

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Trademark Registration

Registration No.: 4579500
Mark: KING PEN
Class: 010
Registrant: XS Distribution, LLC

TTAB

BBK TOBACCO & FOODS, LLP)	
)	
Petitioner,)	
)	Cancellation No.: 92060086
v.)	
)	
XS Distribution, LLC)	
)	
Registrant)	

**PETITION FOR CANCELLATION
(ANSWER)**

1. Petitioner is the current owner of the following trademarks.

Mark	Class and Goods & Services	Serial No.	Registration No.	Filed Date	First-Use Date	Registration Date
Kingpin	IC 030 - Chemical flavorings for the preparation of tobacco, namely, cigarette tobacco, chewing tobacco and snuff; Chemical flavorings in liquid form used to refill electronic cigarette cartridges	85-963317		6/18/13	6/25/2014	
Kingpin	IC 034 - Cigar boxes not of precious metal; Cigar humidifiers; Electronic cigarettes; Electronic cigars	85-963317		6/18/13	6/25/2014	
Kingpin	IC 034 - Tobacco in the form of leaves, Cigarette Rolling Papers, Cigars, Cigarettes	78-293520	2874945	8/28/03	1/1/03	8/17/04
Kingpin Capo Dei Capi	IC 034 - Cigar wraps; Cigars; Tobacco, cigars and cigarettes	85-182777	3996913	11/22/10	11/13/09	7/19/11

We do not dispute the fact that petitioner owns all rights to the Kingpin trade name within its described categories.

- We do believe petitioner uses, and has used, and continues to use their Kingpin trademark.
- Petitioner claims they have used the Kingpin Trademark since 2004.
Petitioners filed trademarks indicate the following dates.



11-20-2014

- a. IC 034 - Tobacco in the form of leaves, Cigarette Rolling Papers, Cigars, Cigarettes
 - i. First Use 1/1/03
 - b. IC 034 - Cigar wraps; Cigars; Tobacco, cigars and cigarettes
 - i. First Use 11/13/09
 - c. IC 034 - Cigar boxes not of precious metal; Cigar humidifiers; Electronic cigarettes; Electronic cigars
 - i. First Use 6/25/14
 - d. IC 030 - Chemical flavorings for the preparation of tobacco, namely, cigarette tobacco, chewing tobacco and snuff; Chemical flavorings in liquid form used to refill electronic cigarette cartridges
 - i. First Use 6/25/14
4. We do not doubt that the Petitioner has sold goods under its Kingpin trademark.
 5. We do not doubt that the petitioner has made expenditures to market its Kingpin brand.
 6. We do believe the Kingpin brand tobacco products are well known in the tobacco industry.
 7. We do believe the Kingpin logo has become distinctive in identifying products emanating from petitioner such as but not limited to cigar wraps, cigar tobacco, cigar humidors.
 8. XS Distribution, LLC is a Michigan based company with its principal place of business at 31234 Warren Rd, Westland MI 48185. I am the resident agent Anthony Shallal.

9. On December 7, 2013 XS Distribution, LLC filed an application to register our trade name KING PEN. The application bears the serial number 86-137774.
10. The KING PEN trademark application was filed as a section 1(a) "in use" application. We started developing the brand and logo late 2012 and early 2013. We branded our first product in September 2013. We Received said product from manufacturer in late October 2013. The images(exhibit A) we provided with our trademark application was our actual product which was available for sale at that time. We have since introduced a new model to the market and our products have remained available for sale at select retail outlet(s).
11. The KING PEN trademark application sought classification in International Class 010 for the following goods and service "Vaporizers for medical purposes; electronic vaporizers for personal use that emit vapor for treatment of a variety of medical conditions; handheld electric powered vaporizers for medical use; electrically powered vaporizers for vaporizing constituents of herbal and plant matter for medical use; battery powered handheld vaporizers for medical use; Electric vaporizer kits for medical use comprised of vaporizers for medical use, vaporizer cartridges for holding oils and liquids used to produce the inhalable aerosol, vaporizer atomizer bases and coils, vaporizer packing tools, vaporizer mouthpieces, and vaporizer batteries and battery chargers sold together as a unit" Our product along with other similar products on the market(exhibit B) is intended for vaporizing oils, extracts, and tinctures derived from herbal and plant matter intended for medical use. Our products are not designed for use with E-liquid, Nicotine Liquid nor do we sell these products. Our style cartridges only hold a couple drops of liquid at time while an e-cigarette cartridge holds 1ml or more. Our cartridges are designed

for use with thick oils and/or paste like texture materials. Our product is not intended for use with any tobacco or nicotine related product.

