

## IN THE MATTER OF

SORGA, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3058. Complaint, March 13, 1981—Decision, March 13, 1981.*

This consent order requires, among other things, a New York City advertising agency to cease, in connection with the advertising and sale of Semicid, or similar over-the-counter vaginal contraceptive suppository products, misrepresenting or failing to substantiate claims relating to the product's effectiveness, safety and performance characteristics. The firm is further prohibited from disseminating advertisements using performance or quality heightening modifiers such as "highly" or "extremely," in conjunction with words like "effective" or "reliable." Additionally, the order requires the company to disclose, in print, radio and TV consumer advertising, certain facts material to contraceptive suppository use; and to maintain business records for a period of three years.

*Appearances*

For the Commission: *Shirley F. Sarna and Paula K. Stein.*

For the respondent: *Evan A. Davis, Clearly, Gottlieb, Steen & Hamilton, New York City.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that Sorga, Inc., a corporation, (hereinafter "respondent") has violated Sections 5 and 12 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Sorga, Inc. is a New York corporation with its principal place of business at 300 East 42nd St., New York, New York. Sorga, Inc. previously did business under the name of Kelly, Nason-Univas, Inc. The name change to Sorga, Inc. was accomplished by amendment to the certificate of incorporation on June 29, 1979.

Allegations stated in the present tense include the past tense.

PAR. 2. For purposes of this complaint the following definitions shall apply:

1. A "vaginal contraceptive suppository" is a spermicidal contraceptive product which is inserted into the vagina prior to coitus.

Body temperature or vaginal secretions dissolve the suppository and spread its sperm killing agent through the vaginal cavity.

2. "*Use effectiveness*" means that level of effectiveness which is obtained when the contraceptive method is used by large numbers of subjects not all of whom follow the instructions accurately nor use the contraceptive method each time they have sexual relations.

3. "*Commerce*" means commerce as defined in the Federal Trade Commission Act, as amended.

PAR. 3. Respondent was an advertising agency for American Home Products Corporation. In such capacity respondent has prepared and placed advertising for publication and has caused dissemination of advertising, including the advertising referred to herein, to promote the sale of a vaginal contraceptive suppository product named "Semicid", a "drug" within the meaning of Section 15 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business respondent has disseminated or caused the dissemination of certain advertisements concerning Semicid (1) by United States mail, or by various means in or having an effect upon commerce, including but not limited to insertion in newspapers or magazines of interstate dissemination and radio and television broadcasts of interstate transmission, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of Semicid, or (2) by various means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of Semicid in or having an effect upon commerce.

PAR. 5. Among the advertisements and other sales promotion materials, and typical of the statements and representations made in respondent's advertisements, but not all inclusive thereof, are the advertisements identified as Attachments 1 through 4.

PAR. 6. Through the use of such advertisements, and others not specifically set forth herein, respondent represents, directly or by implication, that:

1. Semicid has an extremely high use effectiveness, approaching the level of oral contraceptives (hereinafter "the pill") or intrauterine devices (hereinafter "IUD").

2. Semicid has novel contraceptive performance characteristics.

PAR. 7. In truth and in fact:

1. Semicid's use effectiveness is approximately that of other

vaginal contraceptive products. It is not considered to have a use effectiveness on the level of the pill or IUD.

2. Semicid does not have novel contraceptive performance characteristics except as to the characteristics associated with its method of delivery. Its sperm killing ingredient, nonoxynol 9, has been in use for many years in various contraceptive products.

Therefore, the advertisements and representations referred to in Paragraphs Five and Six are false, deceptive or misleading.

PAR. 8. Furthermore, through the use of the advertisements referred to in Paragraphs Four and Five, respondent represents, directly or by implication, that:

1. Semicid has an extremely high use effectiveness.
2. Semicid has novel contraceptive performance characteristics.
3. Semicid has been scientifically or medically proven to have an extremely high use effectiveness.

PAR. 9. At the time respondent made the representations alleged in Paragraph Eight, respondent had no reasonable basis for making those representations. Therefore, the making and dissemination of such representations constitute deceptive or unfair acts or practices in or affecting commerce.

PAR. 10. Furthermore, respondent advertises Semicid without disclosing to the purchasing public through its advertising that:

1. For best protection against pregnancy, it is essential that one follow instructions.
2. Women for whom pregnancy presents a special health risk should make a contraceptive choice in consultation with their physician.
3. Some Semicid users experience irritation.
4. Semicid requires a waiting period of fifteen minutes before intercourse to ensure effectiveness.
5. Semicid is approximately as effective as vaginal foam contraceptives in actual use.

PAR. 11. The facts described in Paragraph Ten are material with respect to the consequences which may result from use of Semicid as a contraceptive under such conditions as are customary or usual. Respondent's failure to disclose these material facts renders the advertisements referred to in Paragraphs Four and Five false, deceptive or misleading.

PAR. 12. Furthermore, through the use of the advertisements referred to in Paragraphs Four and Five, respondent, directly or by

implication, favorably compares some characteristics of Semicid to the pill or the IUD and represents in the same advertisements that Semicid has an extremely high use effectiveness. Favorable comparison of Semicid to certain characteristics of the pill or IUD has the tendency and capacity to lead members of the public into the erroneous and mistaken belief that Semicid's use effectiveness is equal to that of the pill or IUD. Respondent fails to disclose the fact that Semicid has a use effectiveness below that of the pill or IUD and approximately the same as other vaginal foam contraceptive products.

PAR. 13. The fact described in Paragraph Twelve is material in light of the comparative representations made in respondent's advertisements. Respondent's failure to disclose this material fact in advertisements containing such comparative representations renders the advertisements referred to in Paragraphs Four and Five false, misleading or unfair.

PAR. 14. In the course and conduct of its business, and at all times mentioned herein, respondent is in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of services of the same general kind and nature as are sold by respondent.

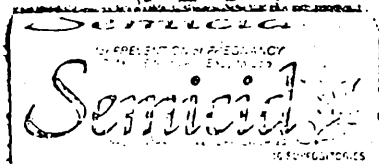
PAR. 15. The use by respondent of the aforesaid false, misleading, deceptive or unfair statements, representations, acts or practices, and the dissemination of the aforesaid false advertisements has the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondent's products or services by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondent as herein alleged, including the dissemination of false advertising, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition or unfair or deceptive acts or practices in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

Commissioner Pitofsky did not participate.



Now you can say  
 goodbye to  
 the pill,  
 the IUD,  
 diaphragms,  
 foams, creams  
 and chippy jellies



Semicid is here

A medically tested, vaginal contraceptive  
 suppository developed for the woman of today.

As a contemporary woman, you know about birth control. You know what works, what feels right, what is aesthetically pleasing.

Whatever method you choose, you want it to be effective, safe and easy to use.

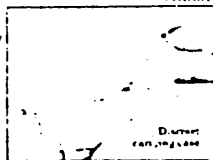
Now there's a non-hormonal contraceptive to satisfy your contemporary needs. Semicid.

**Proven to be effective.**

Semicid is an effective vaginal contraceptive for the prevention of pregnancy. It is a non-hormonal, vaginal mini-suppository that safely kills sperm in seconds. Semicid's active ingredient is nonoxonyl-9, a spermicide used effectively by millions of women for over 10 years.

**Laboratory tested. Doctor tested.**

A U.S. clinical study of hundreds of women of childbearing age over a four year period, proved Semicid's high degree of effectiveness. This study was conducted by a gynecologist and was carefully designed to compare the efficacy of Semicid with published reports of other contraceptive methods. Semicid is known to be effective in the majority of women of the average



**Semicid is safe.**

Semicid contains no hormones. As a result, none can enter your bloodstream. What's more, Semicid is safer than the IUD, because it cannot pierce the uterine walls. Semicid is so safe that you can purchase it without a prescription, and it is non-irritating based on reports from doctors and from women using the product.

**Easy and convenient to use.**

Within minutes, Semicid dissolves and spreads a protective covering over the cervical opening and adjoining vaginal walls. And because Semicid is quick and easy to insert, it will not interfere with spontaneity.

The Semicid package is so small and discreet that it can be kept anywhere. Semicid has no application, so there is nothing to fill, clean or remove.

Semicid is lubricating and has no unpleasant taste or odor. It was formulated for the kind of life you are living today. Ask your doctor for the nearest

Semicid is from Whitehall Laboratories, one of the world's leading pharmaceutical companies. It's available at your local drugstore. Use only as directed.

**SEMICID. Today's contraceptive for today's woman.**

# Now. A safe, simple way to prevent pregnancy.

It's Semicid, a safe, easy-to-use vaginal contraceptive suppository with an active ingredient proven effective by millions of women.

If you're dissatisfied with your present birth control method, you should know about Semicid, a real alternative in contraception from Whitehall Laboratories, one of the world's leading pharmaceutical companies.

Semicid is safe and effective. It contains the maximum allowable level of nonoxynol-9, an ingredient which safely kills sperm in seconds. It's the spermicide doctors recommend most and has been used effectively by millions of women for over 10 years. Now this tested, proven ingredient is available in Semicid.

Semicid is safe, too. Unlike the pill, it has no hormonal side effects. And unlike the IUD, it can't damage uterine walls. Furthermore, Semicid does not effervesce the way the other vaginal suppository does. Semicid is non-irritating to most women. There's also no unpleasant odor. Neither you nor your partner will notice Semicid is there at all.

Semicid is neat and convenient. Slim, only an inch long, Semicid is so simple and easy to use. There's no applicator, so there's nothing to fill, clean, or remove. Semicid is not messy like foams, creams and jellies. And it's not awkward like the diaphragm. It lets love-making happen naturally, spontaneously.

Within minutes after you insert it, Semicid dissolves and spreads a protective covering over the cervical opening and adjoining vaginal walls.

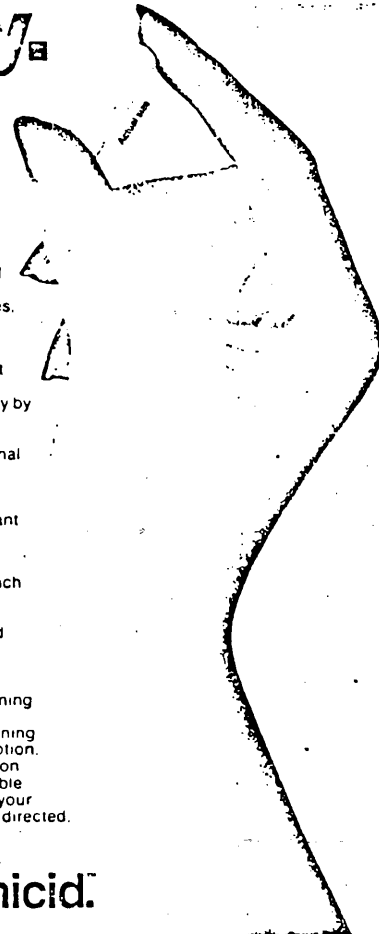
Semicid comes in a small, discreet dispenser containing 10 suppositories. You can purchase it without a prescription.

For more information about this remarkable contraceptive, ask your doctor. Use only as directed.

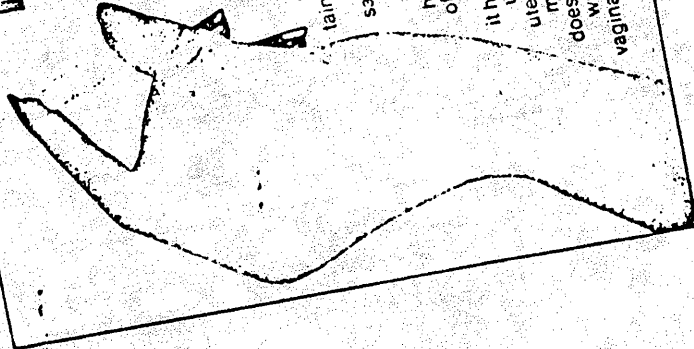


Discreet carrying case

## Semicid.



# Now. A safe, simple way to prevent pregnancy.



It's Semicid, a safe, easy-to-use vaginal contraceptive suppository with an active ingredient proven effective by millions of women.

Neat and convenient. Slim, only an inch long. Semicid is so simple and easy to use, it's not messy like foams. It's not awkward like the diaphragm. It lets love-making happen naturally.

Safe and effective. Semicid contains the maximum allowable level of nonoxonyl-9, an ingredient which safely kills sperm in seconds. It's the spermicidal ingredient in most, and doctors recommend by millions has been used effectively by millions of women for over 10 years.

Semicid is safe, too. Unlike the pill, it has no hormonal side effects. And unlike the IUD, it can't damage uterine walls. Further, Semicid does not interfere the way the other vaginal suppository does.



© 1974, Whitehall Laboratories, Inc.

**Semicid**

Ask your doctor about Semicid. It's from Whitehall Laboratories. And, it's available without a prescription. Use only as directed.

# "It's birth control on my terms. Semicid."



I've always felt birth control was *my* responsibility. (After all, it's *my* body.) And there are certain things I *expect* from a contraceptive: it has to be safe, uncomplicated and...effective.

That's why I choose Semicid. It's a slim, inch-long vaginal suppository. It's easy to insert, has no hormonal side effects, and is highly effective.

I trust it to prevent pregnancy. Semicid contains the contraceptive ingredient used effectively by millions of women for over 10 years. That gives me confidence. What's more, this ingredient is the one in products doctors recommend most, and it safely kills sperm in seconds.


No hormonal side effects for me. I won't take a chance with the Pill, or the I.U.D. I want a contraceptive that's safe. Semicid *is*. It contains no hormones. And it doesn't effervesce like the other vaginal suppository. Semicid is not irritating to most women. I like that.

It doesn't interrupt the mood. The last thing I want is a contraceptive that's awkward. (I know myself: it *has* to be easy to use.) I don't want anything drippy. Or anything that smells or tastes unpleasant.

That's why Semicid's for me. It's *neat* and it gives me all the contraceptive protection I need. Within minutes after I insert it, Semicid dissolves and forms a protective barrier over the cervical opening and adjoining vaginal walls. This protection lasts for an hour.

It's portable, too. Semicid comes in a tiny carrying case of 10 suppositories. It's available at your local drug or food store *without* a prescription.

Ask your doctor about Semicid. You, too, may discover it's birth control *on your terms*.



**Semicid**

**Trial offer from Semicid**  
**Vaginal Contraceptive Suppositories.**

Please send me a sample pack. Sample will be discreetly wrapped. Clip entire coupon and send with you (in check or money order) for postage and handling to:

Whitehall Laboratories, Inc., 611 Third Avenue,  
N.Y., N.Y. 10017. Att: Semicid.

**For the woman  
who's got everything  
under control.**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

This offer is made available in person over 18 years of age. Subject to state and local regulations. Offer good in the State of New York and where taxed, restricted or prohibited by law. Offer expires September 30, 1972. Good only in N.Y.A.

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Sorga, Inc. is a New York corporation with its principal place of business at 300 East 42nd St., New York, New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

## ORDER

This Order applies to respondent Sorga, Inc., its successors, assigns, officers, agents and employees, whether acting directly or through any corporation, subsidiary, division or other device. Except as otherwise provided, order provisions apply to any act taken in connection with respondent's advertising, offering for sale, sale or distribution of Semicid or any OTC (over-the-counter) contraceptive product in or affecting commerce within the United States, including

the Commonwealth of Puerto Rico and any territory or possession of the United States. The reasonable basis standards used in this Order are not intended to set a standard for drug products other than OTC contraceptives.

For purposes of this Order, the following definitions shall apply:

1) "*Use effectiveness*" or effectiveness "*in actual use*" means that level of effectiveness which is obtained when the contraceptive method is used by large numbers of subjects not all of whom follow the instructions accurately or use the contraceptive method each time they have sexual relations.

2) "*Method effectiveness*" means that level of effectiveness which is attained in a well-controlled clinical trial utilizing highly motivated volunteers who reportedly use the contraceptive method correctly with every act of sexual intercourse.

3) "*Semicid*" means the vaginal contraceptive suppository product marketed under the tradename Semicid, or any vaginal contraceptive suppository product of substantially the same chemical formulation.

