ESTTA Tracking number:

ESTTA956311 02/25/2019

Filing date:

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

### **Petition for Cancellation**

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

### **Petitioner Information**

Name	The Hain Celestial Group, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1111 Marcus Avenue Lake Success, NY 11042 UNITED STATES		

Correspondence information	Kristy Meringolo Senior Vice President & General Counsel The Hain Celestial Group, Inc. 1111 Marcus Avenue Lake Success, NY 11042 UNITED STATES IP@hain.com 516-587-5862
----------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### Registration Subject to Cancellation

Registration No.	5082314	Registration date	11/15/2016
Registrant	Charles Paul Charles Paul 8751 North 117th East Ave, S Owasso, OK 74055 UNITED STATES Email: chip@palmbeachvapor		

### Goods/Services Subject to Cancellation

Class 035. First Use: 2015/01/01 First Use In Commerce: 2015/01/01 All goods and services in the class are subject to cancellation, namely: Retail apothecary store services

### **Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)	
No use of mark in commerce before application, amendment to allege use, or statement of use was filed	Trademark Act Sections 14(1) and 1(a), (c), and (d)	
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used	Trademark Act Section 14(3)	
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp.,	

580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir.
2009)

### Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	88039395	Application Date	07/16/2018
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	A HEALTHIER WAY OF LIFE		
Design Mark	A HEALTHIER WAY OF LIFE		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2010/01/07 First Use In Commerce: 2010/01/07 Advertising, business management, business administration, office functions; Promotion, advertising and marketing of on-line websites; Providing services of online and offline retail sales, wholesale, distribution, marketing, consultancy; import, export of food products; retail store and mail order services featuring food and beverages for consumption on and off premises; Advertising and marketing services provided by means of indirectmethods of marketing communications, namely, social media, search engine marketing, inquiry marketing, internet marketing, mobile marketing, blogging and otherforms of passive, shareable or viral communications channels; on-line customer-based social media brand marketing services; Distribution and dissemination of advertising materials, namely, printed material, brochures and samples; Charitable services, namely, organizing and conducting volunteer programs and community service projects for employee participation		

Attachments	88039395#TMSN.png( bytes ) Cancellation action.pdf(1428234 bytes )
Signature	/kristymeringolo/
Name	Kristy Meringolo
Date	02/25/2019

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

In the Matter of U.S. Trademark Registration No.: 5,082,314

For the Mark: PAVING THE WAY TOWARD A HEALTHIER WAY OF LIFE

Date of Registration: November 15, 2016

The Hain Celestial Gro	oup, Inc.,	}	
	Petitioner,	}	
v.		} Cancellation No.:	
Charles Paul,		}	
	Registrant.	}	

Trademark Trial and Appeal Board

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

### **PETITION FOR CANCELLATION**

The Hain Celestial Group, Inc., (hereinafter "Petitioner"), a United States Delaware corporation with an address at 1111 Marcus Avenue, Lake Success, New York 11042 believes it is damaged and will continue to be damaged by U.S. Registration No. 5,082,314, issued November 15, 2016, for the mark PAVING THE WAY TOWARD A HEALTHIER WAY OF LIFE in Class 35 (the "Registration"), registered to Charles Paul (hereinafter "Registrant"), a United States individual with an address at 8751 North 117<sup>th</sup> East Avenue, Suite J, Owasso, OK 74055, and hereby petitions for cancellation of the registration, pursuant to 15 U.S.C.A. §1064.

As grounds in support of its petition for cancellation, Petitioner asserts as follows:

1. Petitioner is the owner of U.S. Trademark Application Ser. No. 88039395 for A HEALTHIER WAY OF LIFE, filed on July 16, 2018 covering "Advertising, business management, business administration, office functions; Promotion, advertising and marketing of on-line websites; Providing services of online and offline retail sales, wholesale, distribution, marketing, consultancy; import, export of food products; retail store and mail order services featuring food and beverages for consumption on and off premises; Advertising and marketing services provided by means of indirect methods of marketing communications, namely, social media, search engine marketing, inquiry

marketing, internet marketing, mobile marketing, blogging and other forms of passive, shareable or viral communications channels; on-line customer-based social media brand marketing services; Distribution and dissemination of advertising materials, namely, printed material, brochures and samples; Charitable services, namely, organizing and conducting volunteer programs and community service projects for employee participation" in Class 35; (the "Application"). See Exhibit A, attached hereto.

