

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN MOTION-SENSITIVE SOUND
EFFECTS DEVICES AND IMAGE DISPLAY
DEVICES AND COMPONENTS AND
PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-773

**ORDER NO. 60: INITIAL DETERMINATION GRANTING MOTION TO
TERMINATE RESPONDENT JAKKS PACIFIC, INC. BASED ON
CONSENT ORDER STIPULATION; AND**

**ORDER DENYING MOTION DOCKET NOS. 773-063, 773-065,
AND 773-070 AS MOOT**

(December 14, 2011)

On December 8, Respondent Jakks Pacific, Inc. (“Jakks”) filed a unilateral motion to terminate the Investigation as to Jakks by reason of a consent order stipulation (“Stipulation”). (Motion Docket No. 773-071.) In support of its motion, Jakks argues that entry of the proposed consent order is in the public interest and will conserve public and private resources. (Mot. at 3.) Jakks represents that Complainant does not oppose the motion. (*Id.* at 5.)

On December 13, 2011, the Commission Investigative Staff (“Staff”) filed a response supporting the motion. Staff agrees that the Investigation should be terminated with respect to Jakks on the basis of the proposed consent order. (Staff Resp. at 5.)

No other responses were received.

Based on a review of the motion papers and responses thereto, the Administrative Law Judge finds as follows:

The Commission’s Rules permit a motion to terminate an investigation as to any or all respondents based upon an agreement to present the matter for consent order. 19 C.F.R. §

210.21(a)(2). Parties making such a motion must include a stipulation that incorporates a proposed consent order. 19 C.F.R. § 210.21(c)(1)(ii). Commission Rule 210.21(c)(3) sets forth certain requirements for stipulations made in intellectual property-based investigations:

- (1) An admission of all jurisdictional facts;
- (2) An express waiver of all rights to seek judicial review or otherwise challenge or contest the validity of the consent order;
- (3) A statement that the signatories to the consent order stipulation will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of this part; and
- (4) A statement that the enforcement, modification, and revocation of the consent order will be carried out pursuant to subpart I of this part, incorporating by reference the Commission's Rules of Practice and Procedure.

* * *

[(5)] A statement that the consent order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable; and

[(6)] A statement that each signatory to the stipulation who was a respondent in the investigation will not seek to challenge the validity of the intellectual property right(s), in any administrative or judicial proceeding to enforce the consent order.

19 C.F.R. § 210.21(c)(3)(i). The agreement of all parties is not a requirement. *See e.g., Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Order No. 6: Initial Determination Granting Respondent Aska's Motion for Termination Based on Consent Order (U.S.I.T.C., August 27, 2008) (unreviewed).

Here, Jakks has made a consent order stipulation with an attached proposed consent order (both attached hereto as Appendix A), providing for termination of the Investigation as to Jakks. Specifically, Jakks agrees that "it will not sell for importation, import into the United States, or sell in the United States after importation, Certain Motion-Sensitive Sound Effects Devices and Image

Display Devices And Components And Products Containing Same that infringe any asserted claim of the '947 Patent until the expiration, invalidation, and/or a finding of unenforceability of the asserted claims of the '947 Patent or until Jakks' products are licensed." (See Stipulation at ¶ 4.)

Rule 210.21(c)(3)(i)(A)(1) requires that the Stipulation contain an admission of all jurisdictional facts. Jakks has admitted to *in personam* and *in rem* jurisdiction. (Stipulation at ¶ 3.) With respect to subject matter jurisdiction, Jakks has revealed imports of 61052 Ultimotion Swing Zone Sports, 03553 TVG Motion Star Wars Clone Wars, 03551 TVG Motion Spiderman, 03557 TVG Motion Power Rangers, and 1109 TVG Motion Triple Header Sports into the United States. (See Mot., Letter from Jakks to Complainant.)

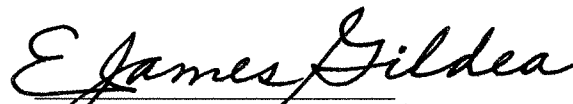
In accordance with Commission Rule 210.21(c), the Stipulation also contains: an express waiver by Jakks of all rights to seek judicial review or otherwise challenge or contest the validity of the consent order; a statement that Jakks will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules; a statement that the enforcement, modification and revocation of the Consent Order will be carried out pursuant to Subpart I of the Commission's Rules, and the statement incorporates by reference the Commission's Rules of Practice and Procedure; a statement that the consent order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable; and a statement that Jakks will not seek to challenge the validity or enforceability of the '947 patent in any administrative or judicial proceeding to enforce the consent order. (Stipulation at ¶¶ 5-9.)

The effect of this proposed consent order would be to terminate the Investigation as to Jakks. Jakks argues that termination is in the public interest. (Mot. at 3.) Staff believes termination as to Jakks would not be contrary to the public interest. (Staff Resp. at 4.) Furthermore, termination of litigation under these circumstances as an alternative method of dispute resolution is generally in the public interest.