12. Our intent and purpose for the KING PEN trademark and KING PEN product line is to provide a medical vaporizer device to the consumer. We wanted to specialize in one product to ensure strict quality control and customer service which is why we have not branched out into several products we have maintained sales of our Double Kit and introduced a Single Kit(exhibit C) both intended for the same use as electronic vaporizers for medical use. If our product was intended for use with E-liquid or nicotine liquid we would have introduced a line of bottled e-liquid as most e-cigarette companies do.
13. The two specimens attached in the application (exhibit A) are photos of our original product, KING PEN Double Kit. This was the first product we introduced with the KING PEN brand and is still available on the market. The photos were taken at that time of the actual box with the contents inside ready and available for sale.
14. The KING PEN trademark was filed as a standard character mark with a space between KING & PEN. We decided to design our logo with KING in big bold text with a crown over it and PEN under it and we included Vaporizer in the logo to describe the products sole purpose. So the logo reads KING PEN VAPORIZER.
15. The term VAPORIZER is merely descriptive of the products function.
16. The KING PEN application listed a website "mykingpen.com" which we planned to launch in January 2014 but being that we are a new company with a limited budget we were unable to launch as planned and have decided to keep our product exclusive to one retail outlet in our area for the time being. We still have the domain name and still plan to launch the site at some point

mainly for the purpose of warranty claims and not online sales due to the fact that there is minimal control of underage/unauthorized purchases.

17. The domain name "mykingpen.com" was registered on October 3, 2013 which was around the same time we were receiving our products. The domain was renewed on October 4, 2014.
18. The website was never active so there are no archives.
19. The KING PEN mark was published on the Official Gazette on or about May 20, 2014.
20. A registration certificate for the mark was issued on August 5, 2014.
21. We have no affiliation with nor were we aware of a new entity forming in the state of California under the name of XS Distribution LLC on August 14, 2014.
22. We have no affiliation nor do I own www.kingpenvapes.com.
23. www.kingpenvapes.com sells vaporizers to customers.
24. We do not sell our products to www.kingpenvapes.com which is why they don't sell any vaporizers under the brand KING PEN.
25. Neither XS Distribution, LLC , KING PEN or www.mykingpen.com maintain any type of social media or online presence.
26. We have sold products bearing the KING PEN name for over a year so I am absolutely positive that they do in fact exist.
27. I was aware of the KingPin brand related to Cigar Tobacco, Cigar Wraps, Cigar Rollers. However I have never heard of or seen any KingPin products relating to vaporizers. That being said we did not look into the matter knowing that the brand was never involved in vaporizers to that point. Upon information and belief the brand KingPin is non-existent in the vaporizer industry.

28. We were aware the KingPin brand sold tobacco products(exhibit D) which is not what we sell.

29. The information we provided in our KING PEN trademark application was true.

a. The photos we submitted with our application were taken of our product available for sale at that time and is still available.

b. The product was available for sale in October, 2013.

c. The intended purpose of our products is as a medical vaporizer device.

30. Our application did not contain any false or misrepresenting information, I signed the declaration with full confidence that every statement was true.

31. We registered our product under the classification in which it is intended for which is a medical vaporizer. We would not have misclassified our product and stated it was not an e-cigarette if it really was, because then we could have never come out with a line of e-liquid or marketed and developed our brand as an e-cigarette. If we wanted to develop an e-cigarette brand we would have chosen a different name with no possible conflict in which we could freely develop and market.

32. There are several differences between the petitioners mark KingPin and the registrants mark KING PEN. The term KingPin refers to the leader of an organization, a criminal mastermind, or the number one pin in a bowling game. The term KING PEN refers to a pen for a king, in this case a vaporizer pen for a king. The logos are not similar at all. Petitioner uses one word with mostly lower case letters, registrant uses two words with all capital letters. Most adults know the meaning of both Pin and Pen and can tell the two words apart.

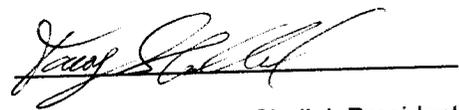
33. We do not include the word "vapes" in our word mark.

