

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

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In the Matter of)

CERTAIN LENS-FITTED FILM PACKAGES)

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

**NOTICE OF COMMISSION DETERMINATIONS CONCERNING
ENFORCEMENT MEASURES AND RESPONDENTS' REQUEST FOR A STAY OF
ANY ORDER LEVYING CIVIL PENALTIES**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the Commission) has determined to levy civil penalties against respondents Jazz Photo Corp. (Jazz), Jack Benun, and Anthony Cossentino, for the violation of the Commission cease and desist order issued to Jazz in the original investigation. The Commission has further determined not to issue a new cease and desist order as requested by complainant Fuji Photo Film Co., Ltd., or to modify the existing cease and desist order or exclusion order. Finally, the Commission has deemed respondents' request for a stay moot in view of its decision to defer enforcement efforts until appeals of its civil penalty determinations are exhausted.

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Esq., telephone 202-205-3106, 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: The Commission's original investigation in this matter was terminated on June 2, 1999, with a finding of violation of section 337 by 26 respondents by reason of importation or sales after importation of certain lens-fitted film packages (LFFPs) (*i.e.*,

disposable cameras) that were found to infringe one or more claims of 15 patents held by complainant Fuji Photo Film Co. (Fuji). 64 *Fed. Reg.* 30541 (June 8, 1999). The Commission issued a general exclusion order, prohibiting the importation of LFFPs that infringe any of the claims at issue, and issued cease and desist orders to twenty domestic respondents. *Id.* The Commission's orders were upheld by the U.S. Court of Appeals for the Federal Circuit. *Jazz Photo Corp. v. Int'l Trade Comm'n*, 264 F.3d 1094 (Fed. Cir. 2001), *cert. denied*, 536 U.S. 950 (2002).

On September 24, 2002, the Commission initiated enforcement proceedings under Commission rule 210.75(b) against Jazz and Messrs. Benun and Cossentino (enforcement respondents), at the request of complainant Fuji. The Commission referred the proceedings to the presiding Administrative Law Judge (ALJ) to determine whether enforcement respondents had violated the general exclusion order or cease and desist orders issued by the Commission on June 2, 1999, and to recommend appropriate enforcement measures if necessary. 67 *Fed. Reg.* 61152 (September 27, 2002).

On April 6, 2004, the ALJ issued his Enforcement Initial Determination (EID) in which he found a violation of the general exclusion order and cease and desist order by respondents. He ultimately recommended penalties of \$13,675,000 against Jazz and Mr. Benun, jointly and severally, and \$154,000 against Mr. Cossentino, for violation of the cease and desist order. He also declined Fuji's request to recommend modification of the existing orders or the issuance of new orders.

Fuji, Jazz, Mr. Benun, and Mr. Cossentino timely filed petitions for review. All parties, including the investigative attorney (IA), filed responses. Based on the petitions and responses, and the record developed below, which fully supported the EID's violation findings (including that Messrs. Benun and Cossentino were subject to individual liability under the circumstances), the Commission determined not to review the violation findings and thereby adopted them. 69 *Fed. Reg.* 46179-80 (Aug. 2, 2004). The Commission then requested, *per* the two-phase review established in the notice of initiation, separate briefing on whether to adopt the specific enforcement measures recommended by the ALJ.

The Commission received briefs and responses from all parties. Based upon its consideration of the EID, the submissions of the parties, and the entire record in this proceeding, the Commission adopts the EID's recommendations and analysis concerning enforcement measures, except as otherwise noted or supplemented in its order and opinion (to be issued later). Accordingly, and subject to final adjudication of any appeal of the same, the Commission has 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. Against Mr. Cossentino, the Commission has determined to impose a civil penalty in the amount of \$119,750, based on a daily penalty rate of \$250 and 479 violation days.

The Commission has further denied Fuji's request for additional injunctive or other relief. Finally, with respect to respondents' request to stay enforcement of any order assessing civil penalties, the Commission finds that such relief is unnecessary and the request thus moot because, in this case, the Commission will not pursue enforcement efforts prior to the exhaustion

of appeals of its civil penalty determinations, as indicated in its accompanying order and the opinion to be issued.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section § 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: January 14, 2005