4) "*Advertisement*" means any written, verbal or audiovisual statement, illustration, depiction or presentation, which is designed to effect the sale of any OTC contraceptive product, or to create interest in the purchasing of such products (except a package or package insert) whether same appears in a brochure, newspaper, magazine, leaflet, circular, mailer, book insert, catalog, billboard, public transit card, point-of-sale display, film strip, video presentation, or in a radio or television broadcast or in any other media, regardless of whether such statement, illustration, depiction or presentation is characterized as promotional, educational or informative; *provided, however*, that the term advertisement does not include material which solely refers to the product without making any claims for the product.

5) "*Product or use characteristic*" includes but is not limited to efficacy, safety or convenience.

## I

*It is ordered*, That respondent cease and desist from:

- A. Making in consumer (lay) advertisements any contraceptive effectiveness claims regarding Semicid which use the words "effective" or "reliable" in conjunction with any performance or quality heightening modifiers such as "highly", "extremely" and the like.
- B. Misrepresenting, directly or by implication, the effectiveness

of any OTC contraceptive product; unless respondent neither knew nor should have known that the representation was false, deceptive or misleading.

C. Representing, directly or by implication, that Semicid has novel contraceptive performance characteristics except as to the characteristics associated with its method of delivery.

D. Representing, directly or by implication, the results of any study of method effectiveness of any OTC contraceptive product as a measure of the use effectiveness of any such product.

E. Making any representation, directly or by implication, concerning the effectiveness of any OTC contraceptive product unless respondent has a reasonable basis for such representation consisting of a consistent body of valid and reliable scientific evidence; *provided, however*, that respondent may represent that Semicid is effective or reliable or make other effectiveness claims as permitted by this Order (for example, "Semicid provides reliable protection against pregnancy").

## II

*It is further ordered.* That respondent make the following affirmative disclosures in any consumer (lay) print advertisement for Semicid:

A. For best protection against pregnancy, it is essential to follow package instructions.

B. If your doctor has told you that you should not become pregnant, ask your doctor if you can use Semicid.

C. Some Semicid users experience irritation in using the product.

D. It is essential that you insert Semicid at least fifteen minutes before intercourse.

E. Semicid is approximately as effective as vaginal foam contraceptives in actual use.

The above affirmative disclosures shall be made clearly and conspicuously. Disclosures C, D and E shall be made in the exact language indicated above; *provided, however*, that if respondent has a reasonable basis, consisting of valid scientific test(s) or study(ies), respondent may modify the words "fifteen minutes" in Disclosure D consistent with such reasonable basis. Disclosures D and E shall be made in typeface at least as large as the typeface of the major portion of the text of the advertising copy. Disclosures D and E shall be separate and distinguishable from the main body of the advertisement for a period of 24 months following the date of service of this

Order or 27 months from the date of signing of this Order, whichever expires earlier.

### III

*It is further ordered,* That respondent make the following affirmative disclosure in any consumer (lay) print advertisement for Semicid in which any product or use characteristic of Semicid is compared, directly or by implication, to any product or use characteristic of oral contraceptives (hereinafter "the pill") or intrauterine devices (hereinafter "IUD"):

Semicid is approximately as effective as vaginal foam contraceptives in actual use, but is not as effective as the pill or IUD.

### OR

Semicid is not as effective as the pill or IUD in actual use, but is approximately as effective as vaginal foam contraceptives.

Either above affirmative disclosure shall be made, where required, in lieu of Disclosure II.E above. The disclosure shall satisfy the requirements regarding exact language, size of type and relation to the main body of the advertisement specified for Disclosure II.E.

### IV

*It is further ordered,* That respondent make the following disclosures in any consumer (lay) TV advertisements for Semicid:

- A. Follow directions exactly, including the fifteen minute waiting period.
- B. Approximately as effective as contraceptive foams.

The above disclosures shall be made clearly and conspicuously as video supers and in the exact language indicated above; *provided, however,* that if respondent has a reasonable basis, consisting of valid scientific test(s) or study(ies), respondent may modify the words "fifteen minutes" in Disclosure A consistent with such reasonable basis.

### V

*It is further ordered,* That respondent make the following disclosure in any consumer (lay) radio advertisements for Semicid:

Semicid's effectiveness is approximately equal to contraceptive foams.



The above disclosure shall be made clearly and conspicuously and in the exact language indicated above.

## VI

*It is further ordered,* That respondent shall make the following disclosures in ethical (professional) advertisements for Semicid:

- A. Irritation accompanies use of the product in some instances.
- B. Semicid must be inserted according to product instructions and at least fifteen minutes before intercourse.
- C. Semicid is approximately as effective as vaginal foam contraceptives in actual use, but is not as effective as the pill or IUD.

## OR

Semicid is not as effective as the pill or IUD in actual use, but is approximately as effective as vaginal foam contraceptives.

Affirmative Disclosures A and B shall be made in language the same or substantially similar to the language set forth above; *provided, however,* that if respondent has a reasonable basis, consisting of valid scientific test(s) or study(ies), respondent may modify the words "fifteen minutes" in Disclosure B consistent with such reasonable basis. Disclosure C shall be made in the exact language indicated above, in typeface at least as large as the typeface of the major portion of the text of the advertising copy.

## VII

*It is further ordered,* That respondent cease and desist from:

- A. Disseminating or causing the dissemination of any advertisement, by means of the United States mail or by any means in or affecting commerce within the United States, including the Commonwealth of Puerto Rico and any territory or possession of the United States, which contains any of the representations prohibited in Paragraph I.A-D of this Order or fails to include any of the disclosures required by this Order.
- B. Disseminating, or causing to be disseminated, by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of Semicid or any OTC contraceptive product in or affecting commerce within the United States, including the Commonwealth of Puerto Rico and any territory or possession of the United States, any advertisement which contains any of the

representations prohibited in Paragraph I.A-D of this Order or fails to include any of the disclosures required by this Order.

### VIII

*It is further ordered,* That in advertisements in languages other than English, exact language disclosures required by this Order shall be made in the non-English language equivalent and convey the same meaning as the English language disclosures.

### IX

*It is further ordered,* That respondent maintain complete business records relative to the manner and form of its compliance with this order. Such records shall include but not be limited to, copies of and dissemination schedules for all advertisements and documents which substantiate or contradict any claim made in advertising, promoting or selling the product. Such records shall be retained for at least three (3) years beyond the last dissemination of any relevant advertisement. Upon thirty (30) days notice respondent shall make any and all such records available to Commission staff for inspection or photocopying.

### X

*It is further ordered,* That respondent forthwith deliver a copy of this Order to each operating division and to all employees or agents now or hereafter engaged in the sale or offering for sale of Semicid or in any aspect of the preparation, creation or placing of advertising for Semicid on behalf of respondent. A statement acknowledging receipt of this Order shall be obtained in each case.

### XI

*It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in a corporate respondent in which the respondent is not a surviving entity, such as dissolution, assignment or sale resulting in the emergence of any successor corporation or corporations, or any other change in said corporation which may affect compliance obligations arising out of this Order.

### XII

*It is further ordered,* That respondent shall, within sixty (60) days

after service upon it of this Order, file with the Commission a report setting forth in detail the manner and form in which it has complied with this Order.

Commissioner Pitofsky did not participate.

IN THE MATTER OF  
TED BATES & COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3059. Complaint, March 17, 1981—Decision, March 17, 1981*

This consent order requires, among other things, a New York City advertising agency to cease referring to any test or survey of "experts" or "consumers" when making representations regarding the performance, benefit, choice or superiority of a product, unless the referenced test or survey has been scientifically designed, executed and evaluated by experts; and provides substantiation for the representations. The firm is further barred from representing, by reference to a test or survey, that experts or consumers surveyed or tested recommended or used a particular brand of product, without disclosing that an equal or greater percentage of such respondents had not indicated any brand preferences. Additionally, the order requires the company to maintain, for a period of three years, records substantiating advertising claims.

*Appearances*

For the Commission: *Mitchell Paul* and *Julie Niemasik*.

For the respondent: *Elhanan C. Stone*, in-house counsel.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Ted Bates & Company, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ted Bates & Company, Inc. ("Ted Bates") is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 1515 Broadway, New York, New York.

PAR. 2. Respondent Ted Bates was for some time an advertising agency of Standard Brands, Inc. ("Standard Brands") and prepared and placed for publication and caused the dissemination of advertising material, including but not limited to the advertising referred to

herein, to promote the sale of Standard Brands' "Fleischmann's Margarine" products.

PAR. 3. In the course and conduct of its business, respondent has disseminated and caused the dissemination of advertisements concerning "Fleischmann's Margarine" products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, by means of advertisements printed in magazines and newspapers distributed by the mail and across state lines and transmitted by television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said "Fleischmann's Margarine" products.

PAR. 4. Among the advertisements so disseminated or caused to be disseminated by respondent are the advertisements attached as Exhibits A through D hereof.

PAR. 5. In Exhibits A through D and others substantially similar thereto, disseminated as aforesaid, respondent has represented directly or by implication that:

- a) When a doctor chooses margarine, chances are it's Fleischmann's;
- b) Twice as many doctors recommend Fleischmann's margarine as any other brand of margarine;
- c) Twice as many doctors personally use Fleischmann's margarine as any other brand of margarine;
- d) Twice as many doctors recommend and personally use Fleischmann's as any other brand of margarine;
- e) Every 15 seconds a doctor recommends Fleischmann's margarine.

PAR. 6. In Exhibits A through D and others substantially similar thereto, respondent has represented directly or by implication that a survey of doctors proves the representations in Paragraph Five above.

PAR. 7. In Exhibits C and D and others substantially similar thereto, disseminated as aforesaid, respondent has represented directly or by implication that:

- a) Of those doctors who recommend a polyunsaturated margarine, twice as many recommend Fleischmann's as any other brand of margarine;
- b) Of those doctors who recommend a polyunsaturated margarine,

twice as many personally use Fleischmann's as any other brand of margarine;

c) Of those doctors who recommend a polyunsaturated margarine, twice as many recommend and personally use Fleischmann's as any other brand of margarine.

PAR. 8. In Exhibits C and D and others substantially similar thereto, respondent has represented directly or by implication that the aforementioned survey proves the representations in Paragraph Seven above.

PAR. 9. In truth and in fact, the aforementioned survey, conducted for Standard Brands by William Douglas McAdams, Inc. and entitled "Marketing Insights Into Physicians' Attitudes and Opinions Concerning Lipids and Cardiovascular Disease (General Medicine)" (hereinafter referred to as the "McAdams survey"), does not prove the representations in Paragraphs Five and Seven for reasons including but not limited to the following:

a) Of those survey respondents who were asked the question, "Which brand(s) of margarine do you recommend?", most (84.5%) did not state that they recommended Fleischmann's margarine;

b) Of those survey respondents who were asked the question, "Which brand(s) of margarine do you recommend?", most (at least 67.5%) did not recommend a specific name brand of margarine;

c) Of those survey respondents who were asked the question, "Do you use margarine at home? If yes: Which brand?", most (82.2%) did not state that they personally used Fleischmann's margarine;

d) Of those survey respondents who were asked the question, "Do you use a margarine at home? If yes: Which brand?", nearly one-half (47.1%) did not state that they used margarine or were unaware of the specific name brand of the margarine they personally used;

e) The survey respondents neither were asked nor stated the frequency of their recommendations of Fleischmann's margarine to their patients or to anyone else.

Therefore, the representations referred to in Paragraphs Six and Eight were and are unfair and deceptive.

PAR. 10. In Exhibits A through D and others substantially similar thereto, disseminated as aforesaid, respondent represented directly or by implication that, in responding to the survey, respondents had used their medical expertise in recommending, using, or choosing Fleischmann's Margarine.

PAR. 11. In Exhibits A through D and others substantially similar thereto, disseminated as aforesaid, respondent represented directly

or by implication that it possessed and relied upon a reasonable basis for the representations in Paragraphs Five, Six, Seven, Eight and Ten at the time of their initial and each subsequent dissemination.

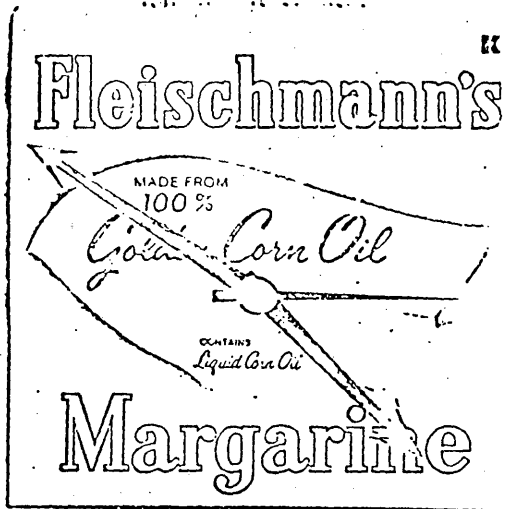
PAR. 12. In truth and in fact, respondent did not possess or rely upon a reasonable basis for the representations in Paragraphs Five, Six, Seven, Eight and Ten at the time of their initial and each subsequent dissemination. Therefore, such representations were and are unfair and deceptive.

PAR. 13. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Ted Bates has been, and now is, in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, with other advertising agencies.

PAR. 14. The use by respondent of the aforesaid unfair and/or deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the purchase of substantial quantities of Fleischmann's margarine manufactured by Standard Brands.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

Every 15 seconds  
a doctor recommends  
Fleischmann's Margarine



Somewhere right about now a doctor is telling a patient to watch his cholesterol and advising him to eat sensibly. And one product he may recommend is Fleischmann's Margarine. A recent survey shows that twice as many doctors recommend Fleischmann's as any other margarine. In fact, based on the frequency with which those doctors made a recommendation, a doctor somewhere is recommending Fleischmann's Margarine every 15 seconds.

Many of those same doctors practice what they preach. The survey also showed twice as many doctors personally use Fleischmann's at home.



Fleischmann's is the only leading margarine made from 100% corn oil. Fleischmann's was part of a clinical test that lowered serum cholesterol levels an average 17%. In that test Fleischmann's was part of a total dietary program along with reduced fats, fewer eggs and skim milk.

Many doctors also recommend Egg Beaters, Fleischmann's fresh-frozen, cholesterol-free egg substitute. With Egg Beaters instead of two eggs for breakfast you can save 450 mgs. of cholesterol and still enjoy the good taste of eggs.

Can you afford not to serve your family Fleischmann's?  
Fine products of Standard Brands

Fleischmann's makes sensible eating delicious.

FL-5505



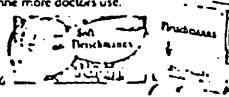
The advertisement features several images of Fleischmann's Margarine packaging. At the top, there are three tubs: one partially cut off on the left, one in the center, and one on the right. Below these are three more tubs arranged in a row. A large, stylized hash symbol (#) is positioned to the left of the central tub. At the bottom of the product images, there are three more tubs in a row. Below the product images is a large, bold headline: "More doctors use and recommend Fleischmann's than any other margarine." Underneath the headline is a section of text containing several lines of small, illegible text, likely representing doctor testimonials. At the bottom right of this section is a small circular logo with three rings. At the very bottom of the advertisement, the name "Fleischmann's" is printed in a stylized font.



**When a doctor chooses margarine,  
chances are it's Fleischmann's.**

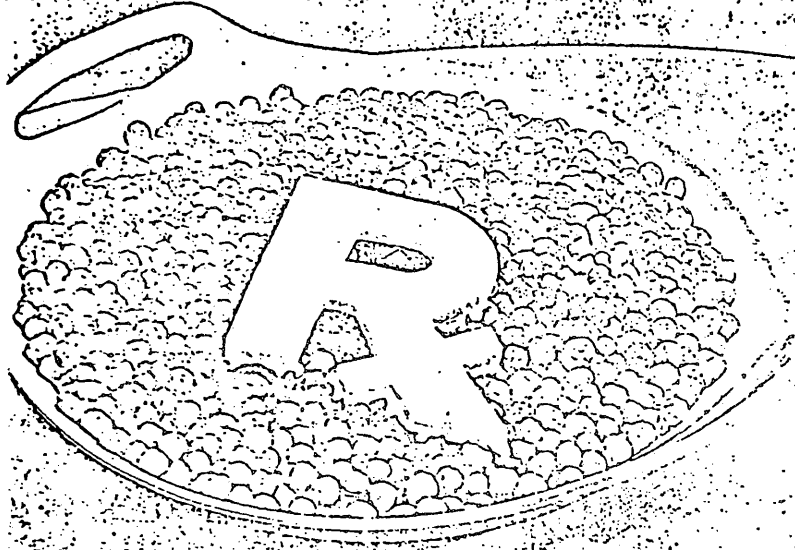
A recent survey of doctors who believe cholesterol levels can be lowered through a total dietary program proved they practice what they preach! Of those doctors who recommend a polyunsaturated margarine to their patients, twice as many recommend and personally use Fleischmann's as any other brand.

But doesn't make you reach for Fleischmann's when you shop, remember it's the only leading margarine made from 100% corn oil. It's high in polyunsaturates and low in saturated fats. Fleischmann's is ideal in a total dietary program designed to lower serum cholesterol. Clinical tests show corn oil is unsurpassed among vegetable oils for lowering serum cholesterol. And 100% corn oil means light, delicious flavor your family will love. Serve your family the margarine more doctors use.



Another fine product of *Heinz and Sons*

Is the margarine most recommended by doctors?



In a recent survey, doctors who recommended polyunsaturated margarines to their patients were asked which brand they chose. Twice as many doctors recommended Fleischmann's® Margarine any other brand.

And twice as many personally used Fleischmann's, too.

Fleischmann's contains no cholesterol, is the only leading margarine made from 97% corn oil. And even it is low in trans fats.

...actually reducing serum cholesterol levels.

Of course, you're aware that no one food will significantly reduce serum cholesterol levels. But used in a total dietary program... along with lean meats, fewer eggs and skim milk... Fleischmann's 100% corn oil margarine can help lower your patients' serum cholesterol levels.

By as much as 17% as shown in clinical tests.

And what's more, Fleischmann's has a light, delicious taste. So compliance to the patients.

You see, like you, we believe an ounce of prevention is worth a pound of cure.



Ask for Egg Beaters® and Fleischmann's Margarine at your favorite restaurant. Another fine product of Borden's.

FL/1312 EXHIBIT D

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of such agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Ted Bates & Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive office and principal place of business located at 1515 Broadway, New York, New York. Ted Bates/New York Division is the sole operating division of Ted Bates & Company, Inc.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent and the proceeding is in the public interest.

## ORDER

## Part I

*It is ordered.* That respondent Ted Bates & Company, Inc., a corporation (hereinafter referred to as respondent) and its successors, assigns, officers, agents, representatives and employees, direct-

ly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, of any product whose advertising account is: (1) currently or in the future assigned to Ted Bates/New York Division; or (2) currently or in the future assigned to Ted Bates/New York Division and is transferred from Ted Bates/New York Division to any subsidiary of Ted Bates & Company, Inc., do forthwith cease and desist from:

1. Making representations, directly or by implication, by reference to a survey or test of "experts" or "consumers" (as hereinafter defined in Part II of this Order), or the results thereof, concerning the performance or any characteristic, benefit, recommendation, usage or choice of or other preference for such Product, unless:

(a) such survey or test of experts or consumers is designed, executed and analyzed in a competent and reliable scientific manner; and

(b) such survey or test of experts or consumers substantiates the claim(s) represented by providing a reasonable basis therefor; and

(c) in regard to any claims of superiority based thereon, such survey test of experts or consumers establishes that such Product is superior to each compared product in respect to which the specific representation is made to a degree that will be discernible to or of benefit to consumers or potential consumers to whom the representation is directed.

2. Representing, directly or by implication, by reference to a survey or test that experts or consumers surveyed or tested:

(a) recommend such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents do not recommend a specific brand of the product, without disclosing such fact(s); or

(b) use such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents do not use a specific brand of the product, without disclosing such fact(s); or

(c) use such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents are not aware of the specific brand of the product which they do use, without disclosing such fact(s).

3. Representing, directly or by implication, by reference to a

survey or test of experts, that experts recommend, use, choose, or otherwise prefer such Product in any respect unless:

(a) such experts in fact possess the expertise to evaluate such Product with respect to such representation; and

(b) such experts actually exercised their expertise by evaluating or testing such Product, and based their stated preferences, findings, or opinions on such exercise of their expertise; and

(c) such representation, to the extent it expresses or implies a product comparison, is supported by an actual comparative evaluation or test by such experts; and

(d) such representation, to the extent it expresses or implies that such Product is superior to competing products, is supported by an actual comparative evaluation or test by such experts and by a conclusion therefrom that such Product is superior in fact to the competing products with respect to the feature(s) so represented as compared.

4. Representing, directly or by implication, by reference to a survey or test of consumers that consumers recommend, use, choose, or otherwise prefer such Product in any respect unless and only to the extent that respondent has a reasonable basis for such representation. A reasonable basis shall consist of any competent and reliable evidence which substantiates a statement or representation.

5. Failing to maintain records

(a) which provided the basis upon which respondent relied at the time of the initial and each subsequent dissemination of the claim; and

(b) which shall be maintained by respondent for a period of three years from the date such advertising or sales promotional material was last disseminated by respondent or any division or subsidiary of respondent.

## Part II

For purposes of this Order, each of the terms listed below is defined as follows:

1. The term *experts* shall be deemed to be an individual(s), group(s) or institution(s), possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals.

2. The term *consumers* shall be deemed to be any person(s) who is a user or potential user of the product.

3. An advertising claim which is a personal endorsement of a product reflecting solely the subjective opinion of the endorser shall not be deemed to be a test.

### Part III

It shall be an affirmative defense to any compliance action brought pursuant to this Order alleging that an advertisement was, in whole or in part, unsubstantiated, or not supported by a reasonable basis, for respondent to show that, prior to disseminating an advertisement containing a statement or representation challenged in such compliance action, respondent submitted to its client in writing all the claims which it reasonably believed were contained in the advertising prepared by it and exercised due care to assure itself that the advertiser possessed and relied upon a reasonable basis for those claims.

It shall be an affirmative defense to any compliance action brought pursuant to this Order alleging that an advertisement was, in whole or in part, false, misleading or deceptive, for respondent to show that, prior to disseminating an advertisement containing a statement or representation challenged in such compliance action, respondent submitted to its client in writing all the claims which it reasonably believed were contained in the advertising prepared by it and exercised due care to assure itself that those claims were neither false, misleading nor deceptive when placed by respondent.

*Provided, however,* that nothing in this Order shall be deemed to deny or limit respondent with respect to any other right, defense, or other affirmative defense to which respondent may otherwise be entitled by law in such compliance action or any other action; nor shall any inference adverse to respondent be drawn in any case from its failure to invoke this paragraph or to rely on the procedures provided herein.

*It is further ordered,* That respondent shall, within 60 days after service upon it of this Order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

*It is further ordered,* That respondent shall forthwith distribute a copy of this Order to the senior executive officer of each account assigned to respondent's Ted Bates/New York Division and the executive in charge of research for such Division.

*It is further ordered,* That respondent notify the Commission at least 30 days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a

successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.



IN THE MATTER OF  
STANDARD BRANDS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3060. Complaint, March 17, 1981—Decision, March 17, 1981*

This consent order requires, among other things, a New York City manufacturer of various products, including "Fleischmann's Margarine" products, to cease referring to any test or survey when making representations regarding the performance, benefit, choice or superiority of a product, unless referenced test or survey has been scientifically designed, executed and analyzed; and provides substantiation for those claims. The firm is further barred from representing that survey respondents recommend or use a particular brand of product more often than a competitive brand, unless the company discloses the fact that an equal or greater percentage of such respondents have no brand preference. Additionally, the order requires the firm to maintain, for a period of three years, records substantiating advertising claims.

*Appearances*

For the Commission: *Mitchell Paul and Julie Niemasik.*

For the respondent: *C. Henry Freas, Jr.*, in-house counsel.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Standard Brands, Inc., a corporation hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Standard Brands, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 625 Madison Ave., New York, New York.

PAR. 2. Standard Brands, Inc. is now, and for some time in the past has been, engaged in the manufacture, distribution, advertising and sale of various products, including "Fleischmann's Margarine" products.

PAR. 3. Respondent Standard Brands causes the said products, when sold, to be transported from its place of business in various

States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent Standard Brands maintains, and at all times mentioned herein has maintained, a course of trade in said products in and affecting commerce. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its business, respondent has disseminated and caused the dissemination of advertisements concerning "Fleischmann's Margarine" products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, by means of advertisements printed in magazines and newspapers distributed by the mail and across state lines and transmitted by television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said "Fleischmann's Margarine" products.

PAR. 5. Among the advertisements so disseminated or caused to be disseminated by respondent are the advertisements attached as Exhibits A through D hereof.

PAR. 6. In Exhibits A through D and others substantially similar thereto, disseminated as aforesaid, respondent has represented directly or by implication that:

- a) When a doctor chooses margarine, chances are it's Fleischmann's;
- b) Twice as many doctors recommend Fleischmann's margarine as any other brand of margarine;
- c) Twice as many doctors personally use Fleischmann's margarine as any other brand of margarine;
- d) Twice as many doctors recommend and personally use Fleischmann's as any other brand of margarine;
- e) Every 15 seconds a doctor recommends Fleischmann's margarine.

PAR. 7. In Exhibits A through D and others substantially similar thereto, respondent has represented directly or by implication that a survey of doctors proves the representations in Paragraph Six above.

PAR. 8. In Exhibits C and D and others substantially similar thereto, disseminated as aforesaid, respondent has represented directly or by implication that:

- a) Of those doctors who recommend a polyunsaturated margarine,

twice as many recommend Fleischmann's as any other brand of margarine;

b) Of those doctors who recommend a polyunsaturated margarine, twice as many personally use Fleischmann's as any other brand of margarine;

c) Of those doctors who recommend a polyunsaturated margarine, twice as many recommend and personally use Fleischmann's as any other brand of margarine.

PAR. 9. In Exhibits C and D and others substantially similar thereto, respondent has represented directly or by implication that the aforementioned survey proves the representations in Paragraph Eight above.

PAR. 10. In truth and in fact, the aforementioned survey, conducted for Standard Brands by William Douglas McAdams, Inc. and entitled "Marketing Insights Into Physicians' Attitudes and Opinions Concerning Lipids and Cardiovascular Disease (General Medicine)" (hereinafter referred to as the "McAdams survey"), does not prove the representations in Paragraphs Six and Eight for reasons including but not limited to the following:

a) Of those survey respondents who were asked the question, "Which brand(s) of margarine do you recommend?", most (84.5%) did not state that they recommended Fleischmann's margarine;

b) Of those survey respondents who were asked the question, "Which brand(s) of margarine do you recommend?", most (at least 67.5%) did not recommend a specific name brand of margarine;

c) Of those survey respondents who were asked the question, "Do you use margarine at home? If yes: which brand?", most (82.2%) did not state that they personally used Fleischmann's margarine;

d) Of those survey respondents who were asked the question, "Do you use a margarine at home? If yes: Which brand?", nearly one-half (47.1%) did not state that they used margarine or were unaware of the specific name brand of the margarine they personally used.

e) The survey respondents neither were asked nor stated the frequency of their recommendations of Fleischmann's margarine to their patients or to anyone else.

Therefore, the representations referred to in Paragraphs Seven and Nine were and are unfair and deceptive.

PAR. 11. In Exhibits A through D and others substantially similar thereto disseminated as aforesaid, respondent represented directly or by implication that, in responding to the survey, respondents had

used their medical expertise in recommending, using, or choosing Fleischmann's Margarine.

PAR. 12. In Exhibits A through D and others substantially similar thereto, disseminated as aforesaid, respondent represented directly or by implication that it possessed and relied upon a reasonable basis for the representations in Paragraphs Six, Seven, Eight, Nine and Eleven at the time of their initial and each subsequent dissemination.

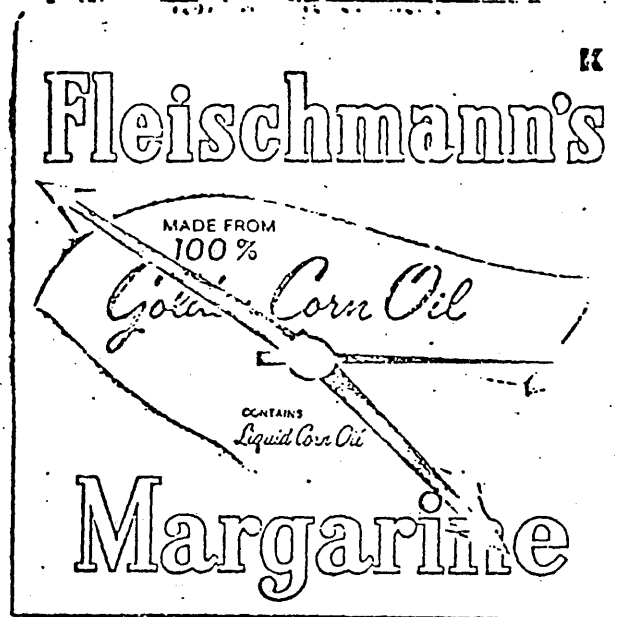
PAR. 13. In truth and in fact, respondent did not possess or rely upon a reasonable basis for the representations in Paragraphs Six, Seven, Eight, Nine and Eleven at the time of their initial and each subsequent dissemination. Therefore, such representations were and are unfair and deceptive.

PAR. 14. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Standard Brands has been, and now is, in substantial competition in or affecting commerce, with corporations, firms and individuals engaged in the sale and distribution of products of the same general kind and nature as those sold by Standard Brands.

PAR. 15. The use by respondents of the aforesaid unfair and/or deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the purchase of substantial quantities of Fleischmann's margarine manufactured by Standard Brands.

PAR. 16. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

Every 15 seconds  
a doctor recommends  
Fleischmann's Margarine



Somewhere right about now a doctor is telling a patient to watch his cholesterol and advising him to eat sensibly. And one product he may recommend is Fleischmann's Margarine. A recent survey shows that twice as many doctors recommend Fleischmann's as any other margarine. In fact, based on the frequency with which those doctors made a recommendation, a doctor somewhere is recommending Fleischmann's Margarine every 15 seconds.

Many of those same doctors practice what they preach. The survey also showed twice as many doctors personally use Fleischmann's at home.



Fleischmann's is the only leading margarine made from 100% corn oil. Fleischmann's was part of a clinical test that lowered serum cholesterol levels an average 17%. In that test Fleischmann's was part of a total dietary program along with reduced fats, fewer eggs and skim milk.

Many doctors also recommend Egg Beaters, Fleischmann's fresh-frozen, cholesterol-free egg substitute. With Egg Beaters instead of two eggs for breakfast you can save 450 mgs. of cholesterol and still enjoy the good taste of eggs. Can you afford not to serve your family Fleischmann's?

Fine products of *Standard Brands*


Fleischmann's makes sensible eating delicious.

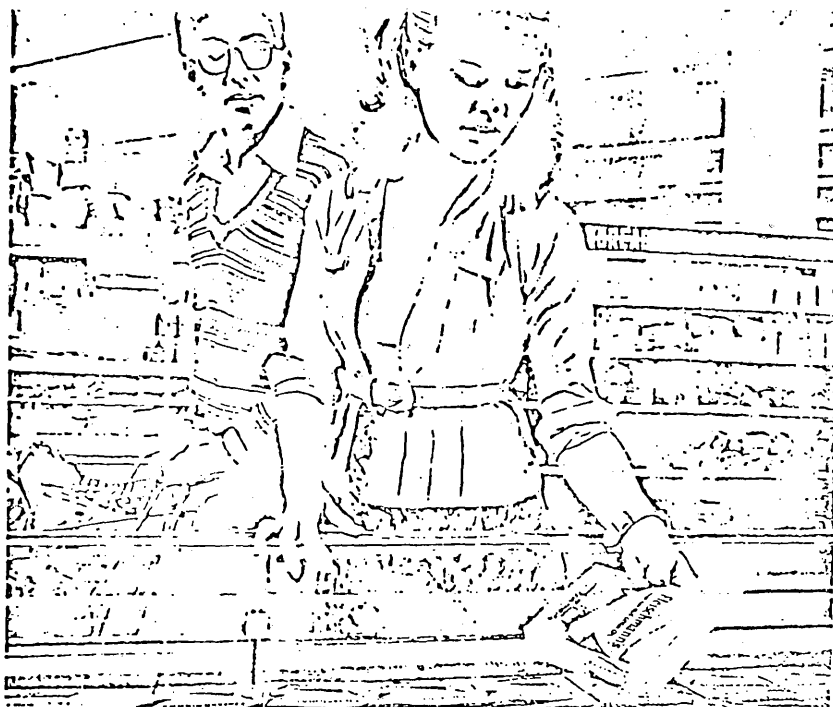
The advertisement features several images of Fleischmann's Margarine packaging. At the top, there are three boxes of margarine, with the central one being the most prominent. Below these, a large, stylized hash symbol (#) is positioned on the left side. To the right of the hash symbol, there are more boxes of margarine, some partially obscured. At the bottom of the advertisement, there is a testimonial in a bold, sans-serif font: "More doctors use and recommend Fleischmann's than any other margarine." Below the testimonial, there is a small circular logo containing the Olympic rings. The entire advertisement is enclosed in a rectangular border.

**Fleischmann's**  
Margarine

#

**More doctors use and recommend Fleischmann's than any other margarine.**

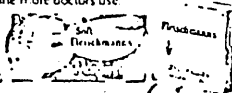




**When a doctor chooses margarine,  
chances are it's Fleischmann's.**

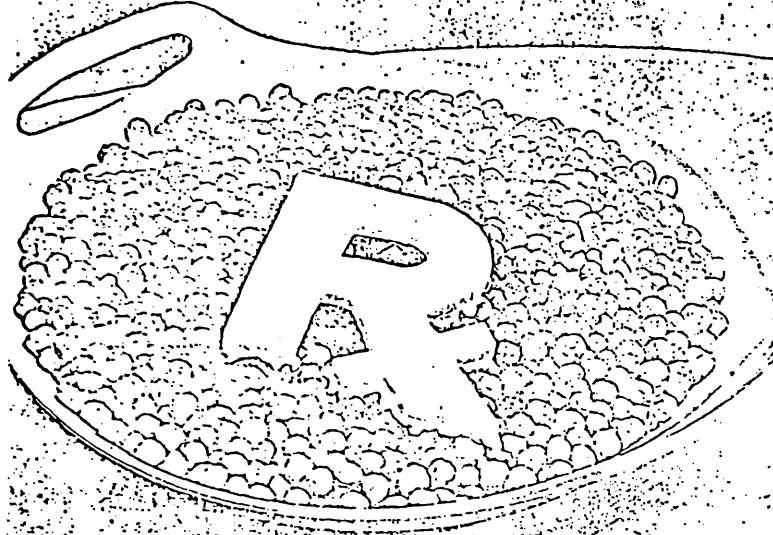
A recent survey of doctors who believe cholesterol levels can be lowered through a total dietary program proved they practice what they preach! Of those doctors who recommend a polyunsaturated margarine to their patients, twice as many recommend and personally use Fleischmann's as any other brand.

If that doesn't convince you, reach for Fleischmann's when you shop. Remember it's the only leading margarine made from 100% corn oil. It's high in polyunsaturates and low in saturated fats. Fleischmann's is ideal in a total dietary program designed to lower serum cholesterol. Clinically superior to all corn oils unsurpassed among vegetable oils for lowering serum cholesterol. And 100% corn oil means light, delicious flavor your family will love. Serve your family the margarine more doctors use.



Another fine product of Standard Brands.

# Is the margarine most recommended by doctors?



In a recent survey, doctors who recommended polyunsaturated margarines to their patients were asked which brand they chose. Twice as many doctors recommended Fleischmann's® Margarine as any other brand.

And twice as many personally used Fleischmann's too.

Fleischmann's contains no cholesterol, is the only leading margarine made from 100% corn oil. And contains less than 10% water.

It adds only the actual amount of serum cholesterol levels.

Ask for Egg Beaters® and Fleischmann's Margarine at your favorite restaurant.

Of course, you're aware that no one food will significantly reduce serum cholesterol levels. But used in a total dietary program...along with lean meats, fewer eggs, and skim milk...Fleischmann's 100% corn oil margarine can help lower your patients' serum cholesterol levels.

By as much as 17% as shown in clinical tests.

And what's more, Fleischmann's has a light, delicious taste. So compliance to the patients.

You see, like you, we believe an ounce of prevention is worth a pound of cure.



Another fine product of Standard Brands



## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of such agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Standard Brands, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive office and principal place of business located at 625 Madison Ave., New York, New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent and the proceeding is in the public interest.

## ORDER

## Part I

*It is ordered,* That respondent Standard Brands, Inc., a corporation (hereinafter referred to as respondent), and its successors, assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection

with the advertising, offering for sale, sale or distribution of any product (hereinafter "Product") in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making representations, directly or by implication, by reference to a survey or test, or the results thereof, concerning the performance or any characteristic, benefit, recommendation, usage or choice of or other preference for such Product, unless:

(a) such survey or test is designed, executed and analyzed in a competent and reliable scientific manner; and

(b) such survey or test substantiates the claim(s) represented by providing a reasonable basis therefor; and

(c) in regard to any claims of superiority based thereon, such survey or test establishes that such Product is superior to each compared product in respect to which the specific representation is made to a degree that will be discernible to or of benefit to consumers or potential consumers to whom the representation is directed.

2. Representing, directly or by implication, that survey respondents:

(a) recommend such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents do not recommend a specific brand of the product, without disclosing such fact(s); or

(b) use such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents do not use a specific brand of the product, without disclosing such fact(s); or

(c) use such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents are not aware of the specific brand of the product which they do use, without disclosing such fact(s).

3. Representing, directly or by implication, by reference to a survey or test of experts, that experts recommend, use, choose, or otherwise prefer such Product in any respect unless:

(a) such experts in fact possess the expertise to evaluate such Product with respect to such representations; and

(b) such experts actually exercised their expertise by evaluating or

testing such Product, and based their stated preferences, findings, or opinions on such exercise of their expertise; and

(c) such representation, to the extent it expresses or implies a product comparison, is supported by an actual comparative evaluation or test by such experts; and

(d) such representation, to the extent it expresses or implies that such Product is superior to competing products, is supported by an actual comparative evaluation or test by such experts and by a conclusion therefrom that such Product is superior in fact to the competing products with respect to the feature(s) so represented as compared.

4. Representing, directly or by implication, that such product is recommended, used, chosen, or otherwise preferred in any respect more often than any or all competing products unless and only to the extent that respondent possessed and relied upon a reasonable basis for such representation at the time of its initial and each subsequent dissemination. A reasonable basis shall consist of competent and reliable evidence which substantiates a statement or representation.

5. Failing to maintain records:

(a) which provided the basis upon which respondent relied at the time of the initial and each subsequent dissemination of the claim; and

(b) which shall be maintained by respondent for a period of three years from the date such advertising or sales promotional material was last disseminated by respondent or any division or subsidiary of respondent.

## Part II

For purposes of this Order, each of the terms listed below is defined as follows:

1. The term *experts* shall be deemed to be an individual(s), group(s) or institution(s), possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals.

2. An advertising claim which is a personal endorsement of a product reflecting solely the subjective opinion of the endorser shall not be deemed to be a test.

## Part III

*It is further ordered,* That respondent shall, within 60 days after

service upon it of this Order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

*It is further ordered.* That respondent shall forthwith distribute a copy of this Order to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements.

*It is further ordered.* That respondent notify the Commission at least 30 days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

## Interlocutory Order

## IN THE MATTER OF

## EXXON CORPORATION, ET AL.

*Docket 8934. Interlocutory Order, March 27, 1981*

Denial of motion for review of ALJ's orders of Jan. 29, 1981 and Feb. 13, 1981.

## ORDER

On February 19, 1981, Respondent Standard Oil of California ("SOCAL") sought Commission review of ALJ Timony's January 29, 1981, order denying respondent SOCAL, Standard Oil of Indiana ("SOIND") and Exxon Corporations' ("Exxon") renewed application for discovery on the "reason to believe issue". SOCAL additionally sought "correction" of ALJ Timony's February 13, 1981, order denying interlocutory review of that order. Respondents SOIND and Exxon have joined in SOCAL's request for Commission review of these two ALJ orders.

Under the Commission's Rule of Practice 3.22 all discovery motions are to be addressed to the ALJ, and will be ruled upon by him. Pursuant to his authority, Judge Timony has denied respondents' discovery request. Respondents now request the Commission to exercise its discretion to review the ALJ's orders. While we may exercise such discretion under Rule of Practice 3.23(a) as to certain limited categories of filings, ALJ Timony's orders of January 29, 1981, and February 13, 1981, do not fall within any of these categories.

In addition, pursuant to Rule of Practice 3.23(b), ALJ Timony by his order of February 13, 1981, made the determination that his January 29, 1981, order does not involve a controlling question of law or policy.

Therefore, the respondents' motion is denied.

courts. Once the Commission has resolved these questions and issued the complaint, the issue to be litigated is not the adequacy of the Commission's pre-complaint information or the diligence of its study of the material in question but whether the violation has in fact occurred. *Exxon Corp.*, 83 F.T.C. 1759, 1760 (1974).<sup>2</sup>

See *Boise Cascade Corp. v. FTC*, No. 80-305 (D. Del., Sept. 30, 1980) at 7-9, *aff'd*, No. 80-2462 (3d Cir. Feb. 4, 1981).<sup>3</sup>

## II

Respondent also contends that "industry and congressional pressure impermissibly influenced the filing of this complaint." Respondent, however, does not allege any facts which would even remotely support this allegation.

Aside from its bald claim of "congressional pressure," respondent neither alleges nor describes any congressional contact or involvement, proper or otherwise, with the Commission's investigation of respondent. The industry "pressure" apparently consists of complaints which were brought to this agency's staff by business rivals of respondent who might benefit if respondent were ordered to alter its practices. That the Commission may have investigated allegations by interested complainants, and ultimately made an independent determination it had "reason to believe" the law was being violated, imparts no impropriety to the Commission. Respondent has failed to allege, let alone establish, facts sufficient to overcome the strong presumption of regularity that attaches to the Commission's law enforcement actions. See, e.g., *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926); *FTC v. Owens-Corning Fiberglas Corp.*, 626 F.2d 966, 975 (D.C. Cir. 1980); *Willapoint Oysters, Inc. v. Ewing*, 174 F.2d 676, 696 (9th Cir.), *cert. denied*, 338 U.S. 860 (1949).

## III

Nor has respondent shown that the Commission improperly failed to name suppliers of respondent as parties. The selection of alleged law violators to be named in a complaint is a matter of prosecutorial discretion. As the Supreme Court stated in *Moog Industries, Inc. v. FTC*, 355 U.S. 411, 413 (1958), "[T]he Commission alone is empowered to develop that enforcement policy best calculated to achieve the

<sup>2</sup> *FTC v. Standard Oil Co.*, 101 S.Ct. 488 (1980), decided after respondent filed this motion, held that "the issuance of a complaint" by the Commission is neither "final agency action" nor otherwise "directly reviewable," 5 U.S.C. 704, before the administrative adjudication concludes. It did not reach the question whether the issuance of a complaint is "committed to agency discretion by law," 5 U.S.C. 701(a)(2), and hence is excepted from judicial review once the agency issues a final order. 101 S.Ct. at 492-93 n. 7, 496 n.13.

<sup>3</sup> Once a complaint issues, "only in the most extraordinary circumstances" will the Commission review its reason to believe and public interest determinations. E.g. *TRW, Inc.*, 88 F.T.C. 544 (1976). Respondent has made no showing that any such extraordinary circumstances are present here.

ends contemplated by Congress and to allocate its available funds and personnel in such a way as to execute its policy efficiently and economically." See also *FTC v. Universal-Rundle Corp.*, 387 U.S. 244 (1967); *Ger-Ro-Mar, Inc. v. FTC*, 518 F.2d 33 (2d Cir. 1975). The Court has specifically recognized the Commission's discretion not to name sellers as respondents in a Section 2(f) case. See *Automatic Canteen Co. v. FTC*, 346 U.S. 61, 79 (1953). In view of the availability of discovery, respondent has not shown that the absence of suppliers as parties will preclude adequate litigation of the Section 2(a) issues in this proceeding.<sup>4</sup>

#### IV

Finally, respondent argues that the adjudicatory proceeding is in fact a disguised rulemaking because one of the issues, "whether the competing principles of *Doubleday* or of *Mueller*<sup>5</sup> should be applied to dual distributors under the Robinson-Patman Act," is a "legislative" issue which "impacts upon all suppliers to dual distributors \*\*\*." However, "the choice made between proceeding by general rule or by individual, *ad hoc* litigation is one that lies primarily in the informed discretion of the administrative agency." *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 293 (1974); *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947); see *Belton Electronics Corp. v. FTC*, 402 F.Supp. 590 (N.D. Ill. 1975). It is well recognized that "adjudicated cases may and do \*\*\* serve as vehicles for the formulation of agency policies which are applied and announced therein," and that such cases "generally provide a guide to action that the agency may be expected to take in future cases." *NLRB v. Bell Aerospace Co.*, 416 U.S. at 294. Respondent has not persuaded us that the legal issues to be addressed in this case are inappropriate for resolution in the course of an adjudicatory proceeding. Accordingly,

*It is ordered*, That the aforesaid motion, insofar as it was certified to the Commission, be, and it hereby is, denied.

<sup>4</sup> Complaint counsel have represented that before trial they will furnish respondent a list of between five and ten manufacturers whose sales will provide the basis for the Section 2(a) violations. Respondent therefore will not be "confronted with a universe of conceivable claims that might be advanced concerning any one or more of hundreds of thousands of transactions involving over 24,000 different products, sold by many hundreds of suppliers." (Respondent's Brief at 13.) Moreover, non-party suppliers who believe that their interests may be adversely affected by the proceeding may move to intervene pursuant to Section 3.14 of the Rules of Practice.

<sup>5</sup> *Mueller Co.*, 60 F.T.C. 120 (1962), *aff'd*, 323 F.2d 44 (7th Cir. 1963); *Doubleday & Co.*, 52 F.T.C. 169 (1955).

## Complaint

## IN THE MATTER OF

## OWENS-CORNING FIBERGLAS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF  
THE CLAYTON ACT

*Docket C-3061. Complaint, March 30, 1981—Decision, March 30, 1981*

This consent order requires, among other things, a Toledo manufacturer of glass fiber products, including glass fiber-based asphalt roofing products, to divest to a Commission-approved buyer within 24 months from the effective date of the order, the four specified asphalt roofing plants acquired from the Lloyd A. Fry Roofing Company in 1977. Further, should the company decide to sell the Trumbull asphalt refinery located adjacent to each divested plant, during the ten-year period following the divestiture, it is required, in certain circumstances, to give the owner of the roofing plant the right of first refusal to purchase. Additionally, the firm is barred for ten years, from acquiring without prior Commission approval, any interest in an asphalt roofing plant located in the "Western Market."

*Appearances*

For the Commission: *David W. Long.*

For the respondent: *James T. Halverson and Gregory Bentley,*  
*Shearman & Sterling, New York City.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that Owens-Corning Fiberglas Corporation ("OCF"), a corporation subject to the jurisdiction of the Commission, has violated Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45(a)(1)), through the acquisition of certain assets of Lloyd A. Fry Roofing Company ("Fry") and that a proceeding in respect thereof is in the public interest, hereby issues its Complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

## I. DEFINITIONS

1. For the purposes of this complaint, the following definitions shall apply:

(a) *Asphalt roofing products* means saturated felt, roll roofing and



asphalt shingles. *Asphalt roofing products* specifically excludes accessory items such as asphalt cements, adhesives, primers and mineral granules.