34. Petitioner sells tobacco products to tobacco consumers while registrant sells vaporizers to any person of legal age interested in purchasing a medical vaporizer.
35. Registrant and petitioner sell different products in different markets using distinctively different trade names and logos. We don't believe this will cause any confusion in the minds of consumers. If they need tobacco products or e-cigarettes they will contact petitioner (KingPin) and if they need a medical vaporizer device they will contact registrant (KING PEN).
36. We don't believe the KING PEN mark is causing or will ever cause any injury and damage to petitioner because we do not sell the same or even similar products. I don't see how they think a consumer in the market for a cigar or an e-cigarette will find us and purchase a medical vaporizer instead.

We ask that you please consider the information provided in our attempt to save our one and only trademark in which we have worked to maintain and develop. Either way we respect your decision.

Dated this 17th day of November 2014.

XS Distribution, LLC



Anthony J Shallal, President
31234 Warren Rd.
Westland, MI 48185

I hereby certify that a true and complete copy of the foregoing has been served on BBK TOBACCO & FOODS, LLP by mailing said copy on November 17, 2014 via First Class Mail, postage prepaid to: BBK TOBACCO & FOODS, LLP 3315 W. Buckeye Rd #4 Pheonix, AZ 85009

Signature 
Anthony J Shallal

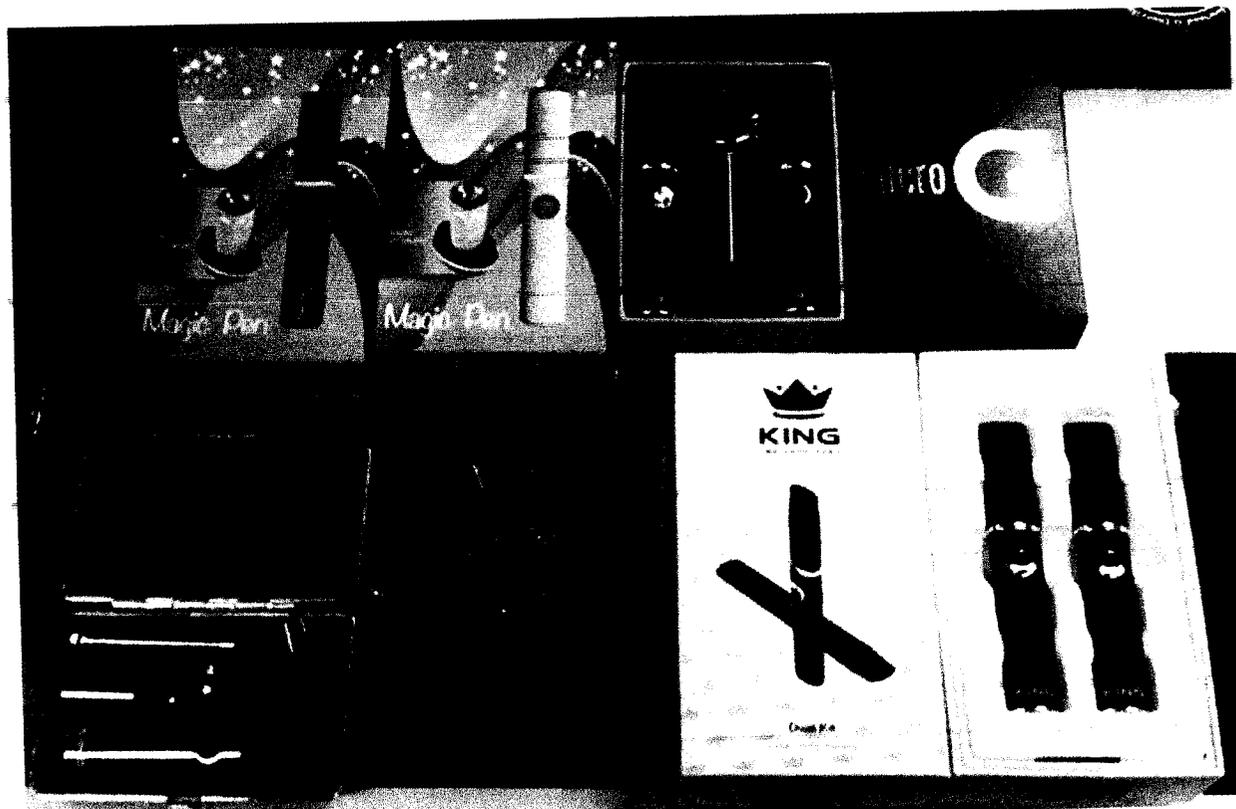
Date 11/17/14

United States Postal Service Tracking Number
9405 5118 9956 1009 8814 78

Exhibit A



Exhibit B



G PEN MICRO

Word Mark G PEN MICRO
Goods and Services IC 010. US 026 039 044. G & S: Medical apparatus, namely, electronic vaporizer for personal use that emits vapor for treatment of a variety of medical conditions
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 86160058
Filing Date January 8, 2014
Current Basis 1B
Original Filing Basis 1B
Published for Opposition December 9, 2014
Owner (APPLICANT) Grenco Science, Inc. CORPORATION CALIFORNIA 11901 Santa Monica Blvd. #658 Los Angeles CALIFORNIA 90025
Attorney of Record Caroline L. Keller
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PEN MICRO" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

MAGIC PEN

Word Mark **MAGIC PEN**
