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Filing date: **05/24/2019**

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

Proceeding	91218230
Party	Plaintiff NJOY, Inc.
Correspondence Address	KELU L SULLIVAN KELLY IP LLP 1300 19TH ST NW WASHINGTON, DC 20036 UNITED STATES kelu.sullivan@kelly-ip.com, lit-docketing@kelly-ip.com 202-808-3570
Submission	Motion to Join/Substitute Party
Filer's Name	Kelu L. Sullivan
Filer's email	kelu.sullivan@kelly-ip.com, lit-docketing@kelly-ip.com
Signature	/Kelu L. Sullivan/
Date	05/24/2019
Attachments	NJOY - Moton to Substitute Party.pdf(754455 bytes )

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

NJOY, LLC (substitution for NJOY, INC.)	Opposition No. 91218230
Opposer	Serial No. 86150445
v.	Mark: IJOY
WANG XI ZHI,	Filed: December 22, 2013
Applicant.	

**MOTION TO SUBSTITUTE PARTY**

NJOY, LLC moves under TBMP § 512.01 to substitute Opposer NJOY, Inc. with NJOY, LLC. NJOY, Inc.'s IP assets were purchased by Homewood NJOY Acquisition, LLC, which then changed its name to NJOY, LLC. Attached as Exhibit A are copies of the redacted Asset Purchase Agreement which shows the assignment of pleaded Reg. Nos. 4395179, 3427769, 4091150, and 4419653 from NJOY, Inc. to Homewood NJOY Acquisition, LLC on February 15, 2017 and the name change document showing that Homewood NJOY Acquisition, LLC changed its name to NJOY, LLC. on February 16, 2017.

Therefore, we request the Board grant the substitution of NJOY, LLC. as the Opposer in the above-referenced proceeding.

Respectfully Submitted,

Dated: May 24, 2019

By: /Kelu L. Sullivan/  
Kelu Sullivan  
Kelu.sullivan@kelly-ip.com  
KELLY IP, LLP  
1919 M St., NW  
Suite 610  
Washington, D.C. 20036  
Telephone: (202) 808-3570  
Facsimile: (202) 354-5232

Attorneys for Opposer  
NJOY , LLC

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing MOTION TO  
SUBSTITUTE PARTY was served by email on this 24<sup>th</sup> day of May 2019, upon  
Opposer's counsel at the following address of record:

Rick Ruz, PLLC  
300 Sevilla Ave., Suite 309  
Coral Gables, FL 33134  
francis@ruzlaw.com

/Larry L. White/\_\_\_\_\_  
Larry L. White  
Litigation Case Manager

# **EXHIBIT A**

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**ASSET PURCHASE AGREEMENT**

**dated as of  
February 15, 2017  
by and between**

**NJOY, INC.,  
Chapter 11 Debtor and Debtor-in-Possession**

**and**

**HOMEWOOD NJOY ACQUISITION, LLC**

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (“**Agreement**”) is entered into as of February 15, 2017 by and between Homewood NJOY Acquisition, LLC, a Delaware limited liability company (the “**Purchaser**”), and NJOY, Inc., a Delaware corporation, having a place of business at 15211 N. Kierland Blvd., Suite 200, Scottsdale, Arizona 85254 (“**Seller**”), as debtor and debtor-in-possession in the chapter 11 case no. 16-12076 (CSS) (the “**Bankruptcy Case**”), pending in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

### RECITALS

WHEREAS, Seller is a leading independent manufacturer and distributor of electronic nicotine delivery systems (ENDS) (the “**Business**”);

WHEREAS, on September 16, 2016 (the “**Filing Date**”), Seller filed a voluntary petition with the Bankruptcy Court under chapter 11 of title 11 of the United States Code, Section 101, *et seq.* (the “**Bankruptcy Code**”);

WHEREAS, the transactions contemplated by this Agreement will be consummated pursuant to a Sale Approval Order (as defined below) to be entered in the Bankruptcy Case under Sections 105, 363, 365 and other applicable provisions of the Bankruptcy Code (as defined below), and this Agreement and the transactions contemplated herein are subject to the approval of the Bankruptcy Court; and

WHEREAS, Purchaser is or will be the assignee of certain rights of the holders of the Second Lien Claims, and desires to credit bid up to all of the Second Lien Claims and the Junior Term Loans (the “**Credit Bid**”) and to pay a specified amount in cash to the Sellers in connection with the Sale Transaction, subject to entry of an acceptable Sale Approval Order;

WHEREAS, Seller wishes to sell to Purchaser and Purchaser wishes to acquire from Seller certain assets related to the Business as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises in this Agreement and for other good and valuable consideration, the parties hereby agree as follows.

