

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

In the Matter of

**CERTAIN SYSTEMS FOR DETECTING
AND REMOVING VIRUSES OR
WORMS, COMPONENTS THEREOF,
AND PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-510

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING IN PART COMPLAINANT'S MOTION
FOR SUMMARY DETERMINATION OF VIOLATION
OF THE CEASE AND DESIST ORDER**

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") granting in part complainant's motion for summary determination that respondent violated the cease and desist order.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. 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 at <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 enforcement proceeding was instituted on October 7, 2005, based on a complaint filed by Trend Micro, Inc. ("Trend Micro") of Cupertino, California. The complaint alleges that respondent Fortinet, Inc. ("Fortinet") and its distributors circumvented the cease and desist order issued by the Commission on August 8, 2005, by

continuing to advertise, market, sell, and offer for sale in the United States the imported infringing products and antivirus features of Fortinet's infringing software.

On December 16, 2005, Trend Micro moved for summary determination that Fortinet violates sections III(B), III(D), and III(E) of the cease and desist order. On January 3, 2006, the Commission investigative attorney filed a response to Trend Micro's motion, and on January 5, 2006, respondent filed a partial opposition to the motion. On January 10, 2006, Trend Micro moved for leave to file a reply to Fortinet's opposition to address "false statements" in the opposition.

On January 12, 2006, the ALJ issued an ID granting Trend Micro's motion for summary determination in part. The ALJ concluded that Trend Micro established that Fortinet violated section III(B) of the cease and desist order. The ALJ based his conclusion on Fortinet's outright admission that it violated this section of the cease and desist order. Fortinet, however, objected to Trend Micro's assertion of violation with regard to sections III(D) and III(E), and the ALJ, resolving any doubt as to the existence of a genuine issue of material fact in favor of Fortinet, determined that Trend Micro had not established a violation of these two sections of the cease and desist order. No petitions for review of the ID were filed.

Having examined the record of this investigation, the Commission has determined not to review the ALJ's ID.

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 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: February 9, 2006