(b) *Saturated felt* consists of a dry felt base, made from rags, wood and other cellulose fibers or from glass fiber or asbestos, which is saturated, coated, or impregnated with an oxidized asphalt or tar saturant, but is otherwise untreated.

(c) *Roll roofing* is made from saturated felt by applying an additional coating of more viscous, weather-resistant oxidized asphalt. *Roll roofing* may be either mineral or smooth surfaced. *Roll roofing* includes, *inter alia*, the products known as *cap sheets* and *base sheets*.

(d) *Asphalt shingles* are mineral-surfaced roll roofing which have been machine-cut into rectangular strips or other shapes.

(e) The *Western market* consists of the states of California, Oregon, Washington, Arizona, Nevada, Utah and Idaho.

## II. OWENS-CORNING FIBERGLAS CORPORATION

2. Respondent OCF is a corporation organized under the laws of the State of Delaware, with its principal place of business at Fiberglas Tower, Toledo, Ohio.

3. OCF is the nation's largest manufacturer of glass fiber products, including glass fiber insulation and glass fiber-based asphalt roofing products, bathroom fixtures, non-corrosive tanks, and large diameter glass fiber-reinforced tanks. In fiscal year 1979, OCF had consolidated net revenues of approximately \$2.26 billion and consolidated net income of approximately \$109 million.

4. At all times relevant hereto, OCF sold and shipped asphalt roofing products throughout the United States, engaged in commerce within the meaning of the Clayton Act, as amended, and engaged in or affected commerce within the meaning of the Federal Trade Commission Act, as amended.

## III. LLOYD A. FRY ROOFING COMPANY

5. Fry was a corporation organized under the laws of the State of Delaware, with its principal place of business at 5818 Archer Road, Summit, Illinois. Prior to the acquisition, Fry was the nation's largest privately-held manufacturer of asphalt roofing products.

6. At all times relevant hereto, Fry sold and shipped asphalt roofing products throughout the United States, engaged in commerce within the meaning of the Clayton Act, as amended, and

engaged in or affected commerce within the meaning of the Federal Trade Commission Act, as amended.

#### IV. THE ACQUISITION

7. On or about April 20, 1977, OCF acquired certain assets, including the asphalt roofing products assets, of Fry and two of its subsidiaries for approximately \$101 million. Post-acquisition adjustments raised the final purchase price to approximately \$108 million.

#### V. TRADE AND COMMERCE

8. Asphalt roofing products constitute a competitively significant line of commerce, or market.

9. The Western market is a relevant geographic market for the manufacture and sale of asphalt roofing products.

10. The Western market is substantially concentrated, with the four largest sellers accounting for approximately 57 percent and the eight largest sellers accounting for approximately 87.2 percent of asphalt roofing products sales in 1977.

#### VI. COMPETITION

11. Prior to the acquisition, OCF and Fry were substantial actual competitors in the manufacture and sale of asphalt roofing products in the Western market.

#### VII. EFFECTS OF THE ACQUISITION

12. The effects of the acquisition include but may not be limited to the following:

(a) actual competition between OCF and Fry in the sale of asphalt roofing products was eliminated;

(b) actual competition between competitors generally in the sale of asphalt roofing products may be lessened;

(c) Fry was eliminated as an actual substantial independent competitor in the sale of asphalt roofing products; and

(d) concentration in the Western market was increased substantially, diminishing the possibilities for eventual deconcentration of that market.

#### VIII. VIOLATIONS CHARGED

13. The effect of the acquisition of Fry by OCF may be substan-

tially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

14. The acquisition of Fry by OCF constitutes an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Commissioner Pertschuk did not participate.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the acquisition of certain assets of Lloyd A. Fry Roofing Company by Owens-Corning Fiberglas Corporation ("OCF") and OCF having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge OCF with violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act; and

OCF, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by OCF of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by OCF that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that OCF has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

#### ORDER

For the purpose of this Order the following definitions shall apply:

1. *OCF* means Owens-Corning Fiberglas Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal offices at Fiberglas Tower, Toledo, Ohio, and its successors and assigns.
2. *Fry* means Lloyd A. Fry Roofing Company, certain assets of

which (as well as certain assets of Trumbull Asphalt Company of Delaware and Summit Wholesale Supply Company) were acquired by OCF pursuant to an agreement dated April 20, 1977.

3. *Plant* means all properties and assets acquired and received from Fry, consisting of all real and personal property described in Paragraphs 4.8 and 4.9 of the Sale of Assets Agreement dated April 20, 1977, among OCF, Fry, Trumbull Asphalt Company of Delaware and Summit Wholesale Supply Company and in Exhibits F-H to such agreement, together with all additions and improvements thereto, that are located at:

- (a) Compton, California;
- (b) Portland, Oregon;
- (c) San Leandro, California; and
- (d) Woods Cross, Utah;

*provided, however*, that the term *Plant* does not include those assets or properties disposed of by OCF in the ordinary course of the business of operating or renovating such facilities for the manufacture of asphalt roofing products; and *provided further* that the term *Plant* does not include such properties or assets as would otherwise be deemed part of the Plant where the Eligible Person acquiring the Plant elects, in its sole discretion, but subject to the approval of the Commission, not to acquire those properties or assets; and *provided further* that the term *Plant* shall include only the land, properties and assets so acquired and received from Fry as are approximately indicated as within the areas bounded by solid red lines on the attached maps.

4. *Person* means any individual, corporation, partnership, joint venture, trust, unincorporated association, or other business or legal entity.

5. *Asphalt Facility* means a plant operated by OCF's Trumbull Asphalt Division, which produces *inter alia* oxidized roofing asphalt.

6. *Asphalt Roofing Plant* means a plant primarily engaged in the manufacture of *asphalt roofing products* as such products are defined in Paragraphs I(1)(a)-(d) of the Complaint.

7. *Eligible Person* means any Person approved by the Commission. No Person shall be considered for status as an Eligible Person unless the Commission is satisfied that the Person has the capacity and intention to operate the Plant(s) to be acquired as a facility or facilities for the manufacture of asphalt roofing products.

8. *Divest* means any act by which OCF sells, transfers, conveys or relinquishes ownership, possessory interest and control of the Plants.

## I.

*It is ordered,* That within twenty-four (24) months of the effective date of this Order OCF shall Divest the Plants subject to the terms of this Order. The Plants may be Divested either separately or in any combination.

## II.

*It is further ordered,* That the divestitures of the Plants shall be made only to one or more Eligible Persons and that OCF shall submit the proposed divestitures to the Commission for its prior approval.

## III.

*It is further ordered,* That pending the divestitures required by this Order, OCF shall not cause, and shall use its best efforts to prevent, the deterioration of the Plants in a manner that impairs the marketability of any such Plants, normal wear and tear excluded. OCF may, but shall not be required to, make capital expenditures for the improvement of the Plants. Nothing in this Order shall prevent OCF from operating or furloughing employees at the Plants in a manner consistent with normal business practice, comparable to the manner in which it operates or furloughs at its other Asphalt Roofing Plants, pending the divestitures required by this Order.

## IV.

*It is further ordered,* That if, at any time during the ten (10) years following the divestiture of each Plant, OCF desires to sell the Asphalt Facility located adjacent to such Plant to a third-party not owned directly or indirectly more than 5% by OCF, then OCF shall, after reaching agreement with such third-party as to the price, terms and conditions to be included in the contract of sale between such third-party and OCF but prior to executing such contract of sale, first offer to sell such Asphalt Facility to whichever Person then owns such Plant for the same price, and upon the same terms and conditions, as are shown in such proposed contract of sale with such third-party; *provided further,* that for the purposes of this Paragraph "OCF" shall include any subsidiary in which the voting stock is more than 50 percent owned directly or indirectly by OCF.

## V.

*It is further ordered,* That for a period of ten (10) years from the date of this Order, OCF shall not directly or indirectly acquire, through purchase, lease or such other transaction as would confer ownership, possessory interest or control of, any Asphalt Roofing Plant located in the states of California, Oregon, Washington, Arizona, Nevada, Utah or Idaho, without the prior approval of the Commission.

## VI.

*It is further ordered,* That OCF shall within ninety (90) days from the effective date of this Order and every ninety (90) days thereafter until the divestitures required by this Order are completed submit in writing to the Commission a verified report setting forth in detail the manner and form in which OCF intends to comply, is complying, and has complied with the terms of this Order and such additional information relating thereto as the Commission may from time to time reasonably require.

## VII.

*It is further ordered,* That OCF notify the Commission at least thirty (30) days prior to effecting any proposed change in corporate respondent which may affect compliance with the obligations arising out of this Order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation.

## VIII.

*It is further ordered,* That OCF shall, upon written request of the Secretary of the Commission or the Director of the Bureau of Competition of the Commission made to OCF at its principal office for the purpose of securing compliance with this Order, and for no other purpose, permit duly authorized representatives of the Commission or the Director of the Bureau of Competition, subject to any legally recognized privilege:

(1) reasonable access during the office hours of OCF, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in OCF's possession or control which relate materially and substantially to any matter contained in this Order; and

(2) an opportunity, subject to the reasonable convenience of OCF, to interview officers or employees of OCF, who may have counsel present, regarding such matters.

The foregoing provision shall not be interpreted to provide any access for the Commission to records relating to any of the business activities of OCF other than the Plants and Asphalt Facilities subject to this Order. Access hereunder to Asphalt Facilities records shall be limited to records relating solely to compliance with the requirements of Paragraph IV of this Order.

#### IX.

Nothing in this Order shall be deemed or construed to affect any statutory rights to confidential treatment of documents or information provided to the Commission by OCF, as such rights are accorded by the Federal Trade Commission Improvements Act of 1980 or other statute.

Commissioner Pertschuk did not participate.

## IN THE MATTER OF

## THE COCA-COLA COMPANY, ET AL.

*Docket 8855. Interlocutory Order, April 1, 1981*

Dismissing proceeding without prejudice to reopen under the standards of the Soft Drink Interbrand Competition Act.

## ORDER

Respondents filed in the United States Court of Appeals for the District of Columbia Circuit a petition for review of the Commission's cease and desist order issued herein on April 7, 1978. Subsequently, Congress enacted the Soft Drink Interbrand Competition Act, Pub. Law No. 96-308, 94 Stat. 939 (1980), which established standards for judging the challenged restraints which differ from those under which the Commission tried and decided these proceedings. Therefore, in September 1980, the Commission requested the Court of Appeals to set aside the Commission's order and remand these proceedings to the Commission for dismissal, without prejudice to any future proceedings under the standards of the Soft Drink Interbrand Competition Act. By an opinion and judgment dated February 5, 1981, the Court of Appeals granted the Commission's request.

Now, therefore, *it is hereby ordered*, in accordance with the opinion and judgment of the Court of Appeals, that this proceeding be, and hereby is, dismissed, without prejudice to any future proceedings under the standards of the Soft Drink Interbrand Competition Act.

Commissioner Pertschuk did not participate.



Interlocutory Order 97 F.T.C.

IN THE MATTER OF

PEPSICO, INC.

*Docket 8856. Interlocutory Order, April 1, 1981*

Dismissing proceeding without prejudice to reopen under the standards of the Soft Drink Interbrand Competition Act.

## ORDER

Respondents filed in the United States Court of Appeals for the District of Columbia Circuit a petition for review of the Commission's cease and desist order issued herein on April 7, 1978. Subsequently, Congress enacted the Soft Drink Interbrand Competition Act, Pub. Law No. 96-308, 94 Stat. 939 (1980), which established standards for judging the challenged restraints which differ from those under which the Commission tried and decided these proceedings. Therefore, in September 1980, the Commission requested the Court of Appeals to set aside the Commission's order and remand these proceedings to the Commission for dismissal, without prejudice to any future proceedings under the standards of the Soft Drink Interbrand Competition Act. By an opinion and judgment dated February 5, 1981, the Court of Appeals granted the Commission's request.

Now, Therefore, *it is hereby ordered*, in accordance with the opinion and judgment of the Court of Appeals, that this proceeding be, and hereby is, dismissed, without prejudice to any future proceedings under the standards of the Soft Drink Interbrand Competition Act.

Commissioner Pertschuk did not participate.

## IN THE MATTER OF

## GOULD INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND  
SECTION 8 OF THE CLAYTON ACT

*Docket 9136. Complaint, May 9, 1980—Decision, April 1, 1981*

This consent order requires, among other things, a Rolling Meadow, Ill. manufacturer and seller of various electrical products to cease having on its board any director who simultaneously serves as a director of a competing company, if the revenues of either corporation derived from the competing "product or service market" exceed the lesser of ten million dollars or one percent of the corporation's total sales; or any individual who fails to provide the statement required under the terms of the order. The order further requires that the company institute an annual monitoring program for the next five years, designed to detect unlawful interlocks.

*Appearances*

For the Commission: *Dennis F. Johnson* and *David M. Malone*.

For the respondent: *John Reilly, John Milliken* and *David Ford, Winston & Strawn*, Washington, D.C.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the provisions of Section 8 of the Clayton Act, 15 U.S.C. 19, and Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45, and that a proceeding by it in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

## COUNT I

PARAGRAPH 1. Respondent Gould Inc. ("Gould") is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 10 Gould Center, Rolling Meadows, Illinois. Gould has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 2. Midland-Ross Corporation ("Midland-Ross") is a corporation organized under the laws of the State of Ohio, with its principal place of business located at 20600 Chagrin Boulevard, Cleveland,

Ohio. Midland-Ross has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 3. Claude M. Blair is an individual, with his principal place of business located at National City Corporation, Post Office Box 5756, Cleveland, Ohio.

PAR. 4. Gould conducts its business, as described herein, in various States of the United States and is thereby engaged in activity in or affecting commerce within the meaning of Section Four of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, Section 1 of the Clayton Act, 15 U.S.C. 12.

PAR. 5. Midland-Ross conducts its business, as described herein, in various States of the United States and is thereby engaged in activity in or affecting commerce within the meaning of Section Four of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and Section 1 of the Clayton Act, 15 U.S.C. 12.

PAR. 6. Claude M. Blair was, until his resignation from Gould's board of directors on or about July 24, 1979, a member of the boards of directors of both Gould and Midland-Ross. He has been a director of Midland-Ross since 1974, and was a director of Gould from 1969 until his resignation.

PAR. 7. During all or part of the period that Claude M. Blair concurrently served as a director of Gould and Midland-Ross, the business of Gould and Midland-Ross included the manufacture and sale of various electrical products, including electrical busways and electrical conduit fittings.

PAR. 8. By the nature of their business as hereinabove described and the locations of their operations, Gould and Midland-Ross have been competitors, during all or part of the time period that Claude M. Blair concurrently served as a director of Gould and Midland-Ross, so that the elimination of competition by agreement between them would constitute a violation of the antitrust laws.

PAR. 9. The simultaneous membership of Claude M. Blair on the boards of directors of Gould and Midland-Ross constitutes a violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act.

#### COUNT II

PAR. 10. Paragraphs One and Four are incorporated herein.

PAR. 11. Narco Scientific, Inc. ("Narco") is a corporation organized under the laws of the State of Delaware, with its principal place of business located at Fort Washington Industrial Park, Fort Washing-

ton, Pennsylvania. Narco has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 12. William C. Musham is an individual, with his principal place of business located at Gould Inc., 10 Gould Center, Rolling Meadows, Illinois.

PAR. 13. Narco conducts its business, as described herein, in various States of the United States and is thereby engaged in activity in or affecting commerce within the meaning of Section Four of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and Section 1 of the Clayton Act, 15 U.S.C. 12.

PAR. 14. William C. Musham was, until his resignation from Narco's board of directors during January 1980, a member of the boards of directors of both Gould and Narco. He has been a director of Gould since 1976, and was a director of Narco from 1977 until his resignation.

PAR. 15. During all or part of the period that William C. Musham concurrently served as a director of Gould and Narco, the business of Gould and Narco included the manufacture and sale of electronic medical devices.

PAR. 16. By the nature of their business as hereinabove described and the locations of their operations, Gould and Narco have been competitors, during all or part of the time period that William C. Musham concurrently served as a director of Gould and Narco, so that the elimination of competition by agreement between them would constitute a violation of the antitrust laws.