Goods and Services IC 010. US 026 039 044. G & S: Vaporizers for medical purposes, namely, electronic vaporizers for personal use that emit vapor for treatment of a variety of medical conditions, handheld electrically powered vaporizers for producing an inhalable aerosol, and electrically powered vaporizers for vaporizing constituents of herbal and plant matter for producing an inhalable aerosol; accessories for vaporizers for medical use for producing an inhalable aerosol, namely, cartridges for holding oils and liquids used to produce the inhalable aerosol; and replacement parts for vaporizers for medical use, namely, mouthpieces, replacement cartridges for vaporizable materials, and vaporizer filters for medical use

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86027281

Filing Date August 2, 2013

Current Basis 1B

Original Filing Basis 1B

Published for Opposition February 11, 2014

Owner (APPLICANT) Mazin G. Samona INDIVIDUAL UNITED STATES 1238 Anderson Road Clawson MICHIGAN 48017

Attorney of Record John VanOphem

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PEN" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

Exhibit C



Exhibit D

The following seven (7) pages are the only products bearing the Kingpin name in the HBI catalog. Cigar Wraps, Cigar Rollers, Humidors and the Kingpin E-Blunt Vaporizer.



The MOST WANTED and MOST FLAVORFUL WRAPS in the WORLD!

Kingpin® Premium Wraps have quickly become the most sought-after wrap in America. From hip-hop artists to country western singers, from the East Coast to the West Coast and everywhere in between, this wrap has become the wrap of choice. Kingpin® tobacco wrappers are packaged in a freshness sealing resusable tube or a foil zipper pouch. Your customers can re-use the tube as a carrying device for a rolled cigar or as a snuffer to extinguish a partially smoked cigar. Keep lots of stock of Kingpin® on-hand for the weekend rushes!



24/3

KINGPIN® PREMIUM WRAPS TRIPLE

- BAHAMA MAMA
- BIG APPLE
- BLUEBERRY BOMB
- CHERRY BONBON
- CHOCOLATE MINT
- GOOMBA GRAPE
- HAWAIIAN
- LIQUID HONEY

- KPBAHAMA
- KPAPPLE
- KPBLUEBERRY
- KPCHERRY
- KPCHOCMINT
- KPGRAPE
- KPHAWAIIAN
- KPHONEY

- MANGO TANGO
- MAPLE SYRUP
- MELON MADNESS
- PEACH PARADISE
- PURPLE PUNCH
- SPANISH FLY
- VSOP COGNAC

- KPMANGO
- KPMAPLE
- KPMELONMADNESS
- KPPEACH
- KPPURPLE
- KPSPANISHFLY
- KPCOGNAC

Kingpin wraps are designed for make your own tobacco cigars. Tobacco is dangerous and addictive. - Kingpin and the Kingpin logo are © and Registered Trademarks



The Magic behind these wraps is the combination of the Perfect Fold™ and Sticky Lip inventions. These two combined make for a very easy to roll and stick wrap. They stick and roll easier than the old straw technology and provide you and your customers a much better value!

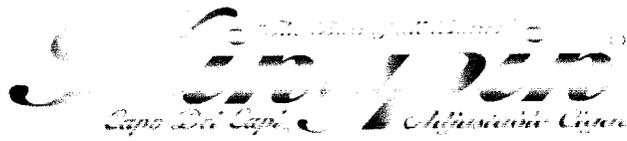


25 4

KINGPIN® MAGIC WRAPS QUADRUPLE

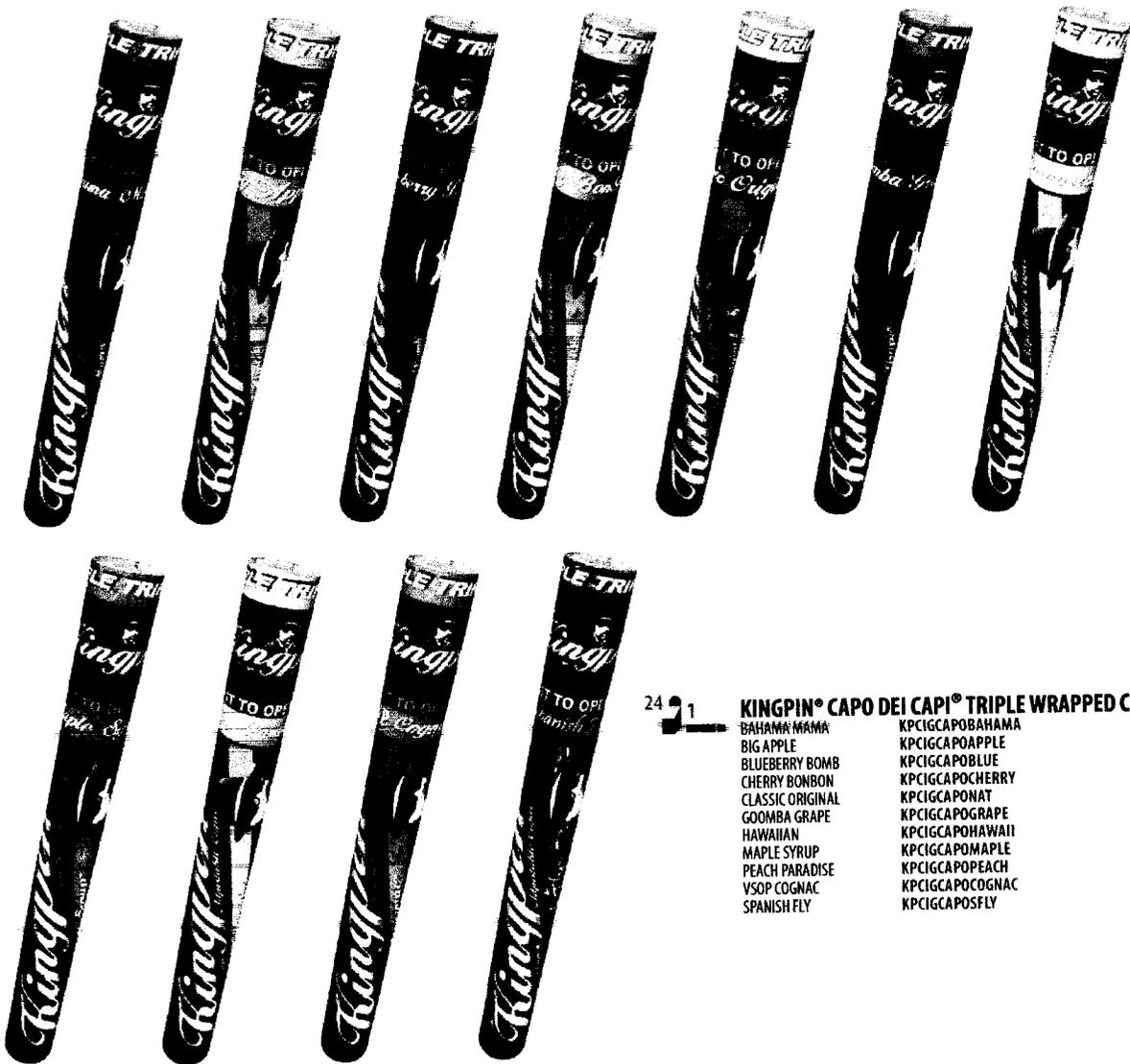
- | | |
|----------------|---------------|
| BAHAMA MAMA | KP4BAHAMA |
| BLUEBERRY BOMB | KP4BLUEBERRY |
| GOOMBA GRAPE | KP4GRAPE |
| LAID BACK | KP4LAIDBACK |
| MANGO TANGO | KP4MANGO |
| ORIGINAL G | KP4ORIGINALG |
| PEACH PARADISE | KP4PEACH |
| SPANISH FLY | KP4SPANISHFLY |