### AGREEMENT

#### 1. DEFINITIONS

**1.1** “**Accounts Receivable**” means all of Sellers’ trade accounts receivable and other rights to payment from customers or other third parties.

**1.2** “**Actions**” has the meaning set forth in **Section 3.4** hereof.

**1.3** “**Affiliate**” of a Person means any other Person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such Person.

**1.4** “**Agreement**” means this Asset Purchase Agreement among the parties set forth on the first page hereof, including, without limitation, all Exhibits and Schedules hereto, as the same may be amended from time to time.

**1.5** “**Alternative Transaction**” means the sale, transfer or other disposition, directly or indirectly, including through an asset sale, share sale, merger, amalgamation, or other similar transaction, including a plan of reorganization approved by the Bankruptcy Court, or resulting from the Auction, of the Purchased Assets, in a transaction or series of transactions with one or more Persons other than Purchaser.

**1.6** “**Ancillary Agreements**” means any agreement, instrument or other document to be executed and delivered in connection with the consummation of the transactions contemplated by this Agreement and shall include, without limitation, any agreement, instrument, or other document that is set forth in **Section 2.6** hereof.

**1.7** “**Apportioned Obligations**” has the meaning set forth in **Section 5.5** hereof.

**1.8** “**Assets**” means, when referenced in the Sale Approval Order, the Purchased Assets.

**1.9** “**Assumed Contracts**” has the meaning set forth in **Section 2.1(d)** hereof.

**1.10** “**Assumed Liabilities**” has the meaning set forth in **Section 2.3(a)** hereof.

**1.11** “**Auction**” means the auction of the Purchased Assets.

**1.12** “**Bankruptcy Case**” has the meaning given to it in the recitals hereto.

**1.13** “**Bankruptcy Code**” has the meaning given to it in the recitals hereto.

**1.14** “**Bankruptcy Court**” has the meaning given to it in the recitals hereto.

**1.15** “**Bidding Procedures**” means the auction, sale and bidding procedures approved by the Bid Procedures Order.

**1.16** “**Bid Procedures Order**” means the order approving the bidding procedures at the Auction for the Purchased Assets.

**1.17** “**Business**” has the meaning given to it in the recitals hereto.

**1.18** “**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks in Delaware are required or authorized by law to be closed.

**1.19** “**Cash and Cash Equivalents**” means all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits, securities, securities entitlements, instruments and other investments of Sellers, and all bank accounts and securities accounts, including any cash collateral that is collateralizing any letters of credit.



- 1.20** “**Cash Payment**” has the meaning set forth in **Section 2.5(a)** hereof.
- 1.21** “**Claim**” has the meaning given that term in section 101(5) of the Bankruptcy Code and shall expressly include claims arising under any theory of successor liability.
- 1.22** “**Closing**” means the closing of the transactions contemplated by this Agreement.
- 1.23** “**Closing Date**” means the date in which the conditions set forth in Article VI are satisfied or waived, or such other date as the parties may mutually agree, upon which the Closing takes place.
- 1.24** “**Code**” means the Internal Revenue Code of 1986, as amended.
- 1.25** “**Consent**” means any consent, approval, authorization, license or order of, registration, declaration or filing with, or notice to, or waiver from, any federal, state, local, foreign or other Governmental Entity or any Person, including, without limitation, any security holder or creditor which is necessary to be obtained, made or given in connection with the execution and delivery of this Agreement and/or any Ancillary Agreement, the performance by a Person of its obligations hereunder and/or thereunder and the consummation of the transactions contemplated hereby and/or thereby.
- 1.26** “**Contract Assumption Order**” has the meaning set forth in **Section 5.4(d)** hereof.
- 1.27** “**CRCMS**” has the meaning set forth in **Section 3.3** hereof.
- 1.28** “**Cure Claims**” means amounts that must be paid and obligations that otherwise must be satisfied, pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption, assignment, and/or sale of the Assumed Contracts, as determined pursuant to the process set forth in the Bid Procedures Order.
- 1.29** “**Deposit**” has the meaning set forth in **Section 2.5** hereof.
- 1.30** “**DIP Amount**” means the amount of all of Seller’s monetary obligations under the DIP Facility,
- 1.31** “**DIP Facility**” means the Seller’s post-petition financing in the form of a revolving credit facility with NJOY Debt Holdings, LLC, as authorized on a final basis by the Bankruptcy Court on October 14, 2016.
- 1.32** “**Disclosure Schedules**” means the disclosure schedules attached to this Agreement as **Exhibit A**, and includes but is not limited to each of the Schedules expressly referred to in **Section 3** of this Agreement.
- 1.33** “**Employment Related Plan**” means any employment, consulting, bonus, incentive compensation, deferred compensation, pension, profit sharing, retirement, stock purchase, stock option, stock ownership, stock appreciation rights, phantom stock, equity (or equity-based), leave of absence, layoff, vacation, day or dependent care, legal services, cafeteria,

