit** with the baby beast. My
23 baby best drip tip broke and would like to get a new tip. Is there anyway I
24 can buy a new tip that is the exact same as the one that came with it?”
- 25 • Feb 28, 2017 – “Hi names Phil and I'm a fan of the **smok alien 220w** tc.
26 vape mod and the baby beast tank I been looking for a great e-juice to vape
27 that's equal in flavor and cloud production. I read a lot about the roswell and
28 area 51 juices on your website after I got an email about them I'm interested

1 in trying these e-juices but unfortunately I'm outta state.”

2 (Showing that Smok’s usage of the infringing “Alien” mark is causing
3 confusion as to the source of goods, since the Roswell and Area 51 e-juices
4 mentioned in the email are from Plaintiff).

- 5 • March 8, 2017 – “Good afternoon! You spoke with one of our employees
6 here at Crystal Vapor regarding Alien Vape E-liquids. I would like to inquire
7 about the availability of any **Smok Alien hardware** that you also be selling.
8 Thank you for your time and consideration. Hope to hear from you very
9 soon! Crystal Vapor”

10 (Demonstrating retailer confusion between Plaintiff’s and Smok’s brands).

- 11 • March 15, 2017 – “I have had my set up for less than a month and the lights
12 have stopped working. My screen is blank but it would still let me vape.”
- 13 • March 19, 2017 – “My vape was hitting fine 1 second I put it down and 5
14 minutes later the screen is black and doesn't fire but can still be read by the
15 computer”

16 (Again, demonstrating confusion with Smok’s infringing devices).

- 17 • March 21, 2017 – “I purchased an order of two juice bottles on the 7th of
18 march, I was wondering if you could let me know how much more time it
19 will take for it to arrive. I've never ordering online with you before and I'm
20 really just curious. I am quite happy with he Alien220W TC by the way,
21 great product!”

- 22 • March 23, 2017– “The display on my Alien 220w mod stopped working.
23 What could I have done? It's about 2 months old. I replaced the batteries
24 with no luck. It still works, however. Thank you”

25 (Showing confusion between Plaintiff’s and Smok’s Alien brands).

26
27 70. To this day, the Retail Defendants continue to advertise and sell the
28 Smok AL85 product using the infringing “Alien Baby” trademark. And the Smok

1 Defendants continue to use the infringing “Alien Baby” and “Alien Kit” trademark
2 in their links and page description.

3 71. The Smok Defendants and the Retail Defendants must now answer for
4 their infringing conduct, which will include an injunction barring all future sale or
5 advertisement of the Alien Kit and the AL85 “Alien Baby” products, Plaintiff’s
6 actual damages, the disgorgement of 100% of Defendants’ profits to Plaintiff, and
7 enhanced damages for the Defendants’ willful infringement.

8
9 **FIRST CAUSE OF ACTION**

10 **(Federal Trademark Infringement Under 15 U.S.C. § 1114)**

11 **(Against all Defendants)**

12 72. Plaintiff refers to and re-alleges each and every allegation 1 through 71,
13 all inclusive, above as if set forth herein.

14 73. Plaintiff is the sole owner of the ALIEN VAPE® Marks, which are
15 registered to Plaintiff on the Principal Register at the USPTO. These registrations
16 constitute prima facie evidence that the ALIEN VAPE® Marks are valid; that they
17 are owned by Plaintiff; and that Plaintiff has the exclusive right to use the ALIEN
18 VAPE® Marks in commerce in connection with the goods specified in the ALIEN
19 VAPE® Registrations.

20 74. Furthermore, Plaintiff has continuously used the ALIEN VAPE® Marks
21 in commerce since at least as early as May 2011. Meanwhile, on information and
22 belief, the Defendants began their infringement of the ALIEN VAPE® Marks by
23 using the ALIEN VAPE® Marks in commerce after the Plaintiff began using his
24 marks. Therefore, Plaintiff clearly has priority of use of the ALIEN VAPE® Marks
25 as against the Defendants. As such, for at least this additional reason, Plaintiff is
26 the owner of the ALIEN VAPE® Marks, and has the exclusive right to use the
27 marks in commerce.