PAR. 17. The simultaneous membership of William C. Musham on the boards of directors of Gould and Narco constitutes a violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Commission having heretofore issued its complaint charging Gould Inc. ("Gould") with violation of Section 8 of the Clayton Act, 15 U.S.C. 19, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and Gould having been served with a copy of that complaint, together with a notice of contemplated relief; and

Gould and its attorney having thereafter executed an agreement containing a consent order, an admission by Gould of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Gould that the law has been violated

as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Gould Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 10 Gould Center, Rolling Meadows, Illinois.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Gould, and the proceeding is in the public interest.

#### ORDER

##### I

The following definitions shall apply in this order:

*Subsidiary* of a corporation means any company of which 50 percent or more of the issued and outstanding voting stock is owned or controlled, directly or indirectly, by such corporation.

*Parent* of a corporation means any company which owns or controls, directly or indirectly, 50 percent or more of the issued and outstanding voting stock of such corporation.

*Sister* of a corporation means any subsidiary of a parent of that corporation.

*Product or service market* means any line of commerce in which Gould's (including its subsidiaries and divisions) annual revenues exceed the lesser of:

- (1) Five million dollars; or
- (2) One-half of one percent of Gould's total annual revenues.

##### II

*It is ordered*, That respondent Gould Inc. ("Gould"), its successors and assigns, shall forthwith cease and desist from having, and in the future shall not have, on its board of directors any person who either:

(a) Serves at the same time as a director of any other corporation if Gould and such other corporation are, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws, providing that the revenues of either corporation derived from the product or service market(s) in which they are competitors exceed the lesser of:

- (1) Ten million dollars; or
- (2) One percent of the total sales of that corporation; or

(b) Fails to submit to Gould any statement required to be obtained by Gould under Paragraph III of this order.

### III

*It is further ordered,* That within thirty (30) days of the effective date of this order, and prior to each election of directors or prior to the solicitation of proxies for such election, whichever is earlier, Gould shall obtain a written statement from each member of its board of directors (except directors whose terms expire at the next election and who are not standing for re-election) and from each nominee for a directorship (who is not then a director) showing:

(a) the name and home mailing address of such director or nominee; and

(b) the name and principal office mailing address of, and a listing of each product or service produced, offered or sold by, each corporation which the director or nominee then serves as a director, or has been nominated to serve as a director at the time of the statement.

The requirements of this Paragraph shall not apply to elections of directors occurring after five years from the effective date of this order, nor shall directors or nominees be required to list products or services of subsidiaries, sisters, or parents of Gould.

Nothing in this Paragraph shall be construed to relieve Gould of its obligation under Paragraph II(a) of this order due to any error or omission contained in any written statement received pursuant to this Paragraph.

If competition arises in any product or service market between Gould and any other corporation with which Gould shares a common director, by virtue of action taken by such other corporation subsequent to a submission of information by such director pursuant

to this paragraph, then Gould shall not be liable under Paragraph II until the date for the next submission of information.

#### IV

*It is further ordered.* That within forty-five (45) days of the effective date of this order and annually for a period of ten (10) years thereafter, Gould shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order. Copies of the statements obtained pursuant to Paragraph III of this order shall be submitted to the Commission as part of the reports of compliance required by this Paragraph during the first five (5) years. Nothing in this Paragraph shall relieve Gould of its obligation to comply with Paragraphs II and V or this order once it is no longer required to submit reports of compliance to the Commission.

#### V

*It is further ordered.* That Gould shall notify the Commission not more than thirty (30) days after any change in the corporation, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

## Complaint

## IN THE MATTER OF

## ENERGY EFFICIENT SYSTEMS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3062. Complaint, April 9, 1981—Decision, April 9, 1981*

This consent order requires, among other things, a Middletown, Conn. corporation and two corporate officers engaged in the advertising, sale and distribution of an electric space heater known as the "Boekamp Quartz Heater" to cease misrepresenting the efficiency, energy savings, performance characteristics and durability of the product. The order further prohibits respondents from making any energy-related advertising claim without reliable substantiation, and bars them from using the term "energy saver," or similar terms in product names. Additionally, respondents are required to send a copy of a prescribed letter to all individuals or business entities engaged in the sale of the Boekamp Quartz Heater advising them of the terms of the order and requesting the return of all advertisements and promotional materials which contain prohibited claims or which fail to include required disclosures.

*Appearances*

For the Commission: *Joan Gerrity, John B. Gatlin and Douglas M. Husid.*

For the respondent: *Michael Steres, Feldman & Steres, San Diego, Calif., and John T. Coyne and William Barton, Carr, Jordan, Coyne & Savits, Washington, D.C.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Energy Policy and Conservation Act, as amended, and by virtue of the authority vested in it by those Acts, the Federal Trade Commission, having reason to believe that Energy Efficient Systems, Inc., a corporation, and John P. White and Elaine B. Owen, individually and as officers of the corporation, hereinafter sometimes referred to collectively as respondents, have violated the provisions of the Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Energy Efficient Systems, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut with its principal office



and place of business located at 330 Middle St., Middletown, Connecticut.

Respondents John P. White and Elaine B. Owen are officers of the corporate respondent named herein. Together they formulate, direct and control the policies, acts and practices of the corporate respondent hereinafter set forth. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the purchasing, advertising, promotion, offering for sale, sale and distribution of a product known as the Boekamp Quartz Energy Saver Heater ("Boekamp Heater") and other products for which energy related claims are made.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the Boekamp Heaters to be shipped from their place of business in the State of Connecticut to purchasers throughout the United States. Respondents now disseminate or cause the dissemination of, and for some time last past have disseminated or caused the dissemination of, certain advertisements and promotional materials concerning the Boekamp Heater by use of the United States mail and have advertised the Boekamp Heater in newspapers of interstate circulation. Accordingly, respondents maintain, and have maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. The advertisements and promotional materials referred to in Paragraph Three include, but are not limited to, the materials marked as Appendix A and attached hereto.

## I

PAR. 5. By and through the use of the aforementioned advertisements and promotional materials, respondents have represented and are now representing, directly or by implication, that:

- a. the Boekamp Heater is twice as efficient as conventional electric resistance heaters;
- b. the Boekamp Heater will provide two to three times as much heat as conventional electric resistance heaters of similar wattage;
- c. the Boekamp Heater provides "free" heat because its quartz tubes do not cool down during the Boekamp Heater's off cycle;
- d. the Boekamp Heater is capable of heating objects which are far away from it in a short period of time;

- e. the Boekamp Heater evenly distributes heat throughout a typical room;
- f. the quartz tubes contained in the Boekamp Heater intensify and magnify the heat generated by the electricity sent through the resistance coils enclosed in the tubes;
- g. the quartz tubes contained in the Boekamp Heater are durable components.

PAR. 6. In truth and in fact, contrary to respondents' representations set forth in Paragraph Five:

- a. the Boekamp Heater is not twice as efficient as conventional electric resistance heaters. All electric resistance heaters produce the same number of British Thermal Units ("BTUs") of heat per watt;
- b. the Boekamp Heater will not provide two to three times as much heat as conventional electric resistance heaters of similar wattage;
- c. the quartz tubes contained in the Boekamp Heater do cool down during the Boekamp Heater's off cycle and the Boekamp Heater does not provide "free" heat for the foregoing reason or for any other reason;
- d. the Boekamp Heater is not capable of heating objects which are far away from it in a short period of time. The Boekamp Heater will only be able to heat objects far away from it if the Boekamp Heater has been operated for a lengthy period of time so that the air space between the Boekamp Heater and the object has itself been heated;
- e. the Boekamp Heater does not evenly distribute heat throughout a typical room;
- f. the quartz tubes contained in the Boekamp Heater do not intensify or magnify the heat generated by the electricity sent through the resistance coils enclosed in the tubes. The quartz tubes only transfer the heat generated by the resistance coils;
- g. the quartz tubes contained in the Boekamp Heater are not durable components. The quartz tubes are fragile elements which shatter easily on impact when the tubes are hot.

Therefore, said advertisements and promotional materials were, and are, false, deceptive, misleading or unfair.

## II

PAR. 7. By and through the use of the aforementioned advertise-

ments and promotional materials, respondents have represented and are now representing, directly or by implication, in addition to those representations set forth in Paragraph Five, that:

(a) a typical user of a Boekamp Heater will save 50% over his/her prior home heating costs;

(b) a typical user of a Boekamp Heater will drastically reduce his/her fuel bills while maintaining personal comfort;

(c) users of the Boekamp Heater report dramatic utility bill savings;

(d) a single Boekamp Heater will raise the temperature in an unheated room of typical size to a comfortable temperature in twenty minutes;

(e) when the outside temperature is 5 degrees Fahrenheit, one 1500 watt Boekamp Heater will maintain a room temperature of 72 degrees Fahrenheit under certain stated conditions;

(f) the Boekamp Heater will heat a typical room more quickly than conventional electric resistance heaters;

(g) the Boekamp Heater provides special comfort to arthritics and others suffering from similar ailments.

PAR. 8. At the time respondents made the representations alleged in Paragraphs Five and Seven they did not possess and rely upon a reasonable basis for such representations. Therefore, the aforementioned advertisements and promotional materials were, and are, unfair, deceptive or misleading.

PAR. 9. By and through the use of the aforementioned advertisements and promotional materials, respondents have represented and are now representing, directly or by implication, that they had a reasonable basis for the representations alleged in Paragraphs Five and Seven at the time they were made. In truth and in fact, respondents had no reasonable basis for the representations alleged in Paragraphs Five and Seven. Therefore, said advertisements and promotional materials were, and are, deceptive, misleading or unfair.

### III

PAR. 10. In the course and conduct of their business, respondents have used the term "Quartz Energy Saver" to refer to the Boekamp Heater in the aforementioned advertisements and promotional materials. By and through the use of that term, respondents have represented and are now representing, directly or by implication,

that the Boekamp Heater consumes less electricity than other electric resistance heaters in providing the same amount of heat.

PAR. 11. In truth and in fact, contrary to respondents' representation set forth in Paragraph Ten, the Boekamp Heater provides the same number of BTUs per watt as any other electric resistance heater. Therefore, the use of the term "energy saver" to refer to the Boekamp Heater was, and is, deceptive, misleading or unfair.

#### IV

PAR. 12. By and through the use of the aforementioned advertisements and promotional materials, respondents have represented and are now representing, directly or by implication, that the Boekamp Heater will quickly and efficiently heat a whole room. In contrast, the operating instructions for the Boekamp Heater, which are provided to consumers after they purchase a Boekamp Heater, caution users to avoid trying to heat a whole room with the Boekamp Heater.

PAR. 13.

(a) The operating instruction referred to in Paragraph Twelve is a material fact in light of the representation made in advertisements and promotional materials as set forth in Paragraph Twelve. The aforementioned advertisements and promotional materials fail to disclose this material fact. Therefore, said advertisements and promotional materials were, and are, deceptive, misleading or unfair.

(b) The operating instruction referred to in Paragraph Twelve is materially inconsistent with the representation made in advertisements and promotional materials as set forth in Paragraph Twelve. Therefore, said advertisements and promotional materials were, and are, deceptive, misleading or unfair.

#### V

PAR. 14. The Boekamp Heater is an unvented electric resistance heater which falls within the category of products defined as "unvented home heating equipment" in 10 C.F.R. 430.2 and as such is a "covered product" as that term is defined in Sections 321(a)(2) and 322 of the Energy Policy and Conservation Act, 42 U.S.C. 6291(a)(2) and 6292.

PAR. 15. In the course and conduct of their business, on and after November 10, 1978, respondents have made, and continue to make, representations, directly or by implication, respecting the energy

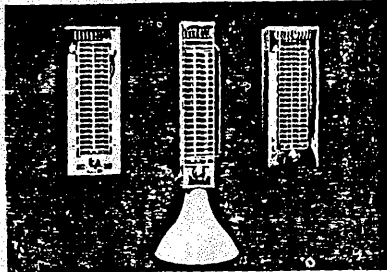
consumption of the Boekamp Heater or the cost of energy consumed by the Boekamp Heater, including the representations set forth at subparagraphs (a), (b) and (c) of Paragraph Five.

The aforementioned representations do not fairly disclose the results of tests conducted on the Boekamp Heater in accordance with the test procedures applicable to "unvented home heating equipment" as prescribed by the Secretary of the Department of Energy at 10 C.F.R. 430.22(g) and 10 C.F.R. Subpart B, Part 430, Appendix G. Therefore, and pursuant to 42 U.S.C. 6293(c) and 6303(c), said representations were, and are, deceptive, misleading or unfair.

PAR. 16. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in or affecting commerce with individuals, firms, and corporations engaged in the distribution and sale of space heaters and other products for which energy related claims are made.

PAR. 17. The use by respondents of the aforementioned false, deceptive, misleading or unfair representations has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that the representations were and are true and complete, and into the purchase of substantial quantities of the Boekamp Heater by reason of this erroneous and mistaken belief.

PAR. 18. The acts and practices of respondents, as herein alleged, were and are to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.



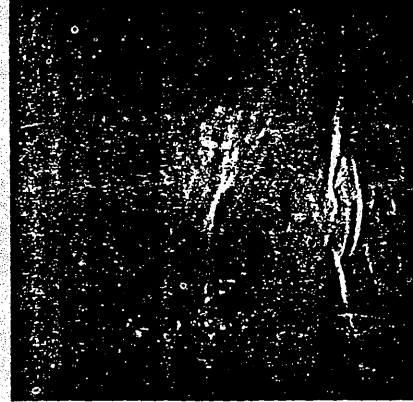
**MODEL 201 CEILING BALL MODEL**  
 with built-in Energy Controller  
 The most complete portable heater ever developed...  
**MODEL 202 PORTABLE MODEL**  
 with built-in Energy Controller  
 This model is the most complete...  
**MODEL 203 SURFACE MOUNT MODEL**  
 with built-in Energy Controller  
 The smallest and most complete heater...  
 Model 201... Model 202... Model 203...  
 \$129.95... \$149.95... \$199.95...

The Energy Controller on the front of all models is a special feature found only on the Boekamp Energy Heater...  
 All Boekamp Energy Heater heaters are UL Listed, and have a National Greening for Automatic Shut-off...  
 \$129.95... \$149.95... \$199.95...

**Boekamp, Inc.**  
 8540 Chandler Street  
 La Brea, CA 90061  
 (213) 441-1111

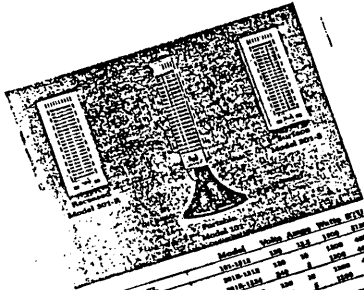
FACTORY TO DIRECT TO PUBLIC

Introducing a Space Heater  
 Like You've Never Sold Before



**Boekamp, Inc.**





Model	Width	Depth	Weight	BTU
QW-1000	10 1/2"	10 1/2"	10 lbs	1000
QW-1500	15 1/2"	15 1/2"	15 lbs	1500
QW-2000	20 1/2"	20 1/2"	20 lbs	2000
QW-2500	25 1/2"	25 1/2"	25 lbs	2500
QW-3000	30 1/2"	30 1/2"	30 lbs	3000

All models feature the exclusive Energy Controller and are fully UL Listed. Portable model features 3 prong grounded plug. Designed to help you combat the high cost of energy while providing comfort and style in localized heating... get your Bockamp Quartz Energy Saver Heater today!

- USES: Living Rooms, Bathrooms, Workshops, Stables/Barns, RVs/Motorhomes, Family Rooms, Offices, Penthouses, Mobile Homes

**Quartz Energy Saver Heater**  
**Bockamp, Inc.**  
San Diego, California

Available from:



Introducing a Space Heater  
Like You've Never Used Before

**Bockamp**



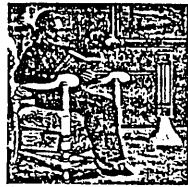
## Boekamp...The ORIGINAL Quartz Energy Saver Heater

Designed and developed to combat the high costs of energy, the U.S. made Boekamp Heater is the sensible solution to effective, efficient heating. Features:

- Total personal comfort in just minutes
- Deeply pleasing, infrared radiant heat

- Heat projected by polished reflector — no fan or blower necessary
- Localized warmth allows temperature and cost of heating rest of house to drop
- Exclusive Energy Controller offers precise control of heat output and energy consumption

Quickly and permanently installed, the surface mount model is ideal for keeping you warm in the garage or workshop.



This portable unit can be carried anywhere to provide body warmth in just minutes, and features a Tip-Over Safety Switch that shuts the heater off if it is knocked over.

The attractive recessed wall model adds warmth and heating efficiency to a living room, family room, bathroom or wherever you wish to install one.



### Quartz Heaters are Different . . .

#### BOEKAMP QUARTZ ENERGY SAVER®

- Room is quickly warmed to an even, comfortable temperature
- Heat is efficiently projected through the air to solid objects by highly polished reflector; there's no need for circulating air
- Temperature difference between floor and ceiling — usually less than 1°.
- Average coil temperature — approximately 1800°
- Room comfort is achieved quickly because people and objects are warmed directly
- Room comfort is maintained easily because objects are heated and re-emit heat; natural air leaks have a minimal effect on comfort maintenance

#### OLD-FASHIONED CONVECTION HEATERS

- Room is slowly heated from top down because hot air rises
- Heat is directed into the room by fan, or rising hot air only; the air must then heat the objects in the room
- Temperature difference between floor and ceiling — usually 30° to 30°
- Average coil temperature — approximately 1800°
- Room comfort is achieved slowly because air must first be heated, then objects and people are heated
- Room comfort is maintained inefficiently because of heat loss through the ceiling and natural air leaks throughout the room

120 112 "R" 05/21/79 to Present

APPENDIX A-3

**COMPARATIVE ANALYSIS**

**QUARTZ HEATER vs. CONVENTIONAL-TYPE HEATERS**

Prepared by:

Malcolm D. Campbell  
Senior Staff Scientist  
Materials Research

Conducting tests to quantitatively compare the performances of quartz heaters versus convection-type heating is difficult because of the infinite number of possible combinations of variables. This is further complicated by the difficulty of assessing human responses. However, any heater serves only one purpose — to provide comfort to people and herein lies the basic difference between the Bookamp Quartz Energy Saver Heater and the typical convection-type electric heater.

Most electric heaters circulate a small portion of the room air over the heating element. This is accomplished with either natural convection or a fan which pulls cold air into the heater and pushes warmed air out. Convection is the vertical movement of warm air as it heats and becomes lighter and is then replaced by air-flowing cold air. It requires large heater areas to move sufficient air to produce reasonable temperature elevation. Fan-driven designs are noisy, but can be more compact in size.

Both types produce a comfortable living environment by raising the temperature of the entire volume of air in the room. In the process, however, they must also heat the contents of the room over which the air flows. Once the room is warmed, the heater continues to consume power to make up for inherent heat losses from the area.

A convection-type heater raises the air being heated as it passes through the heater. The hot air, being lighter in density, rises to the ceiling. Although objects are warmed by the circulating air, the room, in general, heats from the top down. When the air temperature just a few feet off the floor is comfortable for people, the air temperature near the ceiling (where it is not needed) may be as much as 30 degrees higher. This results in a high percentage of the energy consumed being lost through ceiling and upper walls.

The quartz infra-red heater consists of a coil of special resistance wire enclosed in a quartz tube. The coil is heated to a temperature range between 1800 and 2000 degrees Fahrenheit — a temperature that exceeds the coil temperature of a convection-type heater by as much as 150 degrees. At these temperatures, most of the electrical energy supplied is converted into electromagnetic radiation, which is emitted from the coil. The "glow" of any hot wire is the radiation which is in the visible range, i.e., detectable by the human eye. However, this is less than one percent of the total radiation emitted. Most of the remainder is in the "infra-red" region.

Quartz is used for several specific reasons: 1) It supports and protects the hot coil and will survive the excessive operating temperatures; 2) It is totally heat efficient, virtually eliminating any heat loss from the coil and 3) It is relatively transparent to the infra-red radiation.

The quartz elements are mounted in front of a high-efficiency reflector so that nearly all of the radiant heat generated is directed in the desired direction. Contrary to the mode of operation of the typical convection-type heaters, very little of the room air is heated directly. However, the radiation emitted from the quartz heater passes through the air with only minimal energy (heat) loss and strikes any solid object in its path. When this happens, the radiation is "absorbed" and objects are heated. These objects, in turn, emit heat.

The basic difference in mode of operation: Quartz versus Convection; accounts in several ways for the reduced cost of operating a quartz heater. First, with quartz heat, the objects in the room (including people) are heated to comfortable levels long before the room temperature would provide a comfortable environment. Thus, the quartz heater uses less energy to provide body comfort. There is a tremendous advantage in the energy savings because the latent response of the quartz heater eliminates the costly effects of pre-heating an area to be comfortable.

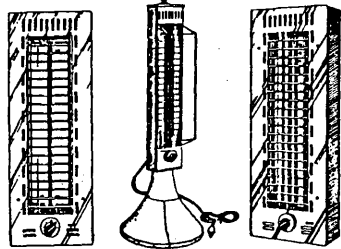
Only a small amount of the energy consumed by a well-designed quartz heater is expended in excessive heating of the air in the vicinity of the heater. Therefore, there is much less of a temperature difference from floor to ceiling and the ceiling temperature and heat losses are considerably less. With the people being heated directly by radiant heat, the overall air temperature can be very low, which minimizes heat losses through the walls and ceilings, as well as floor doors. These facts are primarily responsible for the lower power consumption required to maintain the comfort level once it has been reached.

As with any heating system, quartz heaters must be properly installed and used to the full advantage of their inherent features. Since radiant heat is directional heat, use of two small quartz heaters with energy saving features, to heat a large room from both directions is more efficient than one large heater. They should also be directed away from windows and all other sources of great heat loss. These practices will further enhance the efficiency of the unit.

In conclusion, in a typical residential situation, advanced design quartz infra-red heaters, such as those manufactured by Bookamp, Inc., can provide satisfactory comfort levels at half or less the normal operating costs of other types of electric heaters. The unparalleled performance of the quartz heater enables the user to achieve immediate local comfort levels without the attendant and costly luxury of having to heat the whole house to be comfortable in just one room or area.

APPENDIX A-4

**The ORIGINAL  
Boekamp Quartz Energy Saver Heater...**



**All Other Space Heaters Are Suddenly Old-Fashioned!**

The Boekamp Quartz Energy Saver is like no other heater you've ever used... designed in Europe and built in the USA. This unique quartz heater keeps your living warm while saving you money!

- Personal comfort achieved by just relaxing
- Deeply pleating reflector lens
- Exclusive Energy Controller
- Completely UL Listed
- Full 1 year Warranty
- 2 Quartz tubes to absorb heat

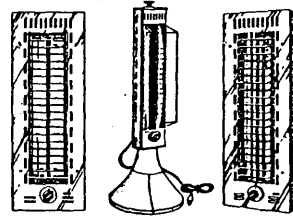
Two quartz tubes in front of a polished reflector project warmth, reflect warmth — no need for a fan or blower to consume additional energy!

**The heater of the future is here... get yours today!**

**ONLY \$**

**YOUR  
IMPRINT  
HERE**

**QUARTZ  
Makes the Difference!**



**The Boekamp Quartz Energy Saver Heater...**

is different from any other space heater you've ever used, because it keeps you warm while saving you money... features:

- Deeply pleating reflector lens
- Exclusive Energy Controller
- Completely UL Listed
- Full 1 year Warranty
- 2 Quartz tubes to absorb heat

The unique Boekamp design features two quartz tubes in front of a polished reflector, projecting warmth, reflect warmth — no need for a fan or blower to consume additional energy!

**Get the Boekamp Quartz Energy Saver...**

**ONLY \$**

**YOUR  
IMPRINT  
HERE**

"QUARTZ HEATING" the heating system in efficient, effective heating

#### BASIC FACTS ON THE BOKLAP "QUARTZ ENERGY SAVER"

##### HEATING EFFICIENCY

The Quartz Energy Saver heats objects instead of air. Every object (walls) absorbs and puts off heat. This unique concept in heating is common in Europe, but relatively new in the United States.

##### HEATING INSTANT HEAT

The Quartz Energy Saver achieves maximum heating capacity in less than one minute. This eliminates the necessity to pre-heat rooms to comfort levels prior to use, thereby reducing your cost of energy.

##### UNUSUAL EFFICIENCY

Test reports indicate the Quartz Energy Saver produces twice as much heat as conventional convection electric heating systems of similar ratings. No energy is wasted in the Quartz Energy Saver, and no fan (which cools down heaters) is required to move heat to far away objects. The combination of Quartz and radiant heat has produced a Quartz Energy Saver capable of providing up to three times as much heat over conventional fan driven electric heaters.

##### HEATING PATTERNS

The Quartz Energy Saver operates on the highest level of the infrared spectrum, providing temperatures up to 2,000 degrees Fahrenheit within the quartz elements. The heat is radiated from the elements and the reflection occurs at an angle of 170 degrees off the face of the heater. Radiant heat will not heat across corners and objects in direct line of sight will absorb greater amounts of heat. The Quartz Energy Saver is capable of radiating heat to objects 30' away.

##### HEAT SAVER CONTROL

The Quartz Energy Saver is equipped with a controller which allows you to vary the quartz elements. The electrical input can be controlled in 13 positions from the low to high setting, permitting the flow of electrical current from 25 to 100% of the time. This permits the user to set their desired comfort level. Quartz elements do not cool down during the off (no energy) cycle, thereby "free" heat is provided during this time period. The Quartz Energy Saver does not surge beyond its rated coverage. The higher the controller setting, the longer the heater is on and the more heat it produces.

##### OPERATING COST

The Boklap, Portable model #201 Quartz Energy Saver is rated at 120 Watts, 1,500 watts, 12.5 amps, and uses 110¢ per hour of operation, at the high setting. If the heater is operated at one-half capacity (the average users setting) it would operate at 1/2 capacity and consume 1/2¢ per hour. Electrical rates vary within each region, however it costs approximately 1¢ per hour to operate the Quartz Energy Saver on the high setting in MAINE, CT. To determine the exact operating cost in other regions of the country, check your utility company's cost per BT hour, and multiply this rate by 1/2 (1,500 watts.)

#### FACTS: Page 2.

##### HEATING AREA COVERAGE

The Quartz Energy Saver is designed to provide a 72 degree F comfort level in a home insulated for electric heat under the following conditions:

Outside temperature - -5 degrees

Ceiling height - 8'-0"

Exterior glass: thermopane or storm windows not exceeding 25% of exterior wall surface.

QUARTZ COVERAGE: 18 to 24 sq. ft. per 100 watts.

Model #201 F is designed to heat approximately 360 sq. ft. under the above conditions. Many users exceed this coverage.

##### HEAT DISTRIBUTION KEY TO USE THE QUARTZ ENERGY SAVER

Position unit in the room where it will radiate directly to the most objects. Point away from windows and other non-absorbing items.

Turn the controller on high, remote call from room, and turn down to desired comfort level.

##### SAFETY OF THE QUARTZ ENERGY SAVER

Quartz Energy Savers have been extensively tested and approved for use by Underwriters Laboratory (UL). Portable model contains tip-over switches to automatically turn the unit off if knocked over and a safety thermostat to regulate the room temperature.

##### WILL QUARTZ ENERGY SAVERS REDUCE HEATING COSTS?

Yes. Quartz Energy Savers are twice as efficient as conventional electric heat and years of fuel oil report extensive savings. Many customers that purchased an initial heater have purchased others to heat major portions of their home. Numerous customers now heat their entire home with QUARTZ ENERGY SAVERS. They are doing this because it is economical.

Quartz Energy Savers will save you money, we believe as high as 50% over existing home heating costs, however this is a direct function of your control over the room you heat, and how often you heat them. The Quartz Energy Saver permits you to decide when you want to heat a specific room. It is your own control.

##### PRODUCT GUARANTEE

The Quartz Energy Saver is under warranty for one year from date of purchase, except for breakage of the quartz elements. It is designed for long life, with elements tested for over 3,000 heating hours. The quartz elements are replaceable at a current replacement cost of \$18.00 per tube. Each unit contains two quartz elements.

##### NOTE:

Eliminate your concerns over potential fuel shortages, the high cost of home heating oil, deregulation of fuel oil and natural gas, and use the QUARTZ ENERGY SAVER, powered by low cost, readily available electricity. The Quartz Energy Saver is clean, quiet and the sensible solution to efficient, effective heating.

### To Effective and Efficient Heating.

#### BASIC FACTS ON QUARTZ HEATING AND ANSWERS TO QUESTIONS REGARDING IT.

##### WHY CONSIDER QUARTZ HEATING?

Conventional sources of energy (oil, electric baseboard, natural gas and firewood) are expensive. QUARTZ HEATERS are designed to provide instant heat, negating the need to extensively pre-heat areas to achieve comfort, thereby saving money for the user. QUARTZ HEATERS permit the user to heat living space only when in use.

##### WHO DEVELOPED QUARTZ HEAT?

German scientists developed QUARTZ HEATERS ten years ago to combat Europe's high cost of energy, resulting in efficient and effective heating used extensively today.

##### WHAT IS THE BASIC PRINCIPLE OF QUARTZ HEATING?

QUARTZ is one of four (Diamonds, rubies, charcoal and quartz) known elements in the world that produces pure radiant heat.

QUARTZ HEATERS utilize conventional electric resistance coils encased in quartz tubes to magnify and intensify heat, reflect it off a polished shield and radiate it to surrounding areas. This carefully designed combination of components produces instantaneous heat.

##### ARE QUARTZ HEATERS SAFE?

Yes. QUARTZ HEATERS have been extensively tested and approved for use by Underwriters Laboratories (UL).

##### HAS QUARTZ HEATING BEEN TESTED IN THE UNITED STATES?

QUARTZ HEATING has been used for residential and commercial purposes for four years in the United States with an extensive test market conducted in the Northeast during the winter of 1977-78. All users have been extremely satisfied with the results.

##### HOW DO QUARTZ HEATERS SAVE MONEY?

QUARTZ HEATERS provide instant heat within one minute of operation, rapidly raising room temperatures to the comfort level in 20 minutes, permitting users to reduce heating levels in unoccupied rooms until their planned use.

Each model QUARTZ HEATER contains a QUARTZ ENERGY SAVER CONTROLLER which cycles the flow of energy to the heating elements to reduce power consumption.

##### WHERE ARE QUARTZ HEATERS MOST EFFECTIVE?

In any living space. Users initially purchase QUARTZ HEATERS to solve specific heating problems in cold rooms. After initial use, they discover that QUARTZ HEAT is an economical solution to heating the entire house.

QUARTZ HEAT, for example, eliminates condensation on bathroom mirrors while showering.

##### HOW MANY QUARTZ HEATERS ARE REQUIRED TO EFFECTIVELY HEAT A HOUSE?

This requirement varies depending on the house, its room sizes, amount of heat loss, ceiling heights, room configuration, etc. Suggests 100 watts per 18 to 22 sq. ft. for planning purposes.

recommends purchasing one QUARTZ HEATER for use in your most frequently occupied room. When the QUARTZ HEATER'S effectiveness is self proven then consider purchasing additional QUARTZ HEATERS for other areas. Keep in mind, each 1200 watt heater utilizes 10 AMPS of available capacity of a typical 15 or 20 AMP circuit.

##### IS SERVICE READILY AVAILABLE FOR QUARTZ HEATERS?

Yes. QUARTZ HEATERS are guaranteed for one year from date of purchase, but are specifically designed for a long lifespan. Replacement parts and service is available, if necessary, for

##### OTHER APPLICATIONS FOR QUARTZ HEATERS:

QUARTZ HEATERS are designed for effective use any place that people are cold. They should be considered for use in professional offices, restaurants, pleasure boats, mobile homes, garage workshops, laundry areas, patios, summer cottages and other areas.

Complaint

**"QUARTZ" HEATING**

The sensible solution to effective ECONOMICAL heating.

The QUARTZ ENERGY SAVER™, EUROPE'S answer to efficient heating with high cost energy is now available in the United States.

Introducing the world's only vertical QUARTZ TUBE PORTABLE heater and built-in and surface mounted wall units.

They contain:

- Built-in ENERGY SAVING CONTROLLER for selection of desired comfort level to control and minimize consumption of electricity.
- Thermostatic control and safety TIP-OVER switch (portable models).
- Quality in design and workmanship.

Operates at 100% capacity for 8 1/2 hours (based on Hartford, CT utility rate).

Designed for SAFETY, COMFORT, ECONOMY and a long lifespan.

Even distribution of heat.

Total comfort achieved in one minute.

Adequate heat for any room in the house. Ideal for 1000 users.

No installation required, just plug in any wall outlet. (Wall models designed for cord or direct wiring)

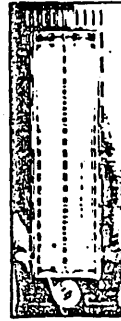
Effectively used, tested and proven in the Northeast.

ELIMINATES NEED TO MAINTAIN CONSTANT HEAT IN LIVING AREAS UNTIL ROOM IS IN USE.

CALL FOR NO OBLIGATION, HOME DEMONSTRATION.

UL approved — Guaranteed for one year.

**NEW PRODUCT**  
**"Quartz Energy Saver"**



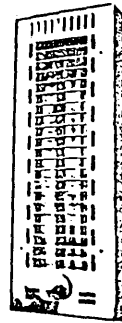
RECESSED  
MODEL  
# 301R

**SPECIFICATIONS AND COST:**

MODEL #	WATTS	VOLTS	AMPS	BTU	PRICE
101P	1500	110	12.8	5120	82.00
301R-120	1200	110	10	4094	60.99
301R-240	1200	220	5	4094	60.99
301S-120	1200	110	10	4094	74.99
301S-240	1200	220	5	4094	74.99



PORTABLE  
MODEL # 101P



SURFACE  
MOUNTED  
MODEL # 301S

Exclusively distributed by

**New Construction/Room-Addition  
Beat The Oil Shortage**


with the  
**QUARTZ ENERGY SAVER**

The QUARTZ ENERGY SAVER is the sensible solution to effective, economical heating.

- For SAFETY, COMPACT, EFFICIENCY & designed to SURVIVE hot heating oils
- operates at 100% capacity for 2 hrs./hr.
- ENERGY SAVING CONTROLLER for selection of desired comfort level
- maximum heat in one minute
- Essentially reduces fuel bills
- Heat heat 10 ft. away in 2 minutes!
- 2,000 satisfied customers
- Model #301 will heat 240 sq. ft.
- U.S. Listed—two year guarantee

ALSO AVAILABLE IN RECESS & PORTABLE MODELS

**SPECIFICATIONS:**  
1200 WATTS, 120V, 10 AMP  
1200 WATTS, 240V, 5 AMP  
4024 BTU



**SURFACE QUARTZ HEATER**  
Model # 301 S  
1200 WATTS, 120V/240V  
4024 B.T.U. 12M AMPS

RECESSED ..... 16 1/2" SURFACE ..... 16 7/8" PORTABLE ..... 17 3/4"

ALSO IDEAL FOR: COTTAGES, BOATS, MOBILE HOMES, VANS, GREENHOUSES, PORCHES, OFFICES, ETC.

WRITE OR CALL FOR DEMONSTRATION

**ECONO HEAT OF CROMWELL**  
P.O. Box 62, Cromwell, Ct. 635-2800  
WE WILL SHIP ANYWHERE IN U.S.

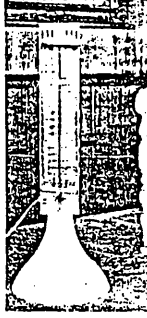
374031 Econo Heat of Cromwell REAL ESTATE home sect.

may 27 dec-43 46 proofs to 25 margo

**New Concept in Efficient Heating  
Reduce Home Heating Costs**  
and be totally comfortable

**QUARTZ HEAT**  
The sensible solution to effective  
ECONOMICAL HEATING:

- For **SAFETY, COMFORT, EFFICIENCY**
- developed in EUROPE to cut heating costs
- operates at 100% capacity for 3W/7h (based on Hartford region electric rate)
- **ENERGY SAVING CONTROLLER** for selection of desired comfort level
- thermostat control
- safety **TIP-OVER** switch
- maximum heat in one minute
- **NO INSTALLATION**, plug in any outlet
- designed as principal heat system
- will solve any heating problem
- proven in NORTHEAST, winter 77-78
- UL listed one year guarantee



TECHNO HEAT Glastonbury CT 06033  
P.O. BOX 62 (203) 633-7800

Please rush me:  
 One Portable QUARTZ HEATER model #101 at purchase price of \$72.50 plus \$2.00 shipping & handling.  
 Enclosed is  check or  money order for \$  
**CHARGE IT!**  
 VISA  MASTER CHARGE  
 Credit Card # \_\_\_\_\_  
 Exp. date \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Conn. res. please add 7% sales tax  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_  
 State \_\_\_\_\_ Zip \_\_\_\_\_

**PORTABLE QUARTZ HEATER**  
 Model # 101  
 1500 WATTS 120V  
 \$72.50  
 30-Day Money-Back  
 GUARANTEE

You must be satisfied with your QUARTZ HEATER's performance or return anytime within 30 days for prompt refund of purchase price. (except shipping & handling)

TECHNO HEAT 33 HULLS RD. GLASTONBURY, CT



NEW PRODUCT

# Quartz Energy Saver™

Reduce Heating Expense Without Sacrificing Comfort

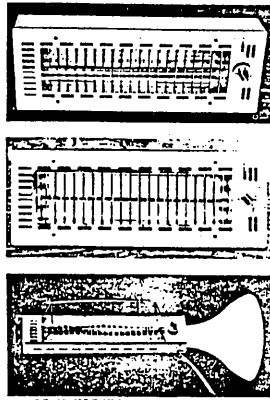


Total Comfort in One Minute

Quartz Energy Saver™ is the new product that has been developed by the Quartz Energy Saver Company, Inc. It is a new type of energy saving device that will reduce your heating expense without sacrificing comfort. It is a new type of energy saving device that will reduce your heating expense without sacrificing comfort. It is a new type of energy saving device that will reduce your heating expense without sacrificing comfort.

Quartz Energy Saver™ is a new type of energy saving device that will reduce your heating expense without sacrificing comfort. It is a new type of energy saving device that will reduce your heating expense without sacrificing comfort. It is a new type of energy saving device that will reduce your heating expense without sacrificing comfort.

Model 301-18



APPENDIX A-10

**MODEL 301-18**  
**INSTALLATION**  
 For maximum efficiency, Quartz Energy Saver™ should be installed in the main supply line of the heating system, between the boiler and the radiators. It should be installed in a horizontal position and should be secured to the pipe with the provided brackets.

**MODEL 301-17**  
**INSTALLATION**  
 For maximum efficiency, Quartz Energy Saver™ should be installed in the main supply line of the heating system, between the boiler and the radiators. It should be installed in a horizontal position and should be secured to the pipe with the provided brackets.

**MODEL 301-16**  
**INSTALLATION**  
 For maximum efficiency, Quartz Energy Saver™ should be installed in the main supply line of the heating system, between the boiler and the radiators. It should be installed in a horizontal position and should be secured to the pipe with the provided brackets.

Quartz Energy Saver™ is a registered trademark of Quartz Energy Saver Company, Inc. All rights reserved.

Complaint

Portable Comfort — Anywhere

The new Energy Efficient... portable comfort... anywhere...

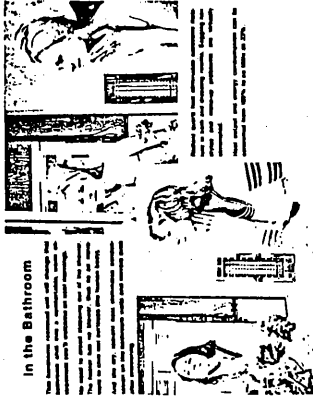


Portable comfort for anytime, anywhere.



On the Patio

Enjoy the outdoors... on the patio... portable heater...



In the Bathroom

Warmth in the bathroom... portable heater...

For that favorite new room



Warmth in the bedroom... portable heater...

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Energy Policy and Conservation Act, as amended; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Energy Efficient Systems, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 330 Middle St., in the City of Middletown, State of Connecticut.

Respondents John P. White and Elaine B. Owen are officers of said corporation. They formulate, direct, and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

## ORDER

## I

For the purposes of this Order, each of the terms listed below, as applied to the respondents named herein, is defined as follows:

1. A *competent and reliable scientific test* is one in which one or more persons, qualified by professional training, education and experience, formulate and conduct a test and evaluate its results in an objective manner using testing procedures which are generally accepted in the professions to attain valid and reliable results. The test may be conducted or approved by (a) a reputable and reliable organization that conducts such tests as one of its principal functions, (b) by an agency or department of the state or federal government, or (c) persons employed or retained by respondents if they are qualified (as defined above in this paragraph) and can conduct and evaluate the test in an objective manner.

2. An *energy related claim* is any oral or written, general or specific, representation that, directly or by implication, describes or refers to the energy cost saving capability, energy saving capability, efficiency, conservation quality or insulating property of any product, or otherwise refers to the energy consumed or generated by any product.

## II

*It is ordered*, That respondents, Energy Efficient Systems, Inc., a corporation, its successors and assigns, and its officers, and John P. White and Elaine B. Owen, individually and as officers of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the electric resistance heater now known as the Boekamp Quartz Energy Saver Heater ("Boekamp Heater"), or any other product for which an energy related claim is made, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Representing orally or in writing, directly or by implication, including through the use of testimonials that:

(i) the Boekamp Heater is more efficient or produces more heat than other electric resistance heaters of similar wattage;

- (ii) the Boekamp Heater provides "free" heat of any kind at any time;
- (iii) the Boekamp Heater is capable of heating objects which are far away from it in a short period of time;
- (iv) the Boekamp Heater evenly distributes heat throughout a typical room;
- (v) the quartz tubes contained in the Boekamp Heater are durable components;
- (vi) the quartz tubes contained in the Boekamp Heater intensify or magnify the heat generated by the electricity sent through the resistance coils enclosed in the tubes, or that the quartz tubes in any way increase the amount of heat generated by the Boekamp Heater.

B. Making any representation, orally or in writing, directly or by implication, including through the use of testimonials, which relates to the heating capabilities, energy saving potential or other performance capabilities of the Boekamp Heater or making any energy related claim for any other product unless: (1) such representation is true, and (2) at the time of making such representation, the representation is fully and completely substantiated in writing by competent and reliable scientific tests which remain available for inspection by the staff of the Federal Trade Commission for at least three (3) years following the final use of the representation.

C. Making any representation, orally or in writing, directly or by implication, including through the use of testimonials, respecting the energy consumption of or the cost of energy consumed by the Boekamp Heater or any other covered product (as "covered product" is defined in Sections 321(a)(2) and 322 of the Energy Policy and Conservation Act, 42 U.S.C. 6291(a)(2) and 6292 or any amendment thereto) unless: (1) such substantiation includes tests conducted on the Boekamp Heater or other covered product in accordance with test procedures prescribed by the Secretary of the Department of Energy pursuant to Section 323 of the Energy Policy and Conservation Act, 42 U.S.C. 6293 or any amendments thereto, with complete written documentation of such tests remaining available for inspection by the staff of the Federal Trade Commission for at least three years following final use of the representation, and (2) such representation fairly discloses the results of such tests.

D. Misrepresenting orally or in writing, the purpose, content, or conclusion of any test or study pertaining to the Boekamp Heater or any product for which an energy related claim is made.

E. Using the term "energy saver", or any other words or phrases

of similar import or meaning, to name or designate the Boekamp Heater.

F. Representing orally or in writing, directly or by implication, including through the use of testimonials, that use of the Boekamp Heater or any product for which an energy related claim is made will result in any energy savings or energy costs savings unless there is clear and conspicuous disclosure, in close conjunction with such representation, of all circumstances and conditions that must be met if the purchaser is to experience similar savings.

G. Making any representation, orally or in writing, directly or by implication, including through the use of testimonials, in connection with the advertisement or promotion of the Boekamp Heater or any product for which an energy related claim is made, which is inconsistent in any material respect with any representation concerning the Boekamp Heater or other said product made, directly or by implication, in post-purchase materials supplied to the purchasers of the Boekamp Heater or other said product.

H. Making any representation, orally or in writing, directly or by implication, including through the use of testimonials, regarding the durability or life span of the Boekamp Heater, including representations regarding warranties or guarantees for the Boekamp Heater, or regarding any life tests performed on the quartz tubes or resistance coils, without disclosing in close conjunction therewith, in print at least as large as the print in which the representation is made, or in an oral presentation, in speech as clear and distinct as that delivered in the rest of the presentation, that the quartz tubes are: (1) fragile unless the quartz tubes are supported or protected in such a manner that they will not break when the Boekamp Heater is tipped over, and (2) not covered by the warranty or guarantee unless the quartz tubes are covered under the warranty or guarantee.

I. Representing, orally or in writing, directly or by implication, including through the use of testimonials, that the Boekamp Heater can heat or raise the temperature of a room, without disclosing in close conjunction therewith the following statement in print at least as large as the print in which the representation is made, or in an oral presentation, in speech as clear and distinct as that delivered in the rest of the presentation, with nothing to the contrary or in mitigation of this statement:

HEATING OR RAISING THE TEMPERATURE OF A ROOM IS ONLY POSSIBLE AFTER EXTENDED, CONTINUOUS USE OF THE BOEKAMP HEATER.

J. For the purpose of this Part II of the Order, when representations are made in television advertising which give rise to a required

disclosure, such disclosure must be made simultaneously in both audio and visual without any distracting sounds and with a clear background.

### III

*It is further ordered,* That each respondent, within twenty (20) days from the date of service of this Order, send a copy of the letter attached hereto and marked as Exhibit A via first class mail to each individual, partnership, corporation or other business entity engaged in the resale or distribution of the Boekamp Heater to whom the respondents sent advertisements or promotional materials relating or referring to the Boekamp Heater which contained a representation or testimonial prohibited by this Order or omitted a disclosure required by this Order and whom respondents are able to locate. Respondents shall use their best efforts to locate all such individuals, partnerships and corporations.

### IV

*It is further ordered,* That respondents forthwith deliver a copy of this Order to: (1) all present and future employees, agents and representatives engaged in any way in the advertising, promotion, offering for sale, sale or distribution of the Boekamp Heater or any other product for which an energy related claim is made; and (2) all present and future individuals, partnerships, corporations or other business entities to whom any of the respondents sell or distribute the Boekamp Heater or any other apparatus designed to provide heat or warmth and which are engaged in the resale or distribution of the Boekamp Heater or other said product; and that respondents secure a signed statement acknowledging receipt of the Order from each such person or entity referred to herein.

### V

*It is further ordered,* That each individual respondent named herein promptly notify the Commission of the discontinuance of his/her present business or employment and of his/her affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this Order each individual respondent shall promptly notify the Commission of his/her affiliation with a new business or employment whose activities include the manufacture, purchase, advertising, promotion, offering for sale, sale or distribution of any product for which an energy related claim

265

## Decision and Order

is made, or of his/her affiliation with a new business or employment in which his/her duties and responsibilities involve the manufacture, purchase, advertising, promotion, offering for sale, sale, or distribution of any product for which an energy related claim is made. Such notice shall include each respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of all duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

## VI

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

## VII

A. *It is further ordered,* That respondents shall maintain all records that relate to any compliance obligations arising out of this Order for a period of not less than three (3) years and shall make such records available to the staff of the Commission.

B. *It is further ordered,* That each respondent shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Date  
330 Middle Street  
Middletown, Connecticut 06457  
(203) 635-2800

RE: Recall of Advertisements and Promotional Materials

Dear Customer:

Some time ago as the distributor