- 2. Petitioner is being harmed by the Registration because the PTO Examining Attorney has refused the Application for registration on grounds that the Application is likely to be confused with the prior pending Registration. Priority and Likelihood of Confusion Trademark Act Section 14 (1) and 2(d).
- 3. Upon information and belief, Registrant is not currently and has not used his trademark PAVING THE WAY TOWARD A HEALTHIER WAY OF LIFE via interstate commerce. The Registrant is the owner of a a vape store called Palm Beach Vapors selling nicotine juice and CBD products in the state of Oklahoma only. No use of trademark has been found in commerce before application, amendment to allege use, or statement of use was filed. Trademark Act Section 14 (1) and 1 (a), (c), and (d). See Investigation Report attached hereto as Exhibit B.
- 4. Petitioner is damaged and will continue to be damaged because Registrant's continued registration of the PAVING THE WAY TOWARD A HEALTHIER WAY OF LIFE mark stands as a bar to Petitioner's ability to federally register and protect its mark A HEALITHER WAY OF LIFE.
- 5. Upon information and belief, Registrant is committing Fraud on the USPTO. Trademark Act Section 14 (3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

WHEREFORE, Petitioner prays that this Petition for Cancellation of Registration No. 5,082,314 be granted, resulting in judgment entered against Registrant effecting the cancellation of the Registration.

Dated: February 25, 2019

Respectfully submitted,

The Hain Celestial Group, Inc.

Ву:

Kristy Meringolo

Attorney for Petitioner

1111 Marcus Avenue, Lake Success, New York 11042

Direct Dial 516-587-5862

Fax 516-673-0255

IP@hain.com

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing PETITION FOR CANCELLATION was sent by overnight courier on this  $25^{th}$  day of February 2019 to:

Charles Paul 8751 North 117<sup>th</sup> East Avenue, Suite J Owasso, OK 74055

The Hain Celestial Group, Inc.

By: Kristy Meringres

Generated on: This page was generated by TSDR on 2019-02-25 11:17:06 EST

Mark: A HEALTHIER WAY OF LIFE

A HEALTHIER WAY OF LIFE

US Serial Number: 88039395

Application Filing Jul. 16, 2018

Date:

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Service Mark

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional

information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on

the Trademark Document Retrieval link at the top of this page.

Status Date: Aug. 23, 2018

### **Mark Information**

Mark Literal A HEALTHIER WAY OF LIFE

Elements:

Standard Character Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Claim

Mark Drawing 4 - STANDARD CHARACTER MARK

Type:

### **Goods and Services**

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

Brackets [.] indicate deleted goods/services;

• Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and

Asterisks \*..\* identify additional (new) wording in the goods/services.

For: Advertising, business management, business administration, office functions; Promotion, advertising and marketing of on-line websites; Providing services of online and offline retail sales, wholesale, distribution, marketing, consultancy; import, export of food products; retail store and mail order services featuring food and beverages for consumption on and off premises; Advertising and marketing services provided by means of indirect methods of marketing communications, namely, social media, search engine marketing, inquiry marketing, internet marketing, mobile marketing, blogging and other forms of passive, shareable or viral communications channels; on-line customer-based social media brand marketing services; Distribution and dissemination of advertising materials, namely, printed material, brochures and samples; Charitable services, namely, organizing and conducting volunteer programs and community service projects for employee participation

International 035 - Primary Class

Class(es):

55 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE Basis: 1(a)

First Use: Jan. 07, 2010

Use in Commerce: Jan. 07, 2010

### **Basis Information (Case Level)**

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No Filed 44E: No

Currently 44D: No Currently 44E: No Amended 44D: No

Filed 66A: No

Currently 664: No

Amended 44E: No

Filed No Basis: No

Currently 66A: No

Currently No Basis: No

### Current Owner(s) Information

Owner Name: The Hain Celestial Group, Inc.

