

PUBLIC VERSION
UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN INKJET INK SUPPLIES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-691

**ORDER NO. 14: INITIAL DETERMINATION TERMINATING RESPONDENT
SMARTONE SERVICES LLC D/B/A INKFORSALE.NET ON THE
BASIS OF SETTLEMENT AGREEMENT**

(May 14, 2010)

On May 7, 2010, complainant Hewlett-Packard Company (“HP”) filed a motion to terminate the investigation as to respondent SmartOne Services LLC d/b/a InkForSale.net (“SmartOne”) on the basis of a settlement agreement. (Motion Docket No. 691-012.) On May 13, 2010, the Commission Investigative Staff (“Staff”) filed a response in support of the motion.

The Commission’s Rules provide that “[a]ny party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement . . .” 19 C.F.R. § 210.21(a)(2); *see also Certain Organizer Racks And Products Containing Same*, Inv. No. 337-TA-466, Order No. 7 at 2, February 19, 2001.

In the instant investigation, the motion to terminate is based on a settlement agreement between HP and SmartOne. In accordance with Commission Rule 210.21(b), the parties filed a public version of the settlement agreement, attached herein as Appendix A. The motion further states, consistent with Commission Rule 210.21(b)(1), that there are no other agreements, written or oral, express or implied, between HP and SmartOne concerning the subject matter of this investigation. (Motion at 1.) The settlement agreement appears to resolve the dispute between

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HP and SmartOne.

Commission Rule 210.50(b)(2) provides that in the case of a proposed termination by settlement agreement or consent order, the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument, although no discovery may be compelled, with respect to issues relating solely to the public interest. 19 C.F.R. § 210.50(b)(2). In any initial determination terminating an investigation by settlement agreement or consent order, the administrative law judge is directed to consider and make appropriate findings regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers. *Id.*

In their motion, HP asserts that termination of this investigation is in the public interest. (Motion at 2.) Staff does not dispute this representation and finds that terminating the investigation would not be contrary to public interest. (Staff Resp. at 4-5.)

Based on the pleadings filed in connection with the motion to terminate the investigation, the ALJ finds that there is no indication that termination of this investigation based on the settlement agreement would have an adverse impact on the public interest. The ALJ finds that termination of this investigation does not impose any undue burdens on the public health and welfare, competitive conditions in the United States economy or United States consumers.

Accordingly, it is the Initial Determination that the motion to terminate this investigation be GRANTED. This initial determination, along with supporting documentation, is hereby certified to the Commission.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the

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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.



Theodore R. Essex
Administrative Law Judge

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APPENDIX A

691-012 5/7/10

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

**Before The Honorable Theodore R. Essex
Administrative Law Judge**

In the Matter of

**CERTAIN INKJET INK SUPPLIES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-691

**MOTION TO TERMINATE INVESTIGATION AS TO RESPONDENT SMARTONE
SERVICES LLC D/B/A INKFORSALE.NET
BASED ON SETTLEMENT AGREEMENT**

Complainant Hewlett-Packard Company ("HP") respectfully moves, pursuant to 19 C.F.R. §§ 210.21(a)(2) and 210.21(b), to terminate this Investigation as to Respondent SmartOne Services LLC d/b/a InkForSale.net ("SmartOne") on the basis that HP and SmartOne have reached a Settlement Agreement. The Investigative Staff has been informed of HP's intention to file this motion, and has indicated that it will set forth its position in a written response after the motion is filed.

The Settlement Agreement submitted herewith represents the entire agreement between HP and SmartOne, and there are no other agreements, written or oral, express or implied, between these parties concerning the subject matter of this Investigation. The Settlement Agreement contains confidential business information within the meaning of 19 C.F.R. § 201.6. Pursuant to 19 C.F.R. § 210.21(b)(1), a copy of the Settlement Agreement containing confidential business information is attached to the confidential version of this motion as Confidential Exhibit 1. Pursuant to 19 C.F.R. § 210.21(b)(1), a redacted copy, or Public Version, of the Settlement Agreement without any confidential business information

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is attached as Exhibit 1 to the Public Version of this motion, and both are being filed contemporaneously.

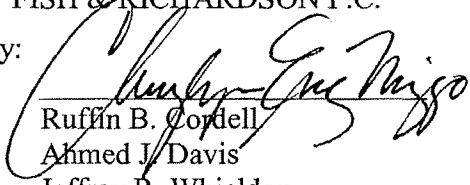
Commission policy and the public interest generally favor settlements. *See, e.g.,* Ground Rule 7, Order No. 2; *Certain Synchronous Dynamic Random Access Memory Devices, Microprocessors, and Products Containing Same*, Inv. No. 337-T-431, Order No. 11 at 2 (July 12, 2000). By this submission, this Investigation should be terminated as to Respondent SmartOne. Further, there is no evidence that termination of this Investigation as to SmartOne pursuant to the settlement as herein requested will prejudice the public interest. HP submits that the requirements of 19 C.F.R. § 210.21 are satisfied and respectfully requests that the Administrative Law Judge issue an Order terminating this Investigation with respect to SmartOne.¹

Dated: May 7, 2010

Respectfully submitted,

FISH & RICHARDSON P.C.

