

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

)
)
In the Matter of)

CERTAIN LENS-FITTED FILM PACKAGES)

Inv. No. 337-TA-406
Enforcement Proceedings (II)

NOTICE OF COMMISSION DETERMINATION ON REMAND

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined on remand, under 19 U.S.C. § 1337(f)(2), to adjust the civil penalty for which Mr. Benun is jointly and severally liable from \$13,675,000 to \$13,128,000.

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Esq., telephone 202-205-3116, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436. Copies of all nonconfidential 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 SW., 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-ON-LINE) at <http://dockets.usitc.gov/eol.public>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: On April 6, 2004, the ALJ issued an Enforcement Initial Determination ("EID") in which he found a violation of the general exclusion order and cease and desist order by enforcement respondents, and recommended, *inter alia*, penalties totaling \$13,675,000 against Jazz Photo Corporation ("Jazz") and Jack Benun (Jazz's founder, former president and, during the relevant period, principal consultant and later COO), jointly and severally, for violation of the cease and desist order. The Commission found that the record supported the EID's violation findings and determined not to review the EID. 69 *Fed. Reg.* 46179 (Aug. 2, 2004). The Commission ultimately determined to impose a civil penalty in the amount of \$13,675,000 against Jazz and Mr. Benun, jointly and severally, based on a daily penalty rate of \$25,000 and 547 violation days. 70 *Fed. Reg.* 3385 (Jan. 24, 2005). Jazz

subsequently settled with the Commission.

On appeal, the U.S. Court of Appeals for the Federal Circuit affirmed in part, reversed in part, and remanded. *Fuji Photo Film Co. v. Int'l Trade Comm'n*, 474 F.3d 1281 (Fed. Cir. 2007). The Court remanded for the limited purpose of considering an appropriate adjustment to the penalty against Mr. Benun in light of the Court's conclusion that the number of infringing subject cameras was approximately 1 million fewer than originally found by the Commission, a correction of approximately 4 percent, from 25.2 million to 24.2 million infringing cameras. The Court issued its mandate, dated March 5, 2007, returning jurisdiction to the Commission and, on April 9, 2007, the Commission issued a notice requesting party comments on the merits of the remand and on whether referral to the ALJ was warranted. All parties filed comments.

Based on its consideration of the entire record in this matter, including the Court's remand, the parties' filings in connection with the remand, and the record in the underlying proceeding, and as set forth in the accompanying Order and Opinion, the Commission has determined that the appropriate adjustment under 19 U.S.C. § 1337(f)(2) to the civil penalty for which Mr. Benun is jointly and severally liable is a 4-percent reduction in the *per diem* rate, from \$25,000 to \$24,000, and therefore an adjustment of \$547,000 to the total penalty set forth in the original penalty order, from \$13,675,000 to \$13,128,000.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: September 12, 2007