28 75. The Defendants’ infringement of the ALIEN VAPE® Marks, in the

1 manner set forth above, supra, trades on the ALIEN VAPE® Marks and the
2 goodwill associated therewith, and is likely to confuse and deceive the consuming
3 public into believing that the Defendants are associated with ALIEN VAPE®
4 and/or Plaintiff.

5 76. The actions of the Defendants complained of herein are likely to cause
6 confusion, to cause mistake or to deceive others into erroneously believing that the
7 Defendants' goods are authorized by, licensed by, sponsored by, endorsed by, or
8 otherwise associated with ALIEN VAPE® and/or Plaintiff. The likelihood of
9 confusion is particularly strong because, inter alia, (i) the ALIEN VAPE® Marks
10 are strong due to Plaintiff's extensive use of the marks since at least as early as
11 May of 2011 and therefore carry a high degree of consumer recognition; (ii)
12 Plaintiff's mark ALIEN VAPE® and the designations used by the Defendants,
13 "Alien Baby" and "Alien Kit", are highly similar; and (iii) both the Defendants and
14 Plaintiff use the marks in connection with identical or highly-related vaping
15 products; (iv) the Defendants and Plaintiff share the same marketing and trade
16 channels; and (v) on information and belief, concurrent use of the marks by the
17 Defendants and Plaintiff has already resulted in actual confusion among
18 consumers.

19 77. In view of the foregoing, and on information and belief, the acts and
20 conduct of the Defendants complained of herein constitute willful and deliberate
21 infringement of Plaintiff's ALIEN VAPE® Marks in violation of Section 32 of the
22 Lanham Act, 15 U.S.C. 1114.

23 78. By reason of the foregoing, Plaintiff has been damaged and is being
24 damaged by the Defendants' willful infringement of the ALIEN VAPE® Marks.
25 Therefore, pursuant to 15 U.S.C. § 1117(a), Plaintiff is entitled to recover at least
26 (i) the Defendants' profits gained from their infringement; (ii) Plaintiff's damages
27 suffered due to the Defendants' infringement; and (iii) Plaintiff's costs in this
28 action.

1 79. Moreover, Plaintiff has been and will continue to be, irreparably injured
2 by the continued infringing acts of the Defendants, until and unless such acts are
3 enjoined. Plaintiff has no adequate remedy at law. Therefore, in addition to the
4 foregoing, the Defendants should be preliminarily and permanently enjoined from
5 their infringing acts under 15 U.S.C. § 1116.

6
7 **SECOND CAUSE OF ACTION**

8 **(False Designation of Origin Under 15 U.S.C. § 1125(a))**

9 **(Against all Defendants)**

10 80. Plaintiff refers to and re-alleges each and every allegation 1 through 71,
11 all inclusive, above as if set forth herein.

12 81. The Defendants' use of the infringing "Alien Baby" and "Alien Kit"
13 marks has resulted in and continues to result in confusion, mistake and deception
14 among consumers as to the source of origin of Plaintiff and Smok's products.

15 82. Through the Settlement Agreement between Plaintiff and Smok, and
16 from numerous emails between Plaintiff and Smok expressly discussing their
17 infringement, Smok was aware at least as early as August 2016 of Plaintiff's prior
18 rights to the ALIEN VAPE® Marks.

19 83. Through explicit notification by Smok and through Smok's revised
20 advertising and marketing materials, the Retail Defendants were aware as early as
21 January 2017 that Smok was no longer referring to the AL85 by the infringing
22 "Alien Baby" mark.

23 84. By having actual and constructive knowledge of Plaintiff's rights and
24 trademarks and continuing to use the infringing Alien Baby mark, the Defendants
25 have, without consent of Plaintiff, willfully violated 15 U.S.C. § 1125(a).

