

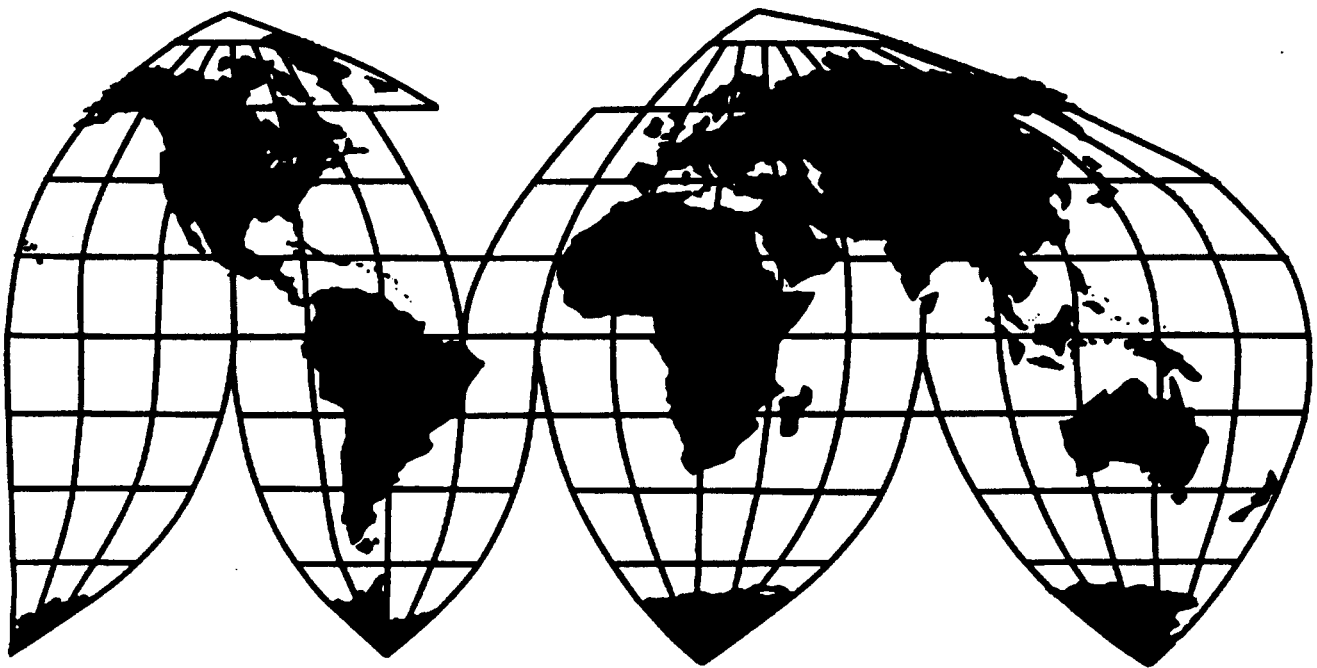
In the Matter of
**Certain Compact Disc
and DVD Holders**

Investigation No. 337-TA-482

Publication 3664

January 2004

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

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**Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436**

U.S. International Trade Commission

Washington, DC 20436

www.usitc.gov

***In the Matter of* Certain Compact Disc and DVD Holders**

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In the Matter of

Certain Compact Disc and DVD Holders



Publication 3664

January 2004

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN COMPACT DISC AND DVD
HOLDERS

Inv. No. 337-TA-482

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NOTICE OF COMMISSION ISSUANCE OF LIMITED EXCLUSION ORDER AND
TERMINATION OF INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and terminated the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Andrea Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3105. Copies of the ALJ's ID and all other 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, 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: The Commission instituted this investigation on October 22, 2002, based on a complaint filed by DuBois Limited of the United Kingdom ("DuBois") against eight respondents, including Wah-De Electron Co., Ltd of Taiwan ("Wah-De") and Dragon Star Magnetics, Inc. of Hong Kong ("Dragon Star"). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation, sale for importation, or sale within the United States after importation of certain compact disc and DVD holders by reason of infringement of U.S. Design Patent No. D441,212. On April 16, 2003, the Commission determined not to review an initial determination (Order No. 13) finding the two remaining respondents in this investigation, Wah-De and Dragon Star, in default. All other respondents have been terminated from the investigation on the basis either of settlement agreements or the withdrawal of the allegations in the complaint as to them.