Owner Address: 1111 Marcus Ave.

Lake Success, NEW YORK 11042 UNITED STATES

Legal Entity Type: CORPORATION

State or Country DELAWARE

Where Organized:

### Attorney/Correspondence Information

Attorney of Record

Attorney Name: Kristy Meringolo

Docket Number: TM000146US

Attorney Primary IP@hain.com Email Address:

Attorney Email Yes

Authorized:

Correspondent

Correspondent KRISTY MERINGOLO

Name/Address: THE HAIN CELESTIAL GROUP, INC.

1111 MARCUS AVE.

LAKE SUCCESS, NEW YORK 11042

UNITED STATES

Phone: 516-587-5171

Correspondent e- IP@hain.com melissa.schombs@hain.com

Correspondent e- Yes mail Authorized:

mail:

Domestic Representative - Not Found

### **Prosecution History**

Date	Description	Proceeding Number
Aug. 23, 2018	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Aug. 23, 2018	NON-FINAL ACTION E-MAILED	6325
Aug. 23, 2018	NON-FINAL ACTION WRITTEN	93061
Aug. 13, 2018	ASSIGNED TO EXAMINER	93061
Jul. 19, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jul. 19, 2018	NEW APPLICATION ENTERED IN TRAM	

### TM Staff and Location Information

### **TM Staff Information**

TM Attorney: SIMCOX, KYLE DUNCAN

Law Office LAW OFFICE 122

Assigned:

**File Location** 

Current Location: TMO LAW OFFICE 122 - EXAMINING

ATTORNEY ASSIGNED

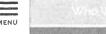
Date in Location: Aug. 23, 2018



### COMPANY

COMPANY BRANDS INVESTOR RELATIONS CAREERS





Founders Message





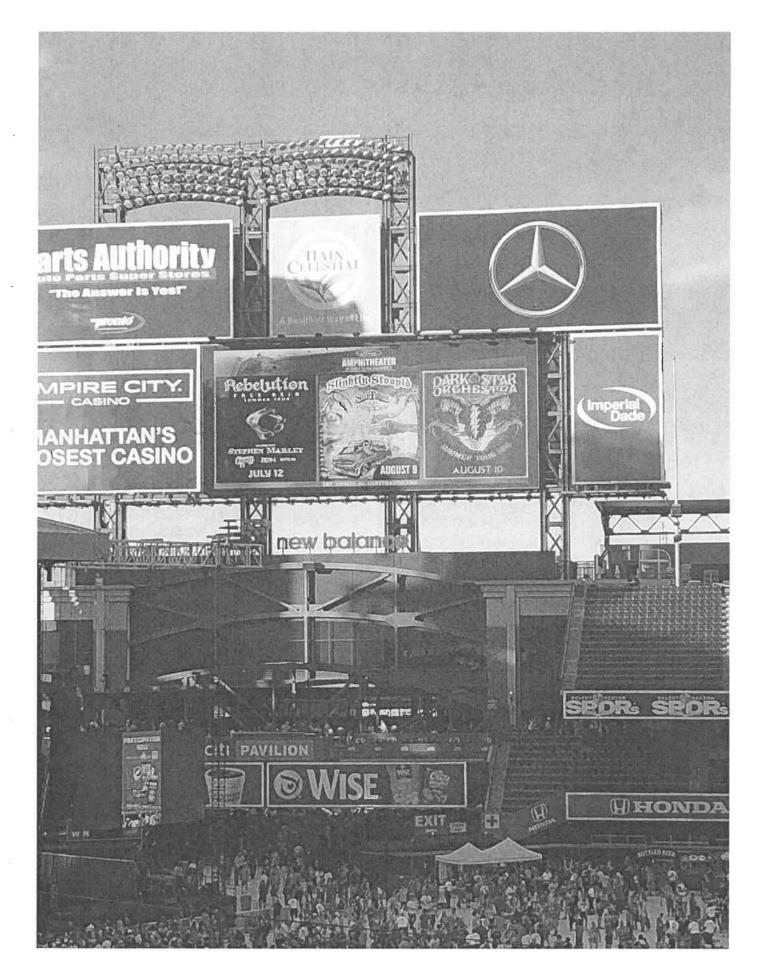


Our Purpose is to create and inspire A Healthler Way of Life ? ..

Our mission is to be the leading marketer, manufacturer and seller or organic and natural better for you products

We are committed to growing sustainably white continuing to implement environmentally sound business practices and manufacturing processes.

Hain Celestial participates in almost all natural categories with well-known brands that



### Trademark/Service Mark Application, Principal Register

Serial Number: 88039395 Filing Date: 07/16/2018

### The table below presents the data as entered.

Input Field	Entered	
SERIAL NUMBER	88039395	
MARK INFORMATION		
*MARK	A HEALTHIER WAY OF LIFE	
STANDARD CHARACTERS	YES	
USPTO-GENERATED IMAGE	YES	
LITERAL ELEMENT	A HEALTHIER WAY OF LIFE	
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.	
REGISTER	Principal	
APPLICANT INFORMATION		
OWNER OF MARK	The Hain Celestial Group, Inc.	
*STREET	1111 Marcus Ave.	
CITY	Lake Success	
*STATE (Required for U.S. applicants)	New York	
*COUNTRY	United States	
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	11042	
PHONE	516-587-5171	
EMAIL ADDRESS	IP@hain.com	
LEGAL ENTITY INFORMATION		
ТҮРЕ	corporation	
STATE/COUNTRY OF INCORPORATION	Delaware	
GOODS AND/OR SERVICES AND BASIS INFORM	MATION	
INTERNATIONAL CLASS	035	
	Advertising, business management, business administration, office functions; Promotion, advertising and marketing of online websites;; Providing services of online and offline retail sales, wholesale, distribution, marketing, consultancy; import, export of food products; retail store and mail order services featuring food and beverages for consumption on and off premises; Advertising and marketing services provided by means of indirect methods of marketing communications,	
*IDENTIFICATION	namely, social media, search engine marketing, inquiry	

	marketing, internet marketing, mobile marketing, blogging and other forms of passive, shareable or viral communications channels; on-line customer-based social media brand marketing services; Distribution and dissemination of advertising materials, namely printed material, brochures and samples; Charitable services, namely, organizing and conducting volunteer programs and community service projects for employee participation	
FILING BASIS	SECTION 1(a)	
FIRST USE ANYWHERE DATE	At least as early as 01/07/2010	
FIRST USE IN COMMERCE DATE	At least as early as 01/07/2010	
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT17\IMAGEOUT 17\880\393\88039395\xm11\ RFA0003.JPG	
	\\TICRS\EXPORT17\IMAGEOUT 17\880\393\88039395\xml1\ RFA0004.JPG	
SPECIMEN DESCRIPTION	photo of billboard at baseball stadium and screen capture of Applicant's website showing the mark in connection with the advertisement of the services;	
ATTORNEY INFORMATION		
NAME	Kristy Meringolo	
ATTORNEY DOCKET NUMBER	TM000146US	
FIRM NAME	The Hain Celestial Group, Inc.	
STREET	1111 Marcus Ave.	
СПУ	Lake Success	
STATE	New York	
COUNTRY	United States	
ZIP/POSTAL CODE	11042	
PHONE	516-587-5171	
EMAIL ADDRESS	IP@hain.com	
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes	
OTHER APPOINTED ATTORNEY	Denise Faltischek	
CORRESPONDENCE INFORMATION		
NAME	Kristy Meringolo	
FIRM NAME	The Hain Celestial Group, Inc.	
STREET	1111 Marcus Ave.	
CITY	Lake Success	
STATE	New York	
COUNTRY	United States	
ZIP/POSTAL CODE	11042	
PHONE	516-587-5171	
*EMAIL ADDRESS	IP@hain.com; melissa.schombs@hain.com	
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes	

