

**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**

**Inv. No. 337-TA-510**

**ORDER TO CEASE AND DESIST**

IT IS HEREBY ORDERED THAT Fortinet, Inc., 920 Stewart Drive, Sunnyvale, California 94085, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, certain systems for detecting and removing viruses or worms, components thereof, and products containing same, covered by one or more of claims 4, 7, 8, and 11-15 of U.S. Patent No. 5,623,600, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

**I.**

**Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Trend Micro Incorporated,” “Trend Micro” or “Complainant” shall mean Trend Micro Incorporated, 10101 De Anza Boulevard, Cupertino, California 95104.
- (C) “Fortinet, Inc.,” “Fortinet,” or “Respondent” shall mean Fortinet Inc., 920 Stewart Drive, Sunnyvale, California 94085.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Fortinet or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean: systems for detecting and removing viruses or worms, components thereof (including software), and products containing same, that infringe one or more of claims 4, 7, 8, and 11-15 of U.S. Patent No. 5,623,600.

## **II.**

### **Applicability**

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent.

## **III.**

### **Conduct Prohibited**

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of the respective patents, Respondent shall not:

(A) import or sell for importation into the United States covered products;

(B) market, distribute, offer for sale, sell, or otherwise transfer (including electronically), in the United States imported covered products (except for exportation);

(C) advertise imported covered products;

(D) solicit U.S. agents or distributors for imported covered products;

(E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products; or

(F) import (including electronically) into the United States, or use, duplicate, transfer or distribute by electronic means or otherwise, within the United States, anti-virus software that constitutes covered product.

#### **IV.**

##### **Conduct Permitted**

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

(A) in a written instrument, the owner of U.S. Patent No. 5,623,600 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States; or

(B) the conduct is limited to the provision of maintenance releases and virus-signature releases of Fortinet's anti-virus software for customers that purchased their covered systems prior to the date of issuance of this Order; or

(C) the conduct is limited to the provision of service and replacement parts for customers that purchased their covered systems prior to the date of issuance of this Order.

## **V.**

### **Reporting**

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2006. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the quantity in units and the value in dollars of covered products that Respondent has imported or sold in the United States after importation during the reporting period and the quantity in units and value in dollars of covered products that remain in inventory in the United States at the end of the reporting period.

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## **VI.**

### **Record-keeping and Inspection**

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to

which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

## **VII.**

### **Service of Cease and Desist Order**

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until

the date of expiration of U.S. Patent No. 5,623,600.

## **VIII.**

### **Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

## **IX.**

### **Enforcement**

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

## **X.**

### **Modification**

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

## **XI.**

### **Bonding**

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the President pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), subject to Respondent posting a bond of 100% of entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the President approves, or does not disapprove within the Presidential review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an order issued by the Commission based upon

application therefore made by Respondent to the Commission.

By Order of the Commission.

/s/  
Marilyn R. Abbott  
Secretary to the Commission

Issued: August 8, 2005