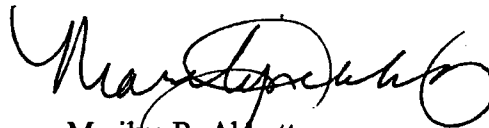
On March 26, 2003, DuBois filed a declaration pursuant to section 337(g)(1) and Commission rule 210.16(c)(1) seeking immediate entry of a limited exclusion order against Wah-De and Dragon Star. On April 22, 2003, the Commission issued a *Federal Register* notice requesting briefing on the issues of default remedy, the public interest, and bonding. 68 *Fed. Reg.* 19848. On April 30, 2003 and May 6, 2003, DuBois and the Commission investigative attorney, respectively, filed submissions on the issues of remedy, the public interest, and bonding. No other person or government agency filed a submission.

Section 337(g)(1) of the Tariff Act of 1930 provides that the Commission shall presume the facts alleged in a complaint to be true, and upon request, issue a limited exclusion order if: (1) a complaint is filed against a person under section 337, (2) the complaint and a notice of investigation are served on the person, (3) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice, (4) the person fails to show good cause why it should not be found in default, and (5) the complainant seeks relief limited to that person. Such an exclusion from entry shall be issued unless, after considering the effect of such exclusion or order in light of the statutory public interest factors, the Commission finds that the exclusion order should not be issued.

The Commission found that each of the statutory requirements for the issuance of a limited exclusion order was met with respect to defaulting respondents Wah-De and Dragon Star. The Commission further determined that the public interest factors enumerated in section 337(g)(1) did not preclude the issuance of such relief. Finally, the Commission determined that bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of entered value.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and section 210.16 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.16.

By order of the Commission.



Marilyn R. Abbott
Secretary

Issued: June 26, 2003

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

In the Matter of

**CERTAIN COMPACT DISC AND DVD
HOLDERS**

Inv. No. 337-TA-482

LIMITED EXCLUSION ORDER

The Commission instituted this investigation on October 22, 2002, based on a complaint filed by DuBois Limited of the United Kingdom (“DuBois”) against eight respondents, including Wah-De Electron Co., Ltd of Taiwan (“Wah-De”) and Dragon Star Magnetics, Inc. of Hong Kong (“Dragon Star”). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation, sale for importation, or sale within the United States after importation of certain compact disc and DVD holders by reason of infringement of U.S. Design Patent No. D441,212, which is owned by DuBois.

The investigation was subsequently terminated as to four of the respondents on the basis of settlement agreements, and as to two of the respondents based on the withdrawal of the allegations in the complaint as to them. Neither Wah-De nor Dragon Star filed responses to the complaint, the notice of investigation, the discovery order of the presiding administrative law judge (“ALJ”), the discovery requests from DuBois and the Commission investigative attorney (“IA”), or the order to show cause why they should not be found in default. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. § 337(g)(1), and Commission rule 210.16(a), 19 C.F.R.

§ 210.16(a), the Commission found Wah-De and Dragon Star to be in default. The Commission can therefore presume the facts alleged in the complaint to be true.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of default remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of compact disc and DVD holders that are covered by U.S. Design Patent No. D441,212 that are manufactured abroad by or on behalf of, or imported by or on behalf of, either Wah-De or Dragon Star.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(g)(1) do not preclude issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of compact disc and DVD holders that are subject to this Order.

Accordingly, the Commission hereby **ORDERS THAT**:

1. Compact disc and DVD holders covered by U.S. Design Patent No. D441, 212 that are manufactured abroad by or on behalf of, or imported by or on behalf of, Wah-de Electron Co. Ltd., or any of its affiliated companies, parents, subsidiaries, contractors, licensees, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, except under license of the patent owner or as provided by law.

2. Compact disc and DVD holders covered by U.S. Design Patent No. D441, 212 that are manufactured abroad by or on behalf of, or imported by or on behalf of, Dragon Star Magnetics, Ltd., or any of its affiliated companies, parents, subsidiaries, contractors, licensees, or other

~~related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, except under license of the patent owner or as provided by law.~~

3. Compact disc and DVD holders that are excluded by paragraphs 1 or 2 of this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100 percent of entered value pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), from the day after this Order is received by the President until such time as the President notifies the Commission that he approves or disapproves this action but, in any event, not later than 60 days after the date of receipt of this action.

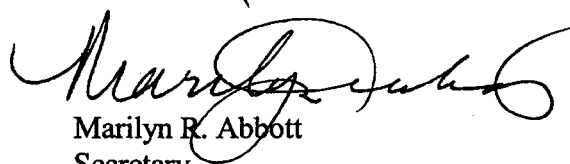
4. In accordance with 19 U.S.C. § 1337(1), the provisions of this Order shall not apply to compact disc and DVD holders that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the Bureau of Customs and Border Protection.

7: Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.



Marilyn R. Abbott
Secretary

Issued: June 26, 2003

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF COMMISSION ISSUANCE OF LIMITED EXCLUSION ORDER AND TERMINATION OF INVESTIGATION** was served upon the following parties via first class mail and air mail where necessary on June 27, 2008.



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Room 406
4/F Cheung Tat Centre
18 Cheung Lee Street
Chai Wan, Hong Kong

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

In the Matter of)
)
)
CERTAIN COMPACT DISC AND DVD HOLDERS)
)

Inv. No. 337-TA-403

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US INTL TRADE COMMISSION
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NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL DETERMINATION FINDING THE TWO REMAINING RESPONDENTS IN DEFAULT, AND REQUEST FOR SUBMISSIONS ON REMEDY, THE PUBLIC INTEREST, AND BONDING

AGENCY: U.S. International Trade Commission.
ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined not to review the presiding administrative law judge’s (“ALJ’s”) initial determination (“ID”) finding respondents Wah-De Electron Co., Ltd (“Wah-De”) and Dragon Star Magnetics, Inc. (“Dragon Star”) in default. In connection with final disposition of the investigation, the Commission is requesting briefing on remedy, the public interest, and the appropriate bond during the period of Presidential review.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3105. Copies of the ALJ’s ID and all other 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, S.W., Washington, D.C. 20436, telephone (202) 205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. 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-ON-LINE) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 22, 2002, based on a complaint filed by DuBois Limited of the United Kingdom (“DuBois”) against eight respondents, including Wah-De and Dragon Star. The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation, sale for importation, or sale within the United States after importation of certain compact discs and DVD holders by reason of infringement of U.S. Design Patent No. D441,212. In previously-issued IDs (Orders Nos. 10 and

11), which the Commission determined not to review, the ALJ terminated the investigation as to the other six respondents in the investigation.

Neither Wah-De nor Dragon Star filed responses to the complaint, the notice of investigation, the ALJ's discovery order or the discovery requests from DuBois and the Commission investigative attorney (IA). On February 12, 2003, DuBois moved pursuant to section 337(g) and Commission rule 210.16(b) for issuance of an order directing those respondents to show cause why they should not be found in default. DuBois' motion also requested that, upon their failure to show cause, an ID be issued finding Wah-De and Dragon Star in default, and that a limited exclusion order be entered immediately against those respondents. On March 7, 2003, the IA filed a response supporting the request for a show cause order, and the entry of default findings if Wah-De and Dragon Star failed to respond to an order to show cause. On March 7, 2003, the ALJ issued Order No. 12, which ordered Wah-De and Dragon Star to show cause by March 18, 2003, why they should not be found in default. Wah-De and Dragon Star did not respond to the order to show cause. On March 21, 2003, the ALJ issued the subject ID finding Wah-De and Dragon Star in default. No petitions for review of the ID were filed.

Under Commission rule 210.16(b)(3), 19 C.F.R. § 210.16(b)(3), Wah-De and Dragon Star are deemed to have waived their right to appear, to be served with documents, and to contest the allegations at issue in this investigation. Section 337(g)(1), 19 U.S.C. § 1337(g)(1) and Commission rule 210.16 (c), 19 C.F.R. § 210.16(c), authorize the Commission to order limited relief against a respondent found in default unless, after consideration of public interest factors, it finds that such relief should not issue. In this investigation, Wah-De and Dragon Star have been found in default and DuBois has requested issuance of a limited exclusion order that would deny entry to certain compact disc and DVD holders imported by Wah-De and Dragon Star. If the Commission decides to issue a limited exclusion order against Wah-De and Dragon Star, it must consider what the amount of the bond should be during the Presidential review period.

In connection with the final disposition of this investigation, the only potential remedy is the issuance of a limited exclusion order that could result in the exclusion from entry into the United States of certain compact disc and DVD holders imported by Wah-De and Dragon Star. Accordingly, the Commission is interested in receiving written submissions that address whether such an order should be issued against either or both respondents. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, it should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates a remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that a remedial order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that

are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.


If the Commission issues a limited exclusion order against Wah-De and/or Dragon Star, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bonds in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bonds that should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed limited exclusion order for the Commission's consideration. The written submissions and proposed limited exclusion order must be filed no later than close of business on [the date that is two weeks after publication of this notice in the Federal Register]. Reply submissions, if any, must be filed no later than the close of business on [the date that is three weeks after publication of this notice in the Federal Register]. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and sections 210.16 and 210.42 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.16 and 210.42.

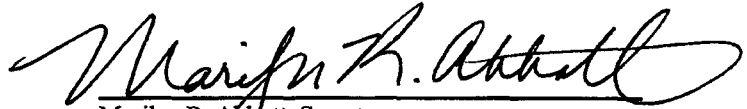
By order of the Commission.


Marilyn R. Abbott
Secretary to the Commission

Issued: April 16, 2003

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached Notice of Commission Decision Not to Review an Initial Determination Finding the Two Remaining Respondents in Default, and Request for Submissions on Remedy, the Public Interest, and Bonding, was served upon the following parties via first class mail and air mail where necessary on April 16, 2003.



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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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U.S. INTERNATIONAL TRADE COMMISSION

03 MAR 21 10 33 AM '03

In the Matter of

CERTAIN COMPACT DISC AND DVD
HOLDERS

Investigation No. 337-TA-482

ORDER NO. 13: INITIAL DETERMINATION Finding Respondents Wah-De and Dragon Star in Default

On October 22, 2002, by publication of a Notice of Investigation in the *Federal Register*, this investigation was instituted, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain compact disc and DVD holders by reason of infringement of U.S. Design Patent No. D441,212, and whether an industry in the United States exists as required by subsection (a)(2) of section 337. 67 Fed. Reg. 64910 (2002). The Notice of Investigation named DuBois Limited ("DuBois") as the complainant, and named eight companies as respondents, including Wah-De Electron Co., Ltd. ("Wah-De") and Dragon Star Magnetics, Ltd. ("Dragon Star"). *Id.*

On February 12, 2003, DuBois filed its "Motion for Order to Show Cause and Entry of Default Judgment" against Wah-De and Dragon Star. Motion Docket No. 482-11.

On February 21, 2003, the Commission Investigative Staff of the Commission's Office of Unfair Import Investigations filed its Response to DuBois' Motion. The Staff supported the

issuance of an order to show cause, and the entry of default findings if Wah-De and Dragon Star failed to respond to an order to show cause. *See* OUII Response at 1 & n.1.

Neither Wah-De nor Dragon Star responded to DuBois' Motion.

On March 7, 2003, the Administrative Law Judge issued Order No. 12, which noted that neither Wah-De nor Dragon Star responded to the Complaint and Notice of Investigation, and that neither party had participated in other important aspects of the investigation, including discovery. Order No. 12 required Wah-De and Dragon Star to show cause by March 18, 2003 why they should not be found in default.¹

Neither Wah-De nor Dragon Star responded to the Order to show cause.

Commission Rule 210.16 provides in pertinent part, as follows:

A party shall be found in default if it fails to respond to the complaint and notice of investigation in the manner prescribed in §210.13 or § 210.59(c), or otherwise fails to answer the complaint and notice, and fails to show cause why it should not be found in default.

19 C.F.R. § 210.16(a)(1).

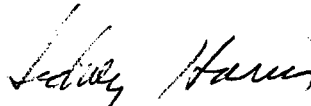
The Commission's Rules provide that "[a] party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation." 19 C.F.R. § 210.16(b)(3).

Accordingly, it is the INITIAL DETERMINATION of the Administrative Law Judge that Wah-De and Dragon Star are each found to be in default. DuBois' Motion No. 482-11 is GRANTED. Consequently, Wah-De and Dragon Star have waived their rights to appear, to be

¹ Order No. 12 granted the portion of DuBois' Motion requesting the issuance of a show-cause order, and deferred ruling on the question of default.

served with documents, and to contest the allegations at issue in the investigation.²

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 contained herein.



Sidney Harris
Administrative Law Judge

Issued: March 21, 2003

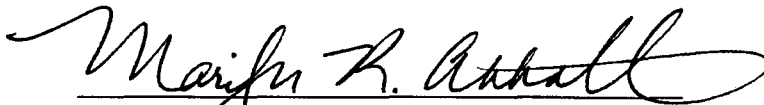
² Initial Determinations have issued terminating this investigation as to all other respondents. See Order No. 8, Order No. 9, Order No. 10, Order No. 11. If the Commission approves termination of the investigation as to the other respondents, this investigation will be terminated in its entirety upon disposition of the investigation with respect to Wah-De and Dragon Star.

**CERTAIN COMPACT DISC AND DVD
HOLDERS**

INV. NO. 337-TA-482

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached Order was served upon Benjamin D. M. Wood, Esq. and upon the following parties via first class mail, and air mail where necessary, on March 21, 2003.



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**CERTAIN COMPACT DISC AND DVD
HOLDERS**

INV. NO. 337-TA-482

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**CERTAIN COMPACT DISC AND DVD
HOLDERS**

INV. NO. 337-TA-482

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