Accordingly, it is the Initial Determination of the Administrative Law Judge that Motion Docket No. 773-071 should be GRANTED and the Investigation terminated with respect to Respondent Jakks Pacific, Inc. The Administrative Law Judge further orders that Motion Docket Nos. 773-063, 773-065, and 773-070 be DENIED as moot. The Investigation remains pending against Respondents Toshiba Corporation and Toshiba America Information Systems, Inc.

This Initial Determination, along with copies of the Stipulation and proposed consent order, is hereby certified to the Commission. Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues herein.

SO ORDERED.


E. James Gildea
Administrative Law Judge

APPENDIX A

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable E. James Gildea
Administrative Law Judge

IN THE MATTER OF)
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CERTAIN MOTION-SENSITIVE SOUND)
EFFECTS DEVICES AND IMAGE DISPLAY)
DEVICES AND COMPONENTS AND)
PRODUCTS CONTAINING SAME)
_____)

Inv. No. 337-TA-773

CONSENT ORDER STIPULATION

WHEREAS, Complainant Ogma, LLC filed a complaint (“Complaint”) before the United States International Trade Commission (“Commission”) on April 1, 2011, alleging unfair acts in the importation into the United States, sale for importation into the United States, and sale in the United States after importation of Certain Motion-Sensitive Sound Effects Devices And Image Display Devices And Components And Products Containing Same by Respondent Jakks Pacific, Inc. (“Jakks”) that are alleged to infringe one or more claims of U.S. Patent No. 6,150,947 (“the ‘947 Patent”);

WHEREAS, the Commission instituted this Investigation under Section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1337), on or about May 16, 2011 based upon the allegations contained within the Complaint;

WHEREAS, Jakks agrees to the entry of a Consent Order by the Commission, in the form attached hereto as Exhibit A;

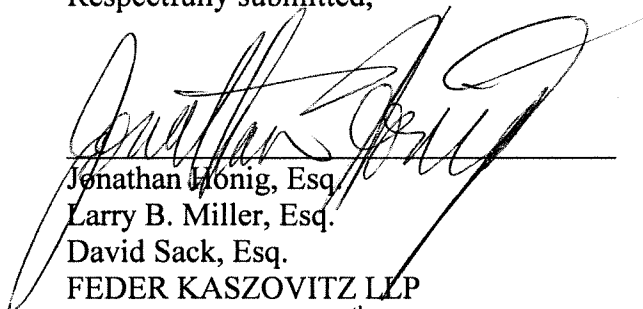
NOW THEREFORE, pursuant to Commission Rule 210.21(c)(1)(ii) and (c)(3)(i), Jakks stipulates and agrees as follows in connection with its Motion for the Termination of this Investigation as to Jakks and for the Entry of the Proposed Consent Order:

- 1) Respondent Jakks is a company organized and existing under the laws of the state of Delaware, with its principal place of business at 22619 Pacific Coast Highway, Suite 250, Malibu, California 90265.
- 2) Jakks stipulates to the entry of a Consent Order in the form attached hereto as Exhibit A (the "Consent Order").
- 3) The Commission has *in rem* jurisdiction over Jakks' Certain Motion-Sensitive Sound Effects Devices And Image Display Devices And Components And Products Containing Same that are the basis of this Investigation and the Commission has personal jurisdiction over Jakks for purposes of the Consent Order.
- 4) Jakks agrees that, upon entry of the Consent Order, it will not sell for importation, import into the United States, or sell in the United States after importation, Certain Motion-Sensitive Sound Effects Devices And Image Display Devices And Components And Products Containing Same that infringe any asserted claim of the '947 Patent until the expiration, invalidation, and/or a finding of unenforceability of the asserted claims of the '947 Patent or until Jakks' products are licensed.
- 5) Jakks expressly waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order, subject to Section 8, below.
- 6) Jakks will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules, 19 C.F.R. Part 210.
- 7) Enforcement, modification, or revocation of the Consent Order will be carried out pursuant to subpart I of the Commission's Rules, 19 C.F.R. Part 210.
- 8) The Consent Order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and non-reviewable.

- 9) Jakks will not seek to challenge the validity or enforceability of the '947 Patent in any administrative or judicial proceeding to enforce the Consent Order.
- 10) The signing of the Consent Order Stipulation does not constitute an admission by Jakks that the '947 Patent is valid, enforceable, or infringed by Jakks.
- 11) The signing of the Consent Order Stipulation does not constitute an admission by Jakks that an unfair act has been committed.
- 12) There are no agreements, written or oral, express or implied, between the parties concerning the subject matter of this investigation other than that attached to the motion.

Dated: December 7, 2011

Respectfully submitted,



Jonathan Honig, Esq.

Larry B. Miller, Esq.

David Sack, Esq.

FEDER KASZOVITZ LLP

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Attorneys for Respondent,

Jakks Pacific, Inc.