Kingpin wraps are designed for make your own tobacco cigars. Tobacco is dangerous and addictive. - Kingpin and the Kingpin logo are © and Registered Trademarks



KINGPIN® CAPO DEI CAPI® TRIPLE WRAPPED CIGAR

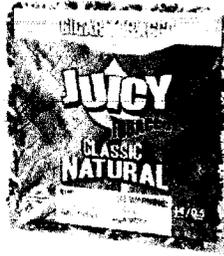
The Kingpin® Capo Dei Capi® is an adjustable cigar. The Capo is triple wrapped with an inner binder sheet over the flavored loose tobacco (known as a "bunch" in the cigar industry). Each of these wraps is infused with flavoring to ensure a truly delicious smoke. The smoker can smoke the Capo as-is or remove or loosen some of the wrappers to make the cigar burn faster, or with an easier draw. In essence it gives the smoker a similar experience to smoking a cigar made in the manner that cigars were rolled 100 years ago.



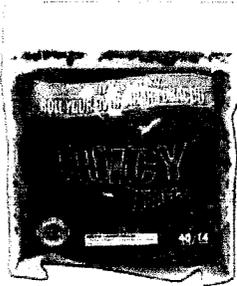
24

KINGPIN® CAPO DEI CAPI® TRIPLE WRAPPED CIGAR

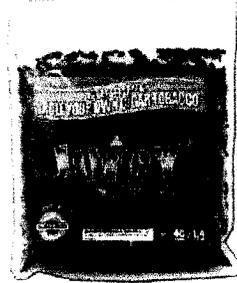
- | | |
|------------------|-----------------|
| BAHAMA MAMA | KPCIGCAPOBAHAMA |
| BIG APPLE | KPCIGCAPOAPPLE |
| BLUEBERRY BOMB | KPCIGCAPOBLUE |
| CHERRY BOMBON | KPCIGCAPOCHERRY |
| CLASSIC ORIGINAL | KPCIGCAPONAT |
| GOOMBA GRAPE | KPCIGCAPOGRAPE |
| HAWAIIAN | KPCIGCAPOHAWAII |
| MAPLE SYRUP | KPCIGCAPOMAPLE |
| PEACH PARADISE | KPCIGCAPOPEACH |
| VSOP COGNAC | KPCIGCAPOCOGNAC |
| SPANISH FLY | KPCIGCAPOFLY |



14g **JUICY® CLASSIC NATURAL**
CIGAR TOBACCO BAG
JJTOBCLASSIC



1.4oz **JUICY® CIGAR TOBACCO**
CIGAR TOBACCO BAG
BLUEBERRY JJTOBBLUE
NATURAL JJTOBNAT
GRAPE JJTOBGRAPE



1.4oz **KINGPIN® CIGAR TOBACCO**
CIGAR TOBACCO BAG
COGNAC KPTOBCOGNAC
WHITE CHOCOLATE KPTOBCHOC
SWEET KPTOBSWEET



14g **KINGPIN® CLASSIC NATURAL**
CIGAR TOBACCO BAG
KPTOBCCLASSIC



SIMPLY THE BEST!

6 ZEN® CIGAR ROLLER
FITS ALL CIGAR WRAPS
ZENROLLREG

SPARE APRON
ZENROLLREGAPRON



SIMPLY THE BEST!

12 ZEN® CONE ROLLER 110mm
FITS KS
ZEN110CONE

CONE 110mm SPARE APRON
ZEN110CONEAPRON



SIMPLY THE BEST!

12 ZEN® ROLLER 70mm
FITS SW ONLY
ZEN70

70 mm SPARE APRON
ZEN70APRON



SIMPLY THE BEST!

12 ZEN® ROLLER 79mm
FITS 1 1/4, 1 1/2, DOUBLE WIDE - 1 EXTRA APRON INCLUDED
ZEN79

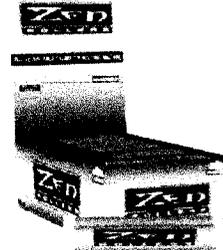
79mm SPARE APRON
ZEN79APRON



SIMPLY THE BEST!

12 ZEN® ROLLER 110mm
FITS KS - 1 EXTRA APRON INCLUDED
ZEN110

110mm SPARE APRON
ZEN110APRON



12 ZEN® ROLLER 70mm ADJUSTABLE
FITS SW ONLY - EXTRA APRON INCLUDED
ZENADJUST70



12 ZEN® ROLLER 79mm ADJUSTABLE
FITS 1 1/4, 1 1/2, DOUBLE WIDE - EXTRA APRON INCLUDED
ZENADJUST79



6 JUICY® CIGAR ROLLER
SIMPLY THE BEST! - FITS ALL CIGAR WRAPS
JUICYROLLER

SPARE APRON
JUICYROLLERAPRON



SIMPLY THE BEST!

6 KINGPIN® CIGAR ROLLER
FITS ALL CIGAR WRAPS
KROLLER

SPARE APRON
KROLLERAPRON

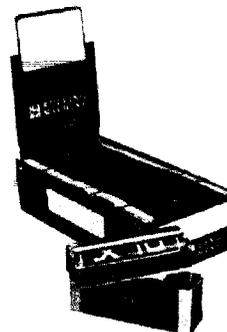


This roller is both low cost AND high quality. It's the best roller for your value conscious customers. It's NOT made in China!

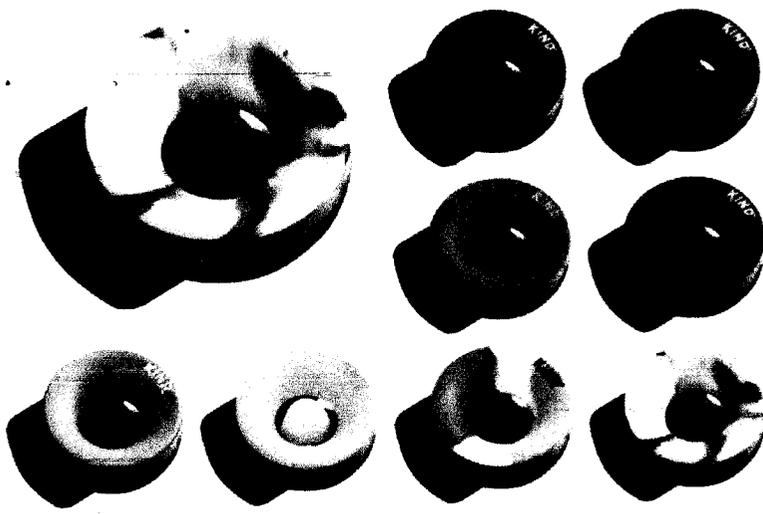
10 LARAMIE® ROLLER 79mm
LARAMIE79



10 DLX® ROLLER 78mm
FITS SW & 1 1/4 - DELUXE POLISHED CHROME METAL ROLLER THAT OPENS FOR EASY FILLING
DLXROLLER79



10 DLX® ROLLER 84mm
FITS SW, 1 1/4 & 84MM - DELUXE POLISHED CHROME METAL ROLLER THAT OPENS FOR EASY FILLING
DLXROLLER84



KIND ASH CACHE ASHTRAY WITH BUILT-IN TOOL HOLDER
HEAT-RESISTANT SILICONE WITH STAINLESS STEEL BOWL

- | | | | |
|--------|------------------|------------------|--------------------|
| BLACK | KINDASHCACHEBLK | RED | KINDASHCACHERED |
| BLUE | KINDASHCACHEBLU | GLOW-IN-THE-DARK | KINDASHCACHEGLOW |
| GREEN | KINDASHCACHEGRN | RASTA | KINDASHCACHETIEDYE |
| PURPLE | KINDASHCACHEPURP | TIE DYE | KINDASHCACHERASTA |



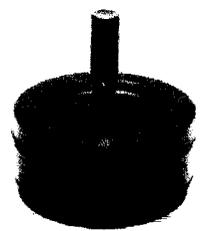
BUTTBUCKET
EXTINGUISHING ASHTRAY!!!
BUTTBUCKET



