

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

In the Matter of)
)
CERTAIN LENS-FITTED FILM PACKAGES) Inv. No. 337-TA-406,
) Advisory Opinion Proceedings II
)
)

NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW
AN INITIAL ADVISORY OPINION

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 the initial advisory opinion issued by the presiding administrative law judge (“ALJ”) on February 13, 2004, in the above-captioned proceedings under section 337 of the Tariff Act of 1930. The Commission also declined the suggestion of C.S. Industries, Inc. that the Commission *sua sponte* issue sanctions against Fuji Photo Film Co. (Fuji) for abuse of process. Fuji’s motion for leave to file a reply brief was denied.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., telephone 202-205-3104, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., 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) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission’s TDD terminal at 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 25, 1998, based on a complaint by Fuji Photo Film Co., Ltd. (“Fuji”) of Tokyo, Japan, alleging unfair acts in violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, by several respondents in the importation and sale of certain lens-fitted film packages (“LFFPs”), *i.e.*, disposable cameras, that infringed one or more claims of 15 U.S. patents held by complainant Fuji. On June 2, 1999, the Commission terminated the investigation, finding a violation of section 337 by 26 respondents by reason of importation or sales after importation of LFFPs that were found to infringe one or more claims of the patents in issue. 64 *Fed. Reg.* 30,541 (June 8, 1999). The Commission issued a general exclusion order prohibiting the importation of LFFPs

that infringe any of the claims at issue, including claim 1 of U.S. Patent No. 4,954,857; claim 1 of U.S. Patent No. 4,972,649; claim 25 of U.S. Patent No. 5,381,200; and claim 1 of U.S. Patent No. Re 34,168. CS Industries Inc. (“CSI”) was not a party to the original investigation.

On July 31, 2001, the Commission instituted formal enforcement and advisory opinion proceedings at Fuji’s request. 66 *Fed. Reg.* 40,721 (Aug. 3, 2001). CSI was named as a party respondent to the enforcement proceeding, and was also named as a party to the advisory opinion proceedings. 66 *Fed. Reg.* 40,721 (Aug. 3, 2001). On May 15, 2003, the Commission concluded the enforcement proceedings finding, *inter alia*, that several respondents, including CSI, had violated the general exclusion order issued in the *Lens Fitted Film Packages* investigation. 68 *Fed. Reg.* 28,254 (May 23, 2003). The Commission also issued cease and desist orders against several respondents, including CSI, that were found to have violated the general exclusion order issued in the original investigation. 68 *Fed. Reg.* 28,254 (May 23, 2003).

On June 19, 2003, CSI filed a request pursuant to Commission rule 210.79 for an advisory opinion as to whether a certain camera model (the M-201 model) that it sought to import would violate the Commission’s general exclusion order. On June 30, 2003, complainant Fuji and the Commission investigative attorney (“IA”) filed responses. The Commission examined CSI’s request for an advisory opinion, and the responses and reply thereto, and determined that the request complied with the requirements for institution of an advisory opinion proceeding under Commission rule 210.79(a). Accordingly, the Commission determined to institute an advisory opinion proceeding and referred CSI’s request to the presiding ALJ for issuance of an initial advisory opinion (IAO) on whether importation of the M-201 model camera would violate either the general exclusion order or the cease and desist order that was issued to CSI.

On February 13, 2004, the ALJ an IAO finding that importation of the M-201 model camera would not violate the general exclusion order or the cease and desist order issued to CSI. Fuji filed a petition for review of the IAO on February 27, 2004. CSI and the IA opposed Fuji’s petition on March 5, 2004. On March 12, 2004, Fuji filed a motion for leave to file a reply to the responses to its petition for review filed by CSI and the IA.

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 210.79 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.79).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: March 30, 2004