By:


Ruffin B. Cordell
Ahmed J. Davis
Jeffrey R. Whieldon
Cheryln Esoy Mizzo

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Counsel for Hewlett-Packard Company

¹ As SmartOne is the last remaining respondent in this Investigation, pursuant to 19 C.F.R. § 210.16(c)(2), HP hereby declares that it seeks a General Exclusion Order in this Investigation. HP's motion for summary determination of violation, which includes a request for a general exclusion order, is being filed concurrently with the instant motion to terminate.

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing document, **PUBLIC VERSION OF MOTION TO TERMINATE INVESTIGATION AS TO RESPONDENT SMARTONE SERVICES D/B/A INKFORSALE.NET BASED ON A SETTLEMENT AGREEMENT**, have been served on this 7th day of May, 2010, on the following:

<p>The Honorable Marilyn R. Abbott Secretary U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, S.W. Washington, D.C. 20436</p>	<p><input type="checkbox"/> Via First-Class Mail <input type="checkbox"/> Via Hand-Delivery <input type="checkbox"/> Via Federal Express <input checked="" type="checkbox"/> Via Electronic Filing</p>
<p>The Honorable Theodore R. Essex Administrative Law Judge U.S. International Trade Commission 500 E Street S.W. Washington, D.C. 20436</p>	<p><input type="checkbox"/> Via First-Class Mail <input checked="" type="checkbox"/> Via Hand-Delivery (2 copies) <input type="checkbox"/> Via Federal Express <input type="checkbox"/> Via E-mail</p>
<p>Ben Levi, Esq. Office of Unfair Import Investigations U.S. International Trade Commission 500 E Street SW Washington, DC 20436</p>	<p><input type="checkbox"/> Via First-Class Mail <input checked="" type="checkbox"/> Via Hand-Delivery <input type="checkbox"/> Via Federal Express <input type="checkbox"/> Via E-mail</p>
<p>InkPlusToner.com 7851 Alabama Ave. #5 Canoga Park, California 91304 Tel: (818) 914-0346</p>	<p><input type="checkbox"/> Via First-Class Mail <input type="checkbox"/> Via Hand-Delivery <input checked="" type="checkbox"/> Via Federal Express <input type="checkbox"/> Via E-mail</p>
<p>SmartOne Services LLC d/b/a InkForSale.net 27613 Del Norte Court Hayward, California 94545 Tel: (510) 782-9541</p>	<p><input checked="" type="checkbox"/> Via First-Class Mail <input type="checkbox"/> Via Hand-Delivery <input type="checkbox"/> Via Federal Express <input type="checkbox"/> Via E-mail</p>

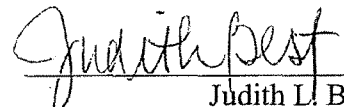

Judith L. Best

Exhibit 1

SETTLEMENT AGREEMENT

SP

This Settlement Agreement ("**Agreement**") is entered into effective as of [REDACTED] (the "**Effective Date**") by and between Hewlett-Packard Company ("**HP**"), having a place of business at 3000 Hanover Street, Palo Alto, California 94304 and SmartOne Services LLC d/b/a InkForSale.net, having a place of business at 27613 Del Norte Court, Hayward, California 94545 ("**SMARTONE**"). HP and SMARTONE may be referred to herein separately as a "**Party**" and together as the "**Parties**."

RECITALS

TERMS AND COVENANTS

In mutual consideration of the promises and obligations set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. COVENANTS NOT TO SUE AND DISMISSALS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. DISPUTE RESOLUTION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. TERM AND REMEDIES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. CONFIDENTIALITY AND PUBLICITY

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. NOTICES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. MISCELLANEOUS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date indicated below.

For Hewlett-Packard Company

Matthew P Barkley

[Signature]

Matthew D Barkley

[Printed Name]

Date: 5/5/2010

Title: IP + Brand Protection Pgm.

For SMARTONE

[Signature]

[Signature]

ERIC PU

[Printed Name]

Date: 02/23/2010

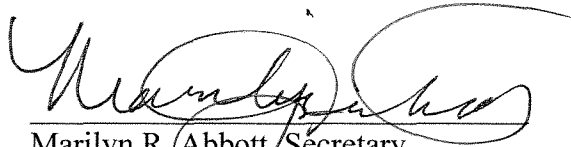
Title: LLC MEMBER

Exhibit B
Products-at-Issue

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER 14 INITIAL DETERMINATION TERMINATING RESPONDENT SMARTONE SERVICES LLC D/B/A INKFORSALE.NET ON THE BASIS OF SETTLEMENT AGREEMENT (PUBLIC VERSION)** has been served by hand upon, the Commission Investigative Attorney, **Benjamin Levi, Esq.** and the following parties as indicated on **May 14, 2010**.



Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112A
Washington, D.C. 20436

Complainant Hewlett-Packard Company:

Ruffin B. Cordell, Esq.
FISH & RICHARDSON P.C.
1425 K Street NW, 11th Floor
Washington, DC 20005-3682

() Via Hand Delivery
() Via Overnight Mail
() Via First Class Mail
() Other: _____

Respondent:

SmartOne Services LLC
d/b/a InkForSale.net
27613 Del Norte Court
Hayward, CA 94545-4114

() Via Hand Delivery
() Via Overnight Mail
() Via First Class Mail
() Other: _____

**CERTAIN INKJET SUPPLIES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-691

PUBLIC MAILING LIST

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Miamisburg, OH 45342

- Via Hand Delivery
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- Via First Class Mail
- Other:

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THOMSON WEST
1100 Thirteen Street, NW, Suite 200
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- Via First Class Mail
- Other: