

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

In the Matter of

CERTAIN RECORDABLE COMPACT
DISCS AND REWRITABLE COMPACT
DISCS

Investigation No. 337-TA-474

RECEIVED
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US INTERNATIONAL TRADE COMMISSION
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GENERAL EXCLUSION ORDER

The Commission has determined in this investigation that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation, sale for importation, and/or sale after importation of certain recordable and rewritable compact discs that infringe certain claims of one or more of the following patents: U.S. Patent Nos. 4,807,209; 4,962,493; 4,972,401; 5,023,856; 4,999,825; and 5,418,764.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is necessary to prevent circumvention of an exclusion order limited to products of named persons because there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing recordable and rewritable compact discs.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. §§ 1337(d), (f), and (g) do not preclude the issuance of the general exclusion order, and

that the bond during the Presidential review period shall be in the amount of US\$0.06 for each covered article in question.

Accordingly, the Commission hereby ORDERS that:

1. Recordable and rewritable compact discs covered by one or more of the following claims of the following patents:

claims 1, 5, and 6 of U.S. Patent No. 4,807,209;
claim 11 of U.S. Patent No. 4,962,493;
claims 1-3 of U.S. Patent No. 4,972,401;
claims 1, 3, and 4 of U.S. Patent No. 5,023,856;
claims 1, 2, 4-6 of U.S. Patent No. 4,999,825; and
claims 20, 23-34 of U.S. Patent No. 5,418,764

are excluded from entry for consumption, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption for the remaining terms of those patents, except under license of the patent owner or as provided by law.

2. Notwithstanding paragraph 1 of this Order, the aforesaid recordable and rewritable compact discs are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption, under bond in the amount of US\$0.06 per such articles, pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (*70 Fed. Reg.* 43251), from the day after this Order is received by the United States Trade Representative, until such time as the United States Trade Representative notifies the Commission that she approves or disapproves this action, but in any event, not later than sixty (60) days after the date of receipt of this Order.
3. Notwithstanding paragraphs 1 and 2 of this Order, the aforesaid recordable or rewritable compact discs are entitled to entry for consumption into the United States, without posting of bond, if upon importation they accompany a person arriving in the United States and are for the arriving person's personal use, or which are otherwise imported into the United States in such small quantities and under such circumstances so as to reasonably indicate to the satisfaction of the U.S. Customs Service that they are being imported for personal use rather than for commercial purposes.
4. When the U.S. Bureau of Customs and Border Protection (Customs) is unable to

determine by inspection whether recordable and rewritable compact discs fall within the scope of this Order, it may, in its discretion, accept a certification, pursuant to procedures specified and deemed necessary by Customs, from persons seeking to import said recordable and rewritable compact discs that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, Customs may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

5. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to recordable and rewritable compact discs 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.
6. The Commission may modify this Order 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).
7. The Secretary to the Commission 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.
8. Notice of this Order shall be published in the *Federal Register*.

By order of the Commission.

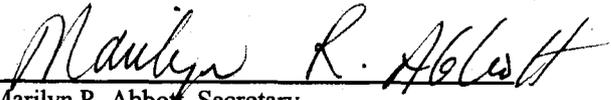


Marilyn R. Abbott
Secretary to the Commission

Issued: February 5, 2007

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF ISSUANCE OF GENERAL EXCLUSION ORDER AND CEASE AND DESIST ORDERS; TERMINATION OF THE INVESTIGATION**, was served upon the Commission Investigative Attorney, Rett V. Snotherly, Esq. and the following parties via first class mail and air mail where necessary on February 5, 2007.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW - Room 112
Washington, DC 20436

**ON BEHALF OF COMPLAINANT U.S. PHILIPS
CORPORATION:**

A. Douglas Melamed, Esq.
Jonathan G. Cedarbaum, Esq.
Edward C. DuMont, Esq.
Michael D. Esch, Esq.
Benjamin C. Mizer, Esq.
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**ON BEHALF OF RESPONDENTS PRINCO
CORPORATION, PRINCO AMERICA
CORPORATION, GIGASTORAGE
CORPORATION TAIWAN, GIGASTORAGE
CORPORATION USA AND LINBERG
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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

CERTAIN RECORDABLE COMPACT
DISCS AND REWRITABLE COMPACT
DISCS

Investigation No. 337-TA-474

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US ITC
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ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Gigastorage Corporation USA, 174 Lawrence Drive, Suite C, Livermore, California 94550, cease and desist from conducting any of the following activities in the United States: importing, selling, advertising, distributing, marketing, consigning, transferring (except for exportation), offering for sale or soliciting U.S. agents or distributors for certain recordable and rewritable compact discs, as described below, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, except as provided in Section IV.

I.

(Definitions)

As used in this Order:

- (A) "Commission" shall mean the United States International Trade Commission.
- (B) "Philips" shall mean U.S. Philips Corp., 580 White Plains Road, Tarrytown, NY, 10591-5190, complainant in this investigation, and its successors and assigns.
- (C) "Respondent" shall mean Gigastorage Corporation USA, 174 Lawrence Drive, Suite C, Livermore, California 94550.
- (D) "Person" shall mean an individual, or any non-governmental partnership, firm,

association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, their 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, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption under the Customs laws of the United States.

(G) The term “covered product” shall mean recordable and rewritable compact discs imported into the United States, that are not imported by, under license from, or with the permission of the patent owner, or as provided by law, that infringe one or more of the following claims of one or more of the following patents:

claims 1, 5, and 6 of U.S. Patent No. 4,807,209;
claim 11 of U.S. Patent No. 4,962,493;
claims 1-3 of U.S. Patent No. 4,972,401;
claims 1, 3, and 4 of U.S. Patent No. 5,023,856;
claims 1, 2, 4-6 of U.S. Patent No. 4,999,825; and
claims 20, 23-34 of U.S. Patent No. 5,418,764.

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, contractors, controlled (whether by stock ownership or otherwise) and/or 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 the Respondent in the United States is prohibited by the Order. For the remaining terms of U.S. Patent Nos. 4,807,209; 4,962,493; 4,972,401; 5,023,856; 4,999,825; and 5,418,764, the Respondent shall not:

(A) import or sell for importation into the United States covered products except under license of the patent owner;

(B) market, advertise, distribute, offer for sale, sell, consign, or otherwise transfer (except for exportation) in the United States imported covered products except under license of the patent owner;

(C) solicit U.S. agents or distributors for imported covered products except under license of the patent owner; or

(D) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products in the United States except under license of the patent owner.

IV.

(Conduct Permitted)

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, Complainant licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered product by or for the United States.

V.

(Reporting)

For purposes of this reporting requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. However, the first report

required under this section shall cover the period from the date of issuance of this Order through December 31, 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 the 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 reported 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 exportation to and importation into the United States and 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 two (2) years from the close of the fiscal year to which they pertain.

(B) For the purposes 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 expiration date of the last to expire of the patents specified in Section I herein.

VIII.

(Confidentiality)

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with section 201.6 of the Commission's Rules of Practice and Procedure, 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 a proceeding 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 United States Trade Representative pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), subject to Respondent posting a bond in the amount of US\$0.06 per covered product. 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 general 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 United States Trade Representative 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 United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, 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.

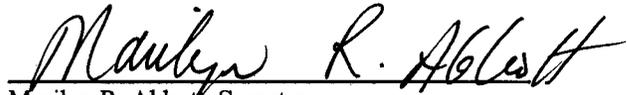


Marilyn R. Abbott
Secretary to the Commission

Issued: February 5, 2007

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF ISSUANCE OF GENERAL EXCLUSION ORDER AND CEASE AND DESIST ORDERS; TERMINATION OF THE INVESTIGATION**, was served upon the Commission Investigative Attorney, Rett V. Snotherly, Esq. and the following parties via first class mail and air mail where necessary on February 5, 2007.



Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW - Room 112
Washington, DC 20436

**ON BEHALF OF COMPLAINANT U.S. PHILIPS
CORPORATION:**

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**ON BEHALF OF RESPONDENTS PRINCO
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CORPORATION TAIWAN, GIGASTORAGE
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DISCS

Investigation No. 337-TA-474

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ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Linberg Enterprise Inc., 1 Charles Avenue, Building 130 B, West Orange, New Jersey 07052, cease and desist from conducting any of the following activities in the United States: importing, selling, advertising, distributing, marketing, consigning, transferring (except for exportation), offering for sale or soliciting U.S. agents or distributors for certain recordable and rewritable compact discs, as described below, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, except as provided in Section IV.

I.

(Definitions)

As used in this Order:

- (A) "Commission" shall mean the United States International Trade Commission.
- (B) "Philips" shall mean U.S. Philips Corp., 580 White Plains Road, Tarrytown, NY, 10591-5190, complainant in this investigation, and its successors and assigns.
- (C) "Respondent" shall mean Linberg Enterprise Inc., 1 Charles Avenue, Building 130 B, West Orange, New Jersey 07052.
- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority

owned or controlled subsidiaries, their 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, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption under the Customs laws of the United States.

(G) The term “covered product” shall mean recordable and rewritable compact discs imported into the United States, that are not imported by, under license from, or with the permission of the patent owner, or as provided by law, that infringe one or more of the following claims of one or more of the following patents:

claims 1, 5, and 6 of U.S. Patent No. 4,807,209;
claim 11 of U.S. Patent No. 4,962,493;
claims 1-3 of U.S. Patent No. 4,972,401;
claims 1, 3, and 4 of U.S. Patent No. 5,023,856;
claims 1, 2, 4-6 of U.S. Patent No. 4,999,825; and
claims 20, 23-34 of U.S. Patent No. 5,418,764.

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, contractors, controlled (whether by stock ownership or otherwise) and/or 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 the Respondent in the United States is prohibited by the Order.

For the remaining terms of U.S. Patent Nos. 4,807,209; 4,962,493; 4,972,401; 5,023,856; 4,999,825; and 5,418,764, the Respondent shall not:

(A) import or sell for importation into the United States covered products except under license of the patent owner;

(B) market, advertise, distribute, offer for sale, sell, consign, or otherwise transfer (except for exportation) in the United States imported covered products except under license of the patent owner;

(C) solicit U.S. agents or distributors for imported covered products except under license of the patent owner; or

(D) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products in the United States except under license of the patent owner.

IV.

(Conduct Permitted)

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, Complainant licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered product by or for the United States.

V.

(Reporting)

For purposes of this reporting requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through

December 31, 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 the 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 reported 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 exportation to and importation into the United States and 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 two (2) years from the close of the fiscal year to which they pertain.

(B) For the purposes 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 expiration date of the last to expire of the patents specified in Section I herein.

VIII.

(Confidentiality)

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with section 201.6 of the Commission's Rules of Practice and Procedure, 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 a proceeding 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 United States Trade Representative pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), subject to Respondent posting a bond in the amount of US\$0.06 per covered product. 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

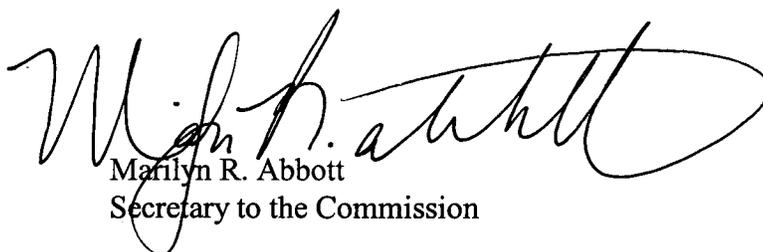
bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

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 United States Trade Representative 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 United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, 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.



Marilyn R. Abbott
Secretary to the Commission

Issued: February 5, 2007

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF ISSUANCE OF GENERAL EXCLUSION ORDER AND CEASE AND DESIST ORDERS; TERMINATION OF THE INVESTIGATION**, was served upon the Commission Investigative Attorney, Rett V. Snoterly, Esq. and the following parties via first class mail and air mail where necessary on February 5, 2007.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW - Room 112
Washington, DC 20436

ON BEHALF OF COMPLAINANT U.S. PHILIPS CORPORATION:

A. Douglas Melamed, Esq.
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Edward C. DuMont, Esq.
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ON BEHALF OF RESPONDENTS PRINCO CORPORATION, PRINCO AMERICA CORPORATION, GIGASTORAGE CORPORATION TAIWAN, GIGASTORAGE CORPORATION USA AND LINBERG ENTERPRISE INC.:

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UNITED STATES INTERNATIONAL TRADE COMMISSION
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DISCS AND REWRITABLE COMPACT
DISCS**

Investigation No. 337-TA-474

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT DiscsDirect.Com, 2165 South Bascom Avenue, Campbell, California 95008, cease and desist from conducting any of the following activities in the United States: importing, selling, advertising, distributing, marketing, consigning, transferring (except for exportation), offering for sale or soliciting U.S. agents or distributors for certain recordable and rewritable compact discs, as described below, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, except as provided in Section IV.

I.

(Definitions)

As used in this Order:

- (A) "Commission" shall mean the United States International Trade Commission.
- (B) "Philips" shall mean U.S. Philips Corp., 580 White Plains Road, Tarrytown, NY, 10591-5190, complainant in this investigation, and its successors and assigns.
- (C) "Respondent" shall mean DiscsDirect.Com, 2165 South Bascom Avenue, Campbell, California 95008.
- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, their 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, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption under the Customs laws of the United States.

(G) The term “covered product” shall mean recordable and rewritable compact discs imported into the United States, that are not imported by, under license from, or with the permission of the patent owner, or as provided by law, that infringe one or more of the following claims of one or more of the following patents:

claims 1, 5, and 6 of U.S. Patent No. 4,807,209;
claim 11 of U.S. Patent No. 4,962,493;
claims 1-3 of U.S. Patent No. 4,972,401;
claims 1, 3, and 4 of U.S. Patent No. 5,023,856;
claims 1, 2, 4-6 of U.S. Patent No. 4,999,825; and
claims 20, 23-34 of U.S. Patent No. 5,418,764.

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, contractors, controlled (whether by stock ownership or otherwise) and/or 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 the Respondent in the United States is prohibited by the Order. For the remaining terms of U.S. Patent Nos. 4,807,209; 4,962,493; 4,972,401; 5,023,856;

4,999,825; and 5,418,764, the Respondent shall not:

(A) import or sell for importation into the United States covered products except under license of the patent owner;

(B) market, advertise, distribute, offer for sale, sell, consign, or otherwise transfer (except for exportation) in the United States imported covered products except under license of the patent owner;

(C) solicit U.S. agents or distributors for imported covered products except under license of the patent owner; or

(D) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products in the United States except under license of the patent owner.

IV.

(Conduct Permitted)

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, Complainant licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered product by or for the United States.

V.

(Reporting)

For purposes of this reporting requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through December 31, 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 the 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 reported 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 exportation to and importation into the United States and 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 two (2) years from the close of the fiscal year to which they pertain.

(B) For the purposes 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 expiration date of the last to expire of the patents specified in Section I herein.

VIII.

(Confidentiality)

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with section 201.6 of the Commission's Rules of Practice and Procedure, 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 a proceeding 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 United States Trade Representative pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), subject to Respondent posting a bond in the amount of US\$0.06 per covered product. 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 general 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 United States Trade Representative 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 United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, 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.



Marilyn R. Abbott
Secretary to the Commission

Issued: February 5, 2007

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF ISSUANCE OF GENERAL EXCLUSION ORDER AND CEASE AND DESIST ORDERS; TERMINATION OF THE INVESTIGATION**, was served upon the Commission Investigative Attorney, Rett V. Snotherly, Esq. and the following parties via first class mail and air mail where necessary on February 5, 2007.



Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW - Room 112
Washington, DC 20436

**ON BEHALF OF COMPLAINANT U.S. PHILIPS
CORPORATION:**

A. Douglas Melamed, Esq.
Jonathan G. Cedarbaum, Esq.
Edward C. DuMont, Esq.
Michael D. Esch, Esq.
Benjamin C. Mizer, Esq.

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**ON BEHALF OF RESPONDENTS PRINCO
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CORPORATION, GIGASTORAGE
CORPORATION TAIWAN, GIGASTORAGE
CORPORATION USA AND LINBERG
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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

CERTAIN RECORDABLE COMPACT
DISCS AND REWRITABLE COMPACT
DISCS

Investigation No. 337-TA-474

RECEIVED
OFFICE OF THE SECRETARY
U.S. INTL. TRADE COMM.
2007 FEB -5 PM 3:08

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Princo America Corporation, 47517 Seabridge Drive, Fremont, California 94538, cease and desist from conducting any of the following activities in the United States: importing, selling, advertising, distributing, marketing, consigning, transferring (except for exportation), offering for sale or soliciting U.S. agents or distributors for certain recordable and rewritable compact discs, as described below, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, except as provided in Section IV.

I.

(Definitions)

As used in this Order:

- (A) "Commission" shall mean the United States International Trade Commission.
- (B) "Philips" shall mean U.S. Philips Corp., 580 White Plains Road, Tarrytown, NY, 10591-5190, complainant in this investigation, and its successors and assigns.
- (C) "Respondent" shall mean Princo America Corporation, 47517 Seabridge Drive, Fremont, California 94538.
- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority

owned or controlled subsidiaries, their 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, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption under the Customs laws of the United States.

(G) The term “covered product” shall mean recordable and rewritable compact discs imported into the United States, that are not imported by, under license from, or with the permission of the patent owner, or as provided by law, that infringe one or more of the following claims of one or more of the following patents:

claims 1, 5, and 6 of U.S. Patent No. 4,807,209;
claim 11 of U.S. Patent No. 4,962,493;
claims 1-3 of U.S. Patent No. 4,972,401;
claims 1, 3, and 4 of U.S. Patent No. 5,023,856;
claims 1, 2, 4-6 of U.S. Patent No. 4,999,825; and
claims 20, 23-34 of U.S. Patent No. 5,418,764.

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, contractors, controlled (whether by stock ownership or otherwise) and/or 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 the Respondent in the United States is prohibited by the Order.

For the remaining terms of U.S. Patent Nos. 4,807,209; 4,962,493; 4,972,401; 5,023,856; 4,999,825; and 5,418,764, the Respondent shall not:

(A) import or sell for importation into the United States covered products except under license of the patent owner;

(B) market, advertise, distribute, offer for sale, sell, consign, or otherwise transfer (except for exportation) in the United States imported covered products except under license of the patent owner;

(C) solicit U.S. agents or distributors for imported covered products except under license of the patent owner; or

(D) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products in the United States except under license of the patent owner.

IV.

(Conduct Permitted)

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, Complainant licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered product by or for the United States.

V.

(Reporting)

For purposes of this reporting requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through

December 31, 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 the 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 reported 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 exportation to and importation into the United States and 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 two (2) years from the close of the fiscal year to which they pertain.

(B) For the purposes 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 expiration date of the last to expire of the patents specified in Section I herein.

VIII.

(Confidentiality)

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with section 201.6 of the Commission's Rules of Practice and Procedure, 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 a proceeding 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 United States Trade Representative pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), subject to Respondent posting a bond in the amount of US\$0.06 per covered product. 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 general 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 United States Trade Representative 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 United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

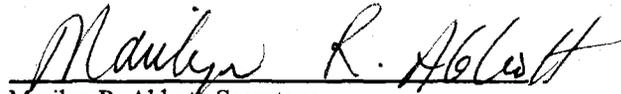
By Order of the Commission.


Marilyn R. Abbott
Secretary to the Commission

Issued: February 5, 2007

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF ISSUANCE OF GENERAL EXCLUSION ORDER AND CEASE AND DESIST ORDERS; TERMINATION OF THE INVESTIGATION**, was served upon the Commission Investigative Attorney, Rett V. Snotherly, Esq. and the following parties via first class mail and air mail where necessary on February 5, 2007.



Marilyn R. Abbot, Secretary
U.S. International Trade Commission
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Washington, DC 20436

**ON BEHALF OF COMPLAINANT U.S. PHILIPS
CORPORATION:**

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Jonathan G. Cedarbaum, Esq.
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**ON BEHALF OF RESPONDENTS PRINCO
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CORPORATION, GIGASTORAGE
CORPORATION TAIWAN, GIGASTORAGE
CORPORATION USA AND LINBERG
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