

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN INK MARKERS AND
PACKAGING THEREOF**

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) **Inv. No. 337-TA-522**
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**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION FINDING A RESPONDENT IN DEFAULT AND
MAKING CERTAIN ADVERSE INFERENCES**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) in the above-captioned investigation, finding respondent Mon Ami Co., Ltd. in default and making certain adverse inferences.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3104. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: This trademark-based section 337 investigation was instituted by the Commission based on a complaint filed by Sanford, L.P. of Freeport, Illinois (“complainant”). 69 *Fed. Reg.* 52029 (August 24, 2004). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink markers and packaging thereof by reason of infringement of U.S. Trademark Registration Nos. 807,818 and 2,721,523 and also by reason of infringement of trade dress. The notice of investigation identified 12 respondents. On November 10, 2004, the ALJ granted a motion to add three respondents to the investigation. The Commission determined not to review the ID. 69 *Fed.*

Reg. 75342 (December 16, 2004).

On November 15, 2004, the ALJ granted a motion to terminate the investigation with respect to one respondent on the basis of a settlement agreement. The Commission determined not to review the ID. On January 7, 2005, the ALJ issued an ID finding three respondents in default. The Commission determined not to review the ID. On February 11, 2005, the ALJ granted three motions to terminate the investigation, each with respect to one respondent on the basis of a settlement agreement and a consent order. The Commission determined not to review those IDs. On March 15, 2005, the ALJ issued two IDs (Order Nos. 21-22), each granting a joint motion for termination of the investigation as to one respondent on the basis of a settlement agreement and a consent order. The Commission determined not to review the IDs. On May 12, 2005, the ALJ issued two IDs granting the joint motions for termination of this investigation as to one respondent on the basis of a settlement agreement and a consent order and as to another respondent on the basis of a settlement agreement. No petitions for review of either of the IDs were filed. The Commission determined not to review the IDs.

On March 25, 2005, complainant filed a motion for issuance of an ID finding respondent Mon Ami Co., Ltd., (“Mon Ami”) in default and finding adverse inferences against Mon Ami because of its failure to respond to complainant’s discovery requests. On April 7, 2005, the investigative attorney (“IA”) filed an opposition to complainant’s motion, arguing that complainant may not seek relief under Commission Rule 210.33(b) before obtaining an order to compel against Mon Ami. On April 7, 2005, complainant filed a motion for leave to file a reply to the IA’s opposition, arguing that a March 14, 2005, discovery teleconference conducted by the ALJ constituted the required order to compel under Commission Rule 210.33(b). The ALJ granted complainant’s motion for leave to file a reply and requested that the IA file a response to complainant’s motion (Order No. 23). On May 17, 2005, the IA filed a response supporting complainant’s position regarding the discovery teleconference as well as the issuance of certain adverse inferences and a finding that Mon Ami is in default.

On May 19, 2005, the ALJ issued an order compelling Mon Ami to provide discovery responses to complainant and to file a letter stating that it has complied with said order by May 31, 2005 (Order No. 26). Because no letter was received from Mon Ami, on June 1, 2005, the ALJ found Mon Ami in default pursuant to Commission rule 210.16(b)(2) and made certain adverse inferences relating to the discovery requests in question pursuant to Commission rule 210.33(b) (Order No. 28). In the ID, the ALJ noted that he did not consider the March 14, 2005, discovery teleconference to be an order to compel against Mon Ami.

No petitions for review of the subject ID were filed.

The authority for the Commission’s determination is contained in section 337 of the

Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42(h)).

By order of the Commission.

Issued: June 16, 2005

Marilyn R. Abbott
Secretary to the Commission