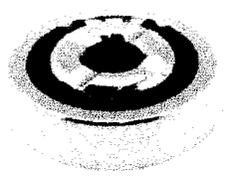
JET LIFE ASH TRAY
ASHJETLIFE



BUDDIES° ASHTRAY
3707
ASHKIT3707



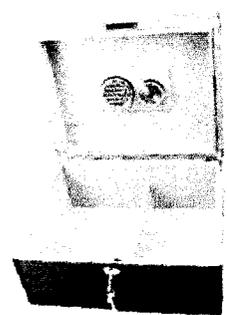
BUDDIES° ASHTRAY
3721
ASHKIT3721



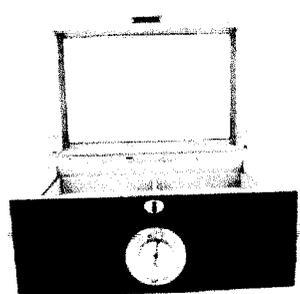
BUDDIES° ASHTRAY
KPT3701
ASHKPT3701



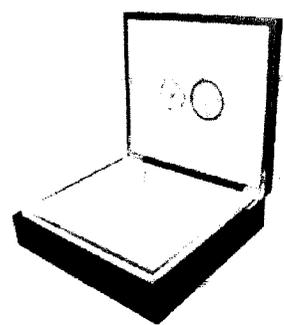
JAPANESE SMOKELESS ASHTRAY
SMOKELESSASH
REPLACEMENT FILTERS
SMOKELESSFIL



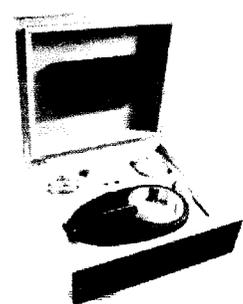
KINGPIN° HUMIDOR
ROSEWOOD
FITS 50 CIGARS
HUMIDOR007P



KINGPIN° HUMIDOR
GLASS TOP
FITS 100 CIGARS
HUMIDORKP



KINGPIN° HUMIDOR
BLACK FINISH
FITS 20 CIGARS
HUMIDOR061



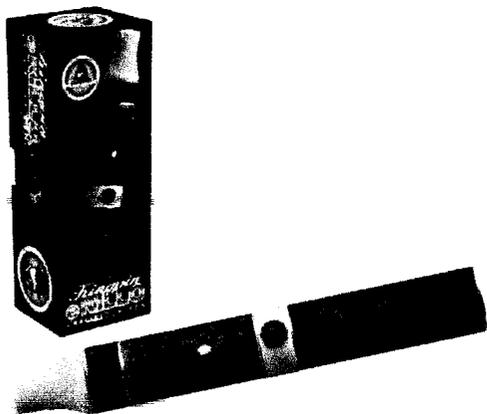
KINGPIN° HUMIDOR
ASHTRAY & CUTTER
WITH ASHTRAY AND CUTTER TRAY
HUMIDORT003



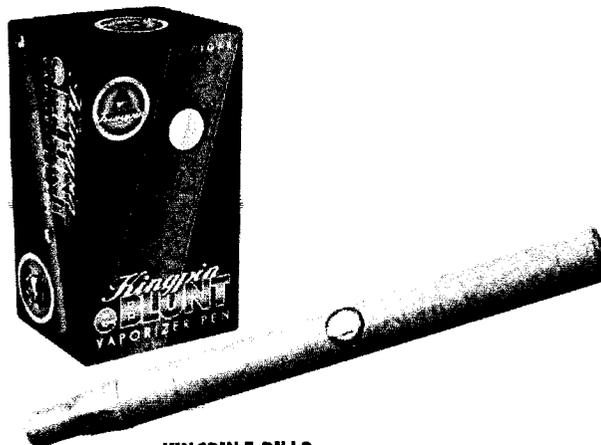
6 ELEMENTS® VAPORLIGHTER™ DISPLAY
USB RECHARGABLE NO-FLAME LIGHTER AND VAPORIZER
VAPOLIGHTDISPLAY



6 ELEMENTS® VAPORLIGHTER™ KIT
EACH KIT CONTAINS:
VAPORLIGHTER™, USB CABLE, & 2 GLASS SCREENS
VAPOLIGHTBLISTER



KINGPIN E-BLUNT
VAPORIZER KIT FOR DRY HERBS, WAXES, OR DRIP ATOMIZING
VAPOLIGHT DISPLAY



KINGPIN E-RILLO
VAPORIZER KIT FOR DRY HERBS, WAXES, OR DRIP ATOMIZING
VAPOLIGHT DISPLAY