life, health, medical, dental, vision, welfare, accident, disability, workmen's compensation or other insurance, severance, separation, termination, change of control, collective bargaining or other benefit plan, understanding, agreement, practice, policy or arrangement of any kind, whether written or oral, and whether or not subject to ERISA, including any "employee benefit plan" within the meaning of Section 3(3) of ERISA.

**1.34 "Encumbrances"** means collectively and without limitation, any and all mortgages, security interests, conditional sales or title retention agreements, pledges, hypothecations, rights, liens, judgments, interests, encumbrances or claims of any kind or nature whatsoever, including, without limitation, any and all "claims" as defined in Section 101(5) of the Bankruptcy Code, whether arising by agreement, any statute or otherwise and whether arising before, on or after the Filing Date.

**1.35 "ERISA"** means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

**1.36 "ERISA Affiliate"** means any Person required at any particular time to be aggregated with any of Seller or any Seller Subsidiary under Sections 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

**1.37 "Excluded Assets"** has the meaning set forth in **Section 2.2** hereof.

**1.38 "Excluded Liabilities"** has the meaning set forth in **Section 2.3(b)** hereof.

**1.39 "Filing Date"** has the meaning given to it in the recitals hereto.

**1.40 "Final Order"** means an order, judgment or other decree, the operation or effect of which has not been reversed, stayed, modified or amended and any and all appeal periods with respect to such order, judgment or other decree have expired.

**1.41 "First Lien Credit Agreement"** means that certain Credit Agreement dated as of March 3, 2015 among Seller, the Guarantors (as defined therein), the Lenders (as defined therein) and the Agent (as defined therein), as amended from time to time.

**1.42 "First Lien Claims"** means the aggregate principal amount of obligations outstanding under the First Lien Credit Agreement, together with accrued interest and any other Claims with respect to the First Lien Credit Agreement by such holders, and any Liens securing the foregoing.

**1.43 "GAAP"** means United States generally accepted accounting principles, applied on a consistent basis.

**1.44 "Governmental Entity"** means any federal, state, local or foreign government, political subdivision, legislature, court, agency, department, bureau, commission or other governmental regulatory authority, body or instrumentality, including any industry or other non-governmental self-regulatory organizations.

**1.45 “Insurance Policies”** shall have the meaning set forth in Section 3.10 of this Agreement.

**1.46 “Intellectual Property”** means all Seller’s intellectual property of any kind used, or held for use, in connection with the operation of the Business, including the following: (i) trademarks, service marks, trade names, slogans, logos, trade dress, internet domain names, brand names, and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (ii) patents, utility models and industrial design registrations (and all continuations, divisionals, continuations in part, provisionals, renewals, reissues, re-examinations and applications for any of the foregoing); (iii) copyrights and copyrightable subject matter (including, without limitation, any registrations and applications for any of the foregoing); (iv) trade secrets, proprietary processes, formulae, algorithms, models, and methodologies; and (v) computer software, computer programs, and databases (whether in source code, object code or other form).

**1.47 “Intellectual Property Rights”** means all proprietary rights and privileges of any kind or nature, however known or denominated, whether arising by operation of law, contractual obligation, or other means, throughout the world, including the right to distribute, exhibit, broadcast, and market by all means now known or hereafter devised (including over the Internet, World Wide Web, or other computer network) Intellectual Property.