EXHIBIT A

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

**Before the Honorable E. James Gildea
Administrative Law Judge**

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DEVICES AND COMPONENTS AND)	
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)	

[PROPOSED] CONSENT ORDER

The United States International Trade Commission (hereinafter the “Commission”) has instituted this Investigation under Section 337 of the Tariff Act of 1930 as amended (19 U.S.C. §1337), based upon the allegations contained in the Complaint filed by Complainant Ogma, Inc. (“Complainant”) that alleges unfair acts in the importation into the United States, the sale for importation, and the sale within the United States after importation of Certain Motion-Sensitive Sound Effects Devices And Image Display Devices And Components And Products Containing Same by Respondent Jakks Pacific, Inc. (“Jakks”).

Jakks has executed a Consent Order Stipulation to this Proposed Consent Order in which Jakks agrees to the entry of this Consent Order and to all waivers and other provisions as required by the Commission’s Rules of Practice and Procedure and has filed a Motion for Termination of this Investigation based upon the Proposed Consent Order. In particular, Jakks has stipulated as follows:

- 1) Respondent Jakks is a company organized and existing under the laws of the state of Delaware, with its principal place of business at 22619 Pacific Coast Highway, Suite 250, Malibu, California 90265.
- 2) Jakks stipulates to the entry of this Consent Order (the "Consent Order").
- 3) The Commission has *in rem* jurisdiction over Jakks' Certain Motion-Sensitive Sound Effects Devices And Image Display Devices And Components And Products Containing Same that are the basis of this Investigation and the Commission has personal jurisdiction over Jakks for purposes of the Consent Order.
- 4) Jakks agrees that, upon entry of the Consent Order, it will not sell for importation, import into the United States, or sell in the United States after importation, Certain Motion-Sensitive Sound Effects Devices And Image Display Devices And Components And Products Containing Same that infringe any asserted claim of the '947 Patent until the expiration, invalidation, and/or a finding of unenforceability of the asserted claims of the '947 Patent or until Jakks' products are licensed.
- 5) Jakks expressly waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order, subject to Section 8, below.
- 6) Jakks will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules, 19 C.F.R. Part 210.
- 7) Enforcement, modification, or revocation of the Consent Order will be carried out pursuant to subpart 1 of the Commission's Rules, 19 C.F.R. Part 210.
- 8) The Consent Order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and non-reviewable.
- 9) Jakks will not seek to challenge the validity or enforceability of the '947 Patent in any administrative or judicial proceeding to enforce the Consent Order.
- 10) The signing of the Consent Order Stipulation does not constitute an admission by Jakks that the '947 Patent is valid, enforceable, or infringed by Jakks.

- 11) The signing of the Consent Order Stipulation does not constitute an admission by Jakks that an unfair act has been committed.
- 12) There are no agreements, written or oral, express or implied, between the parties concerning the subject matter of this investigation other than that attached to the motion.

NOW, THEREFORE, the Commission issues the following Consent Order:

- 1) Upon entry of this Consent Order, Jakks shall not sell for importation, import into the United States, or sell in the United States after importation, Certain Motion-Sensitive Sound Effects Devices And Image Display Devices And Components And Products Containing Same that infringe any asserted claim of the '947 Patent until the expiration, invalidation, and/or a finding of unenforceability of the asserted claims of the '947 Patent or until Jakks's products are licensed.
- 2) Jakks shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of the Consent Order, subject to Sections 4 and 5, below.
- 3) Jakks shall cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules, 19 C.F.R. Part 210.
- 4) Jakks shall not seek to challenge the validity or enforceability of the '947 Patent in any administrative or judicial proceeding to enforce the Consent Order.
- 5) When the '947 patent has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and non-reviewable, this Order shall become null and void.
- 6) There are no agreements, written or oral, express or implied, between Jakks and Complainant concerning the subject matter of this investigation other than that attached to the motion.
- 7) The entry of this Consent Order does not constitute an admission by Jakks that the '947 Patent is valid, enforceable, or infringed by Jakks.
- 8) The entry of this Consent Order does not constitute an admission by Jakks that an unfair act has been committed.
- 9) This Investigation is hereby terminated as to Jakks and Jakks is hereby dismissed as a named respondent in this Investigation; provided, however,

that enforcement, modification, or revocation of the Consent Order shall be carried out pursuant to Subpart I of the Commission's Rules, 19 C.F.R. Part 210.

BY ORDER OF THE COMMISSION:

Date:

James R. Holbein, Secretary

**CERTAIN MOTION-SENSITIVE
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337-TA-773

PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **ORDER** has been served by hand upon, the Commission Investigative Attorney, **Vu Bui, Esq.**, and the following parties as indicated on December 14 , **2011**.



James R. Holbein
Secretary to the Commission
U.S. International Trade Commission
500 E Street, SW, Room 112A
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ON BEHALF OF COMPLAINANT OGMA, LLC

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**CERTAIN MOTION-SENSITIVE
SOUND EFFECTS DEVICES AND
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337-TA-773

ON BEHALF OF RESPONDENT KYOCERA COMMUNICATIONS, INC.:

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