

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

In the Matter of)

CERTAIN POINT OF SALE TERMINALS)
AND COMPONENTS THEREOF)

Inv. No. 337-TA-524

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN ORDER AND AN
INITIAL DETERMINATION TERMINATING THE INVESTIGATION BASED ON
WITHDRAWAL OF THE COMPLAINT; SCHEDULE FOR FILING AN APPEAL OF A
SANCTIONS ORDER; STAY OF ENFORCEMENT OF THE SANCTIONS ORDER
PENDING APPEAL TO THE COMMISSION**

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 presiding administrative law judge's ("ALJ") order (ALJ Order No. 40) denying the respondents' joint motion for sanctions and an initial determination ("ID")(ALJ Order No. 49) terminating the above-captioned investigation. Notice is also hereby given that the Commission is setting a schedule for filing an appeal of the sanctions levied in ALJ Order No. 48.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. 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 patent-based section 337 investigation was instituted by the Commission based on a complaint filed by Verve, LLC ("Verve"), of Austin, Texas. 69 Fed. Reg. 53945 (September 3, 2004). The complainant 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 point of sale terminals and components thereof by

reason of infringement of claims 1 and 2 of U.S. Patent No. 5,012,077. The complaint named Thales e-Transactions, Inc. of Atlanta, Georgia, Thales Group of Plaisir Cedex, France, CyberNet USA, Inc. of San Jose, California, CyberNet, Inc. of Seoul, Korea, Lipman USA, Inc. of Syosset, New York, Lipman Electronic Engineering, Ltd. of Rosh Haayin, Israel, Ingenico Corp. USA of Atlanta, Georgia, Ingenico of Puteaux Cedex, France, Trintech, Inc. of Addison, Texas, Trintech Group, PLC of Dublin, Ireland, Hypercom Corp. of Phoenix, Arizona and VeriFone, Inc. of Alpharetta, Georgia as respondents. Eight respondents remain in this investigation, as two respondents were terminated on summary determination of no violation and two respondents were terminated on the basis of a settlement agreement.

On February 7, 2005, the ALJ issued Order No. 31 finding that Verve lacked sufficient standing by itself to maintain this investigation without joining Omron Tateisi Electronics Company (“Omron”). On February 11, 2005, Verve filed a motion for withdrawal of the complaint and termination of the investigation. On February 18, 2005, the remaining respondents filed a joint motion for sanctions for improper filing of the complaint, abuse of discovery and failure to make discovery, and attorneys’ fees for the sanctionable conduct found to exist. Six of the remaining respondents also filed individual motions for sanctions. On March 10, 2005, Verve filed a joint response in opposition to all of the remaining respondents’ motions for sanctions. On March 18, 2005, the Commission investigative attorney (“IA”) filed separate responses opposing the respondents’ motions for sanctions while supporting sanctions by the ALJ *sua sponte*. On April 1, 2005, Verve filed a reply to the IA’s response.

On April 11, 2005, the ALJ issued Order No. 40 denying all of the respondents’ motions for sanctions and ordering Verve to show cause why sanctions should not be imposed by the ALJ. On May 5, 2005, Verve filed a response to the show cause order. On May 16, 2005, the respondents filed a joint reply to Verve’s response.

On June 7, 2005, the ALJ issued Order No. 48 imposing, *sua sponte*, monetary sanctions on Verve, its principals, and its counsel. On June 13, 2005, Verve filed a motion to stay the enforcement of Order No. 48, pending its appeal of the order to the Commission.

Meanwhile, on June 8, 2005, the ALJ issued an ID (Order No. 49) granting Verve’s motion for withdrawal of the complaint and termination of the investigation. On June 14, 2005, the respondents filed a joint petition for review of Order No. 40 and the ID. On June 21, 2005, the IA and Verve filed separate responses opposing the respondents’ petition for review.

Having examined Order No. 40, the ID, and the parties’ submissions, the Commission determined not to review the order and the ID. The Commission also granted Verve’s motion to stay enforcement of Order No. 48, pending appeal to the Commission. Finally, the Commission determined to treat Order No. 48 and the ID as having been issued concurrently. Pursuant to Commission Rule 210.25(d), the Commission has set forth a briefing schedule for appeal of Order No. 48. Petitions for review of Order No. 48 must be filed no later than July 29, 2005. Responses to the petitions must be filed no later than August 12, 2005.

The authority for the Commission's determinations are contained in section 337 of the Tariff Act of 1930, as amended 19 U.S.C. § 1337, and in sections 210.42, 210.43, and 210.25(d) of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42, 210.43, and 210.25(d)).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: July 8, 2005