26 85. The Defendants have done and are continuing to do so with the intent to
27 unfairly compete against Plaintiff, to trade upon Plaintiff's reputation and goodwill
28 by causing confusion and mistake among consumers and the public, and to deceive

1 the public into believing that the e-cigarette products being sold by the Defendants
2 are associated with, sponsored by, or approved by Plaintiff, when they are not.

3 86. The Defendants' aforementioned acts and statements have caused
4 damages to Plaintiff in an amount to be proven at trial.

5 87. Plaintiff is also being irreparably injured. Such irreparable injury will
6 continue unless the Defendants are permanently enjoined by this Court from
7 further violation of Plaintiff's rights, for which Plaintiff has no adequate remedy at
8 law.

9
10 **THIRD CAUSE OF ACTION**

11 **(California Statutory Unfair Competition, Cal. Bus. & Prof. Code § 17200)**

12 **(Against all Defendants)**

13 88. Plaintiff refers to and re-alleges each and every allegation 1 through 71,
14 all inclusive, above as if set forth herein.

15 89. By virtue of the acts complained of herein, the Defendants have
16 intentionally caused a likelihood of confusion among consumers and the public and
17 has unfairly competed with Plaintiff in violation of Cal. Bus. & Prof. Code §
18 17200, *et seq.*

19 90. The Defendants' acts constitute unlawful, unfair, malicious or fraudulent
20 business practices, which have injured and damaged Plaintiff.

21 91. As a direct and proximate result of the Defendants' acts, Plaintiff has
22 suffered and will suffer great harm in an amount to be determined at trial. Plaintiff
23 has also been irreparably injured. Plaintiff will continue to be irreparably damaged
24 unless Defendants are enjoined from further committing unfair and unlawful
25 business practices against Plaintiff.
26
27
28

FOURTH CAUSE OF ACTION

(Common Law Trademark Infringement)

(Against all Defendants)

92. Plaintiff refers to and re-alleges each and every allegation 1 through 71, all inclusive, above as if set forth herein.

93. The Defendants have caused a likelihood of confusion among the purchasing public in this District and elsewhere, thereby infringing Plaintiff's common law trademark rights.

94. Plaintiff is being irreparably injured. Such irreparable injury will continue unless the Defendants are permanently enjoined by this Court from further violations of Plaintiff's rights.

FIFTH CAUSE OF ACTION

(California Common Law Unfair Competition)

(Against all Defendants)

95. Plaintiff refers to and re-alleges each and every allegation 1 through 71, all inclusive, above as if set forth herein.

96. The Defendants have caused a likelihood of confusion among the purchasing public in this District and elsewhere, thereby infringing Plaintiff's trademark rights, in violation of the common law of the State of California.

97. Plaintiff is being irreparably injured. Such irreparable injury will continue unless the Defendants are permanently enjoined by this Court from further violations of Plaintiff's rights.

SIXTH CAUSE OF ACTION

(Breach of Contract)

(Against the Smok Defendants)

98. Plaintiff refers to and re-alleges each and every allegation 1 through 71, all inclusive, above as if set forth herein.

99. Plaintiff and Smok entered into the Settlement Agreement on October 28, 2016, to settle matters related to Smok's infringement of the ALIEN VAPE® Marks.

100. Plaintiff has fully performed or tendered all performances required by the Settlement Agreement.

101. Smok has breached their obligations in clause 3.1.1 of the Settlement Agreement by failing to pay Plaintiff \$15,000 per month for Plaintiff's e-liquid products.

102. Smok has breached their obligations to Plaintiff in clauses 3.1.2 through 3.1.7 of the Settlement Agreement by failing to adhere to the advertising requirements set forth, including the placement of an ALIEN VAPE® banner ad on the first slide of the front page of the Smok website www.smoktech.com, regular social media postings.