FEE INFORMATION	
APPLICATION FILING OPTION	TEAS RF
NUMBER OF CLASSES	1
APPLICATION FOR REGISTRATION PER CLASS	275
TOTAL FEE DUE	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
SIGNATURE	/kristymeringolo/
SIGNATORY'S NAME	Kristy Meringolo
SIGNATORY'S POSITION	Senior Vice President and General Counsel
SIGNATORY'S PHONE NUMBER	516-587-5195
DATE SIGNED	07/16/2018

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CM8 N - JCs1 9539 (Exp 02:28:2021)

### Trademark/Service Mark Application, Principal Register

Serial Number: 88039395 Filing Date: 07/16/2018

### To the Commissioner for Trademarks:

MARK: A HEALTHIER WAY OF LIFE (Standard Characters, see <u>mark</u>)
The literal element of the mark consists of A HEALTHIER WAY OF LIFE.
The mark consists of standard characters, without claim to any particular font style, size, or color.

The applicant, The Hain Celestial Group, Inc., a corporation of Delaware, having an address of 1111 Marcus Ave.

Lake Success, New York 11042

United States
516-587-5171(phone)

IP@hain.com (not authorized)

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 035: Advertising, business management, business administration, office functions; Promotion, advertising and marketing of on-line websites;; Providing services of online and offline retail sales, wholesale, distribution, marketing, consultancy; import, export of food products; retail store and mail order services featuring food and beverages for consumption on and off premises; Advertising and marketing services provided by means of indirect methods of marketing communications, namely, social media, search engine marketing, inquiry marketing, internet marketing, mobile marketing, blogging and other forms of passive, shareable or viral communications channels; on-line customer-based social media brand marketing services; Distribution and dissemination of advertising materials, namely printed material, brochures and samples; Charitable services, namely, organizing and conducting volunteer programs and community service projects for employee participation

In International Class 035, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 01/07/2010, and first used in commerce at least as early as 01/07/2010, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) photo of billboard at baseball stadium and screen capture of Applicant's website showing the mark in connection with the advertisement of the services;.

Specimen File1
Specimen File2

The applicant's current Attorney Information:

Kristy Meringolo and Denise Faltischek of The Hain Celestial Group, Inc. 1111 Marcus Ave.

Lake Success, New York 11042

United States

516-587-5171(phone)

IP@hain.com (authorized)

The attorney docket/reference number is TM000146US.

The applicant's current Correspondence Information:

Kristy Meringolo

The Hain Celestial Group, Inc.

1111 Marcus Ave.

Lake Success, New York 11042

516-587-5171(phone)

IP@hain.com;melissa.schombs@hain.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant, the applicant's attorney, or the applicant's domestic representative at the e-mail address provided in this application. I understand that a valid e-mail address

must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in the loss of TEAS Reduced Fee status and a requirement to submit an additional processing fee of \$125 per international class of goods/services.

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

### Declaration

### Basis:

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

### And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce:
- The applicant has a bona fide intention to use the mark in commerce on or in connection with the goods/services in the
  application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.