**1.48 “IP Assets”** has the meaning set forth in **Section 3.5** hereof.

**1.49 “Inventory”** means all of Seller’s inventories (including, without limitation, raw materials, processed scrap, packaging materials, supplies, work in process, finished goods, spare parts and replacement and component parts and fuel) that are used, or held for use, in connection with the operation of the Business.

**1.50 “Junior Term Loans”** means all Term Loans (as such term is defined in the First Lien Credit Agreement) other than the Senior Term Loans (as such term is defined in the First Lien Credit Agreement).

**1.51 “Knowledge of Seller”** or any other similar knowledge qualification in this Agreement means all facts actually known by the President of the Seller and any member of the Seller’s board of directors.

**1.52 “Material Adverse Effect”** means a state of facts, event, change or effect to the Business, that results in a material adverse effect on the Business, taken as a whole, but excludes any state of facts, event, change or effect caused by states of facts, events, changes or developments relating to: (i) changes or conditions affecting the industry in general; (ii) changes in economic, regulatory or political conditions generally; (iii) any act(s) of war or of terrorism; (iv) the initiation of the Bankruptcy Case; (v) any actions taken in the Bankruptcy Case in furtherance of the transactions contemplated herein; or (vi) changes resulting from any motion, application, proceeding or order relating to, filed or entered in the Bankruptcy Case.

**1.53 “Next Highest Bidder”** has the meaning set forth in the Bidding Procedures.

**1.54** “**NPA**” means that certain Convertible Note Purchase Agreement dated as of October 16, 2015 among Seller, the Guarantors (as defined therein), the Noteholders (as defined therein) and Homewood NJOY Services LLC as Agent, as amended on February 5, 2016 and further amended on April 8, 2016.

**1.55** “**Permits**” means all licenses, certificates of authority, permits, orders, consents, franchises, approvals, registrations, clearances, variances, exemptions, local siting approvals, authorizations, qualifications and filings under any laws or with any Governmental Entities or other private Persons.

**1.56** “**Person**” means an individual, corporation, partnership, limited liability company, firm, joint venture, association, joint stock company, trust, unincorporated organization or other entity, or any Governmental Entity or quasi-governmental body or regulatory authority.

**1.57** “**Post-Closing Tax Period**” shall mean (i) any Tax period beginning any time after the Closing Date and (ii) with respect to a Tax period that commences before but ends after the Closing Date, the portion of such period beginning the day after the Closing Date.

**1.58** “**Pre-Closing Tax Period**” shall mean (i) any Tax period ending on or before the Closing Date and (ii) with respect to a Tax period that commences before but ends after the Closing Date, the portion of such period up to and including the Closing Date.

**1.59** “**Purchased Assets**” has the meaning set forth in **Section 2.1** hereof.

**1.60** “**Purchase Price**” has the meaning set forth in **Section 2.5** hereof.

**1.61** “**Purchaser**” has the meaning given to it in the recitals hereto.

**1.62** “**Sale Approval Order**” has the meaning set forth in **Section 5.4(c)** hereof.

**1.63** “**Sale Hearing**” means the hearing to approve the sale of the Purchased Assets.

**1.64** “**Second Lien Claims**” means (a) the aggregate principal amount of obligations outstanding under the NPA, together with accrued interest and any other Claims with respect to the NPA, and any Liens securing the foregoing.

**1.65** “**Seller**” has the meaning given to it in the recitals hereto.

**1.66** “**Seller Plan**” means an Employment Related Plan that Seller or any ERISA Affiliate sponsors, maintains, has any obligation to contribute to, has or may have liability under or is otherwise a party to, or that otherwise provides benefits for employees, former employees, independent contractors or former independent contractors (or their dependents and beneficiaries) of Seller on or prior to the Closing Date and, in the case of an Employment Related Plan that is subject to Part 3 of Title I of ERISA, Section 412 of the Code, or Title IV of ERISA, at any time during the five (5) year period preceding the Closing Date.

**1.67** “**Seller’s Representative**” has the meaning set forth in **Section 7.15** hereof.

**1.68 “Sponsors”** means the lenders and agent pursuant to the NPA and the Term Lenders (as such term is defined in the First Lien Credit Agreement).

**1.69 “Subsidiary”** means, with respect to any Person, any other Person (i) of which the first Person owns directly or indirectly fifty percent (50%) or more of the equity interest in the other Person; (ii) of which the first Person or any other Subsidiary of the first Person is a general partner or (iii) of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions with respect to the other Person are at the time owned by the first Person and/or one or more of the first Person’s Subsidiaries.