103. Smok has breached their obligations under clause 3.1.9 and 3.1.10 of the Settlement Agreement by failing to resell and distribute Plaintiff's Alien Vape e-liquid.

104. Smok also breached the contract by introducing a second "Alien" branded e-cigarette product (the "Alien Baby"), in direct violation of clause 3.2.

105. Smok's numerous breaches go to the heart of the Settlement Agreement and, accordingly, Plaintiff is entitled to terminate the contract, to collect the agreed-upon damages, and to recover any additional damages directly and proximately caused by Smok's breach, including interest.

106. As a direct and proximate result of the Smoke Defendants' acts,

1 Plaintiff has suffered and will suffer great harm in an amount to be determined at
2 trial.

3 **SEVENTH CAUSE OF ACTION**

4 **(Contributory Trademark Infringement)**

5 **(Against the Smok Defendants)**

6 107. Plaintiff refers to and re-alleges each and every allegation 1 through
7 71, all inclusive, above as if set forth herein.

8 108. The Retail Defendants are engaged in illegal trademark infringement
9 of Plaintiff's ALIEN VAPE® Marks in that they each sell, offer for sale, promote,
10 and advertise, infringing Alien Baby and Alien Kit e-cigarette products.

11 109. The Smok Defendants have actual knowledge of the Retail
12 Defendants' illegal activities.

13 110. The Smok Defendants have materially encouraged, enabled,
14 contributed to, and induced the infringing conduct of the Retail Defendants by
15 providing, among other things, the infringing products to the Retail Defendants and
16 encouraged them to sell, market, and promote them.

17 111. The Smok Defendants therefore bear contributory liability for the
18 Retail Defendants' trademark infringement of Plaintiff's ALIEN VAPE® Marks.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff demands a judgment against the Defendants and
22 prays that this Court grants:

- 23 a. Permanent injunctive relief against all Defendants and their parents,
24 subsidiaries, affiliated companies, and their respective officers, directors,
25 employees, and agents from using the Alien trademarks, any marks likely
26 to cause confusion with the Alien trademarks, and selling any of the Alien
27 Baby/AL85 and Alien Kit vaporizer products;

- b. An accounting of, and disgorgement of, any and all profits derived by the Defendants and all damages sustained by Plaintiff, trebled, by virtue of the Defendants' infringing and illegal acts, in an amount to be determined at trial;
- c. Prejudgment interest, the costs of this action, witness fees, and Plaintiff's attorneys' fees, pursuant to the Settlement Agreement between Plaintiff and the Smok Defendants, 15 U.S.C. § 1117, 1118, and California Civil Code § 3288;
- d. Punitive, enhanced, treble, and exemplary damages for the Defendants' acts of unfair competition and willful infringement;
- e. The agreed-upon damages set forth in the Settlement Agreement between Plaintiff and the Smok Defendants;
- f. Other economic and consequential damages in an amount to be determined at trial;
- g. The destruction of all materials bearing infringements of Plaintiff's ALIEN VAPE® trademarks;
- h. That the Defendants be held jointly and severally liable;
- i. A judgment that the Defendants have unfairly competed with Plaintiff and violated the trademark laws of California and the United States; and
- j. Grant to Plaintiff such further relief as may be equitable and proper.

Respectfully submitted,

By: /s/ Stephen McArthur

Dated: March 28, 2017

Stephen Charles McArthur
The McArthur Law Firm PC
Attorneys for Plaintiff, Mike Saredine
10008 National Blvd., #295
Los Angeles, CA 90034
(323) 639-4455

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure as to all issues in this lawsuit.

By: /s/ Stephen McArthur
Stephen Charles McArthur
The McArthur Law Firm PC
Attorneys for Plaintiff
Mike Saredine
10008 National Blvd., #295
Los Angeles, CA 90034
(323) 639-4455

Dated: March 28, 2017