To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

### **Declaration Signature**

Signature: /kristymeringolo/ Date: 07/16/2018

Signatory's Name: Kristy Meringolo

Signatory's Position: Senior Vice President and General Counsel

Payment Sale Number: 88039395 Payment Accounting Date: 07/17/2018

Serial Number: 88039395

Internet Transmission Date: Mon Jul 16 15:21:30 EDT 2018

TEAS Stamp: USPTO/BAS-XXX.XXX.XXX.XXX-20180716152130

406947-88039395-610a7c0b7c66d7869802549f 6bf9c823ccd658c6a82c845e0f87f6880add6fa7 df7-DA-3922-20180716142003137223

### A HEALTHIER WAY OF LIFE

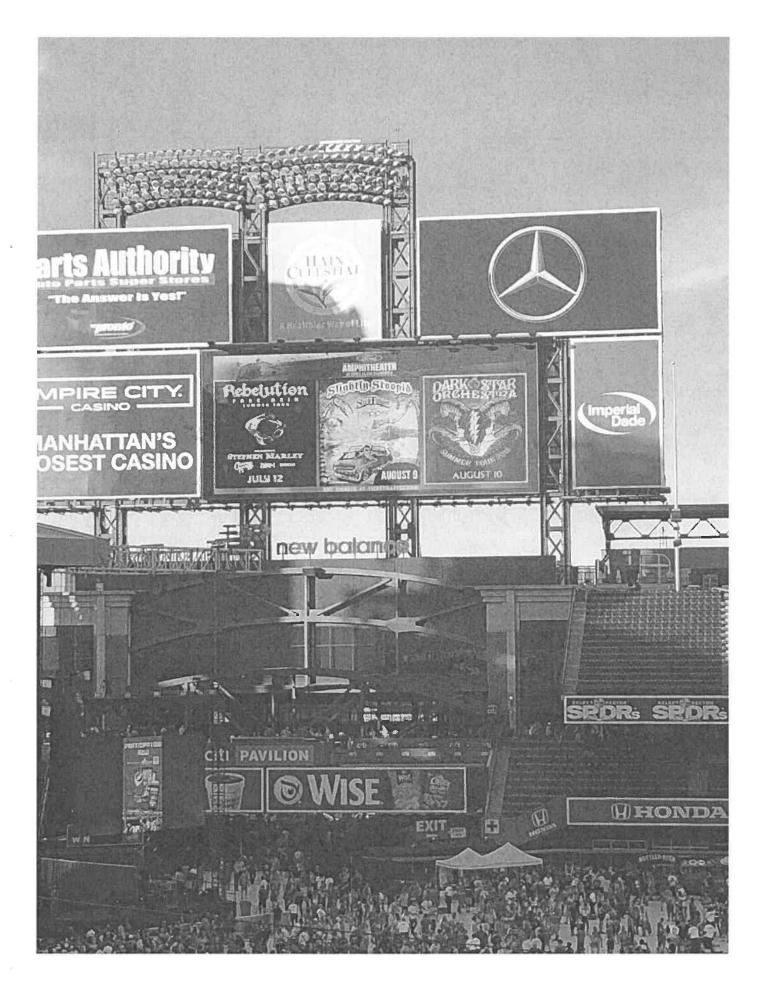


### COMPANY

COMPANY BRANDS INVESTOR RELATIONS CAREERS









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spices for your wellbeing.

**PBV Wellness Shop** 

personalized service and custom tailored juices alongside todays cutting edge use of natural herbs and Palm Beach Vapors TM prides itself on its unique philosophy and approach to vaping which combines spices for your wellbeing.

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\$4.95 - \$34.95







and get your juice and hardware today! Also check out our sales on CBD's!! 🎉

#eliquid #vapejuice #vapedeals #vapesale #hardware #cbd #morethanavapestore #vaping #owassovape



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One of our MANY sales going on TODAY NONLY!!!

- 50% off our house juice - ANY size, ANY flavor, ANY nic level! #nicotine #eliquid #vapejuice #vapedeals #valentinesdaysale

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Phone: 918-609-6711

We are here for you!



### Breathe | Herbal Capsules

\$4.95 - \$30.00



# Have a question, give us a call!

Phone: 918-609-6711 Email: info@palmbeachyapors.com

### **Our Mission**

At Palm Beach Vapors 1th we prides ourselves on our unique philosophy and approach to vaping which combines personalized service and custom tailored juices alongside todays cutting edge use of natural herbs and spices for your wellbeing.

### Come see us!



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