**1.70 “Successful Bidder”** shall have the meaning set forth in the Bidding Procedures.

**1.71 “Tangible Personal Property”** has the meaning set forth in **Section 2.1(f)** hereof.

**1.72 “Taxes”** (or **“Tax”** where the context requires) shall mean all federal, state, county, provincial, local, foreign and other taxes (including, without limitation, income, alternative or add-on minimum, profits, premium, estimated, license, registration, value added, escheat, abandoned or unclaimed property, excise, sales, use, occupancy, gross receipts, franchise, ad valorem, severance, capital levy, production, transfer, withholding, employment and payroll related and property taxes and other governmental charges and assessments and taxes of any kind whatsoever), whether disputed or not, whether attributable to statutory or nonstatutory rules and whether or not measured in whole or in part by net income, including any obligations to indemnify or otherwise assume or succeed to the Tax liability of any other Person and including, without limitation, interest, additions to tax or interest, charges and penalties with respect thereto, and expenses associated with contesting any proposed adjustment related to any of the foregoing.

**1.73 “Tax Return”** means any report, return, declaration, claim for refund or other information or statement supplied or required to be supplied by any Person relating to Taxes, including any schedules or attachments thereto and any amendments thereof.

## **2. PURCHASE AND SALE OF ASSETS**

**2.1 Purchase and Sale of Assets.** Subject to the terms and conditions of this Agreement together with any Bankruptcy Court approval that may be required, including the payment by Purchaser of the Purchase Price, at the Closing, Seller hereby agrees to sell, assign, transfer, convey and deliver to Purchaser, and Seller hereby sells, assigns, transfers, conveys and delivers to Purchaser, free and clear of any and all Encumbrances, good, valid and marketable title and interest in and to all of the assets, properties and rights of Seller (other than the Excluded Assets) to the maximum extent permitted by Section 363 of the Bankruptcy Code (such assets, properties and rights are hereinafter collectively referred to as the **“Purchased Assets”**), on an “As Is/Where Is” basis, including, but not limited to, the following assets, properties and rights:

- (a) All Inventory;
- (b) All Accounts Receivable, Cash and Cash Equivalents;

- (c) All Intellectual Property and Intellectual Property Rights;
- (d) All rights and privileges of Seller under the contracts, agreements, leases and licenses listed on **Schedule 2.1(d)** (the “**Assumed Contracts**”), which list may be revised by Purchaser in its sole discretion at any time prior to Closing;
- (e) All vested rights and privileges of Seller under or relating to any contracts or leases to which Seller is or was a party that are not capable of being assumed and/or assigned under Section 365 of the Bankruptcy Code, including but not limited to those set forth on **Schedule 2.1(e)**;
- (f) All owned equipment (including, but not limited to, office equipment), computers, servers, workstations, printers, machines, materials, prototypes, tools, supplies, vehicles, furniture, fixtures, all physical embodiments of the Works, and improvements to the foregoing (including, but not limited to, the tangible assets identified on **Schedule 2.1(f)**) (collectively, “**Tangible Personal Property**”); provided, however, that, Seller, Seller’s bankruptcy estate, and any successor to Seller, including any trustee appointed in the Bankruptcy Case, shall be provided with reasonable access to any information on Seller’s computer system in existence as of the Closing Date for a period of twelve (12) months thereafter to the extent necessary for the investigation of and pursuit of claims and causes of action not being purchased by Purchaser or otherwise released;
- (g) All personal or mixed property, whether tangible or intangible, including but not limited to those set forth on **Schedule 2.1(g)**;
- (h) All files, documents, instruments, papers, books and records (whether in paper, digital or other tangible or intangible form) that are now, or at the time of the Closing will be, used or held for use in or otherwise related to, useful in or necessary for the conduct of, the Business, the Purchased Assets or the Assumed Liabilities, including all financial records, technical information, operating and production records, quality control records, blueprints, Tax Returns, research and development notebooks and files, customer credit data, manuals, engineering and scientific data, business development, positioning, marketing and sales related material, drawings, technical plans, business plans, budgets, price lists, and lists of customers and suppliers; provided, however, that, Seller, Seller’s bankruptcy estate and any successor to Seller, including any trustee appointed in the Bankruptcy Case, shall be provided with reasonable access to any information in such files in existence as of the Closing Date for a period of twelve (12) months thereafter to the extent necessary for the investigation of and pursuit of claims and causes of action not being purchased by Purchaser or otherwise released;
- (i) All interests in Permits, to the extent assignable, transferable or reissuable;
- (j) All goodwill and other intangibles owned by Seller;
- (k) All of Seller’s claims or causes of action of any type (other than claims that are Excluded Assets); and
- (l) All Seller’s rights under the Insurance Policies identified on **Schedule 3.10** of the Disclosure Schedules.

assumed by Purchaser pursuant to **Section 2.3(a)** of this Agreement (the “**Excluded**

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[REDACTED]

**3.5 Intellectual Property.** **Schedule 3.5** of the Disclosure Schedules sets forth a complete and accurate list of all registered Intellectual Property and material unregistered Intellectual Property. Except as otherwise disclosed in **Schedule 3.5** of the Disclosure Schedules, Seller possesses all right, title and interest in and to the Intellectual Property and all Intellectual Property Rights inherent therein or appurtenant thereto (all of the foregoing, collectively, the “**IP Assets**”), and all IP Assets shall be conveyed and transferred to Purchaser free and clear of all Encumbrances. No claims are pending against before a Governmental Entity or, to the Knowledge of Seller, threatened with regard to the ownership by Seller of any Intellectual Property. No Intellectual Property is subject to any material restriction on the use thereof by Seller, or material restriction on the licensing thereof by Seller to any Person. To the Knowledge of Seller, Seller has not infringed, misappropriated or otherwise violated, any intellectual property of any other Person and is not aware of any facts that indicate a likelihood of any of the foregoing and has not received any notices regarding any of the foregoing (including any demands or offers to license any intellectual property from any third party). To the Knowledge of Seller, the Intellectual Property is not being infringed, misappropriated or otherwise violated by any other Person.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

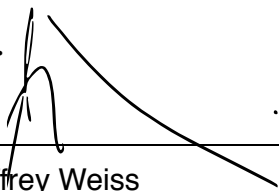
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IN WITNESS WHEREOF, the parties have executed this Asset Purchase Agreement as of the date first written above:

**SELLER:**

**NJOY, INC.**

By:  \_\_\_\_\_

Name: Jeffrey Weiss

Title: President/General Counsel

**PURCHASER:**

**HOMEWOOD NJOY ACQUISITION, LLC**

By: \_\_\_\_\_

Name: Douglas Teitelbaum

Title: Authorized Signatory

IN WITNESS WHEREOF, the parties have executed this Asset Purchase Agreement as of the date first written above:

**SELLER:**

**NJOY, INC.**

By: \_\_\_\_\_

Name:

Title:

**PURCHASER:**

**HOMEWOOD NJOY ACQUISITION, LLC**

By:  \_\_\_\_\_

Name: Douglas Teitelbaum

Title: Authorized Signatory

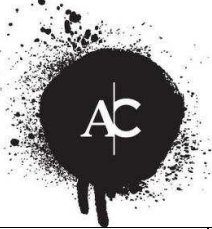


**B. Trademarks**

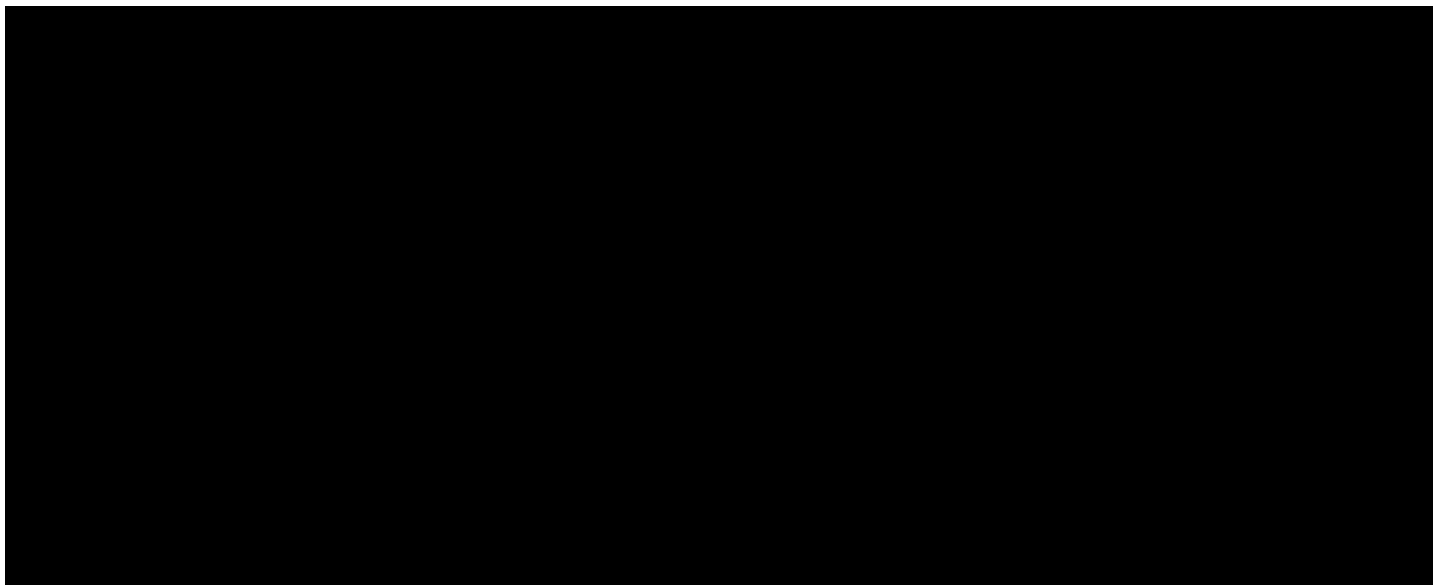
**1. United States**

Mark	Issue	Ser. No. Filing Date	Reg. No. Reg. Date	Goods
NJOY	Registered	85/785,672 11/21/12	4,395,179 09/03/13	Class 9: Battery chargers; electronic cigarette batteries
NJOY	Registered	86/072,249 09/23/13	4,650,214 12/02/14	Cl 35: On-line retail store services featuring ecigarettes, vaporizers and accessories
NJOY	Registered	86/202,066 02/24/14	4,752,836 06/09/15	Cl 30: Chemical flavorings in liquid form used to refill electronic cigarette cartridges; electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form used to refill electronic cigarette cartridges
NJOY	Registered	86/202,041 02/24/14	4,752,835 06/09/15	Cl 1: Disposable and reusable cartridges filled with vaporizable nicotine based liquid, for use with battery powered, rechargeable portable vaporizing units in the nature of electronic cigarettes and vaporizer pipes Cl 11: Electronic vaporizers Cl 34: Smoker's articles, namely, battery

Mark	Issue	Ser. No. Filing Date	Reg. No. Reg. Date	Goods
				powered, rechargeable portable vaporizing units in the nature of vaporizers for the personal inhalation of tobacco; Cartomizers, namely, combination electronic cigarette refill cartridges sold empty and atomizers, sold as a component of electronic cigarettes;
NJOY YOURSELF	Registered	86/351,559 7/29/14	4814412	Cl 30: Chemical flavorings in liquid form used to refill electronic cigarette cartridges; electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form used to refill electronic cigarette cartridges Cl 34: Electronic cigarettes; electronic cigarettes for use as an alternative to traditional cigarettes; smoker's articles, namely, battery powered, rechargeable portable smokeless cigarettes for the personal inhalation of tobacco; smokeless cigarette vaporizers and components therefor, namely, cartomizers, namely, combination electronic cigarette refill cartridges sold empty and atomizers, sold as a component of electronic cigarettes; Electronic cigarette cartridges and refillable cartridges sold empty, for use in electronic cigarettes, smokeless cigarette vaporizers and similar electronic cigarette vaporizers; Smoking simulators, namely, electronic cigarettes, without tobacco, not for medical purposes; Liquid nicotine in the form of disposable and reusable cartridges, for use with battery powered, rechargeable portable vaporizing units in the nature of electronic cigarettes and vaporizer pipes
ARTIST COLLECTION	Registered	86/412,078 10/1/14	4905899	Cl 34: Vaporizable, chemical flavoring in liquid form for use in battery powered, rechargeable, portable vaporizing units in the nature of electronic cigarettes and smokeless oral vaporizer devices for personal inhalation
DRAGON SCAPE	Registered	86/412,091 10/1/14	4842637	Cl 34: Vaporizable, chemical flavoring in liquid form for use in battery powered, rechargeable, portable vaporizing units in the nature of electronic cigarettes and smokeless oral vaporizer devices for personal inhalation
HEDON'S BITE	Registered	86/412,103 10/1/14	4842638	Cl 34: Vaporizable, chemical flavoring in liquid form for use in battery powered, rechargeable, portable vaporizing units in the nature of electronic cigarettes and smokeless oral vaporizer devices for personal inhalation

Mark	Issue	Ser. No. Filing Date	Reg. No. Reg. Date	Goods
PARA MOUR	Registered	86/412,107 10/1/14	4842639	Cl 34: Vaporizable, chemical flavoring in liquid form for use in battery powered, rechargeable, portable vaporizing units in the nature of electronic cigarettes and smokeless oral vaporizer devices for personal inhalation
SACRÉ COEUR	Registered	86/412,111 10/1/14	4842640	Cl 34: Vaporizable, chemical flavoring in liquid form for use in battery powered, rechargeable, portable vaporizing units in the nature of electronic cigarettes and smokeless oral vaporizer devices for personal inhalation
SAMBA SUN	Registered	86/412,117 10/1/14	4842641	Cl 34: Vaporizable, chemical flavoring in liquid form for use in battery powered, rechargeable, portable vaporizing units in the nature of electronic cigarettes and smokeless oral vaporizer devices for personal inhalation
A C Design 	Registered	86/440,186 10/30/14	4905962	Cl 34: Vaporizable, chemical flavoring in liquid form for use in battery powered, rechargeable, portable vaporizing units in the nature of electronic cigarettes and smokeless oral vaporizer devices for personal inhalation
NJOY DAILY	Application	86/454,450 11/14/14		Cl 34: Ecigarettes
IT'S THAT SATISFYING	Pending	86/936241	—	
1 PREMIUM ELECTRONIC CIGARETTE NJOY KING BOLD AND DESIGN	Registered	85/840932	4428152	
CIGARETTE PACKAGE	Registered	85/841103	4392292	

Mark	Issue	Ser. No. Filing Date	Reg. No. Reg. Date	Goods
DESIGN				
CIGARETTES, YOU'VE MET YOUR MATCH	Registered	85/694390	4632824	
DESIGN	Registered	85/352013	4159073	
NJOY	Registered	85/394927	4091150	
NJOY	Registered	77/125612	3427769	
NJOY KING	Registered	85/694403	4419653	
ONEJOY	Registered	85/358710	4159085	
SHIELD DESIGN	Registered	85/723548	4377700	
THE LAST MATCHES YOU WILL EVER NEED	Registered	85/498981	4396923	





# Delaware

The First State

Page 1

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF  
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT  
COPY OF THE CERTIFICATE OF AMENDMENT OF "HOMEWOOD NJOY  
ACQUISITION, LLC", CHANGING ITS NAME FROM "HOMEWOOD NJOY  
ACQUISITION, LLC" TO "NJOY, LLC", FILED IN THIS OFFICE ON THE  
SIXTEENTH DAY OF FEBRUARY, A.D. 2017, AT 11:16 O`CLOCK A.M.*



6192575 8100  
SR# 20170955917

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature of Jeffrey W. Bullock in black ink, written over a horizontal line.

Jeffrey W. Bullock, Secretary of State

Authentication: 202057555  
Date: 02-17-17

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 11:16 AM 02/16/2017  
FILED 11:16 AM 02/16/2017  
SR 20170955917 - File Number 6192575

**CERTIFICATE OF AMENDMENT  
TO  
CERTIFICATE OF FORMATION  
OF  
HOMWOOD NJOY ACQUISITION, LLC**

The undersigned, being duly authorized to execute and file this Certificate of Amendment to Certificate of Formation for the purpose of amending the Certificate of Formation pursuant to the Section 18-202 of the Limited Liability Company Act of the State of Delaware, does hereby certify as follows:

**FIRST**

The name of the limited liability company is Homewood NJOY Acquisition, LLC (the "Company").

**SECOND**

Paragraph 1 of the Certificate of Formation of the Company is hereby deleted in its entirety and amended to read in full as follows:

1. Name. The name of the limited liability company is NJOY, LLC (the "Company").

\* \* \* \* \*

**IN WITNESS WHEREOF**, the undersigned has duly executed this Certificate of Amendment to Certificate of Formation as of the 16th day of February, 2017.

By: /s/ Douglas Teitelbaum  
Name: Douglas Teitelbaum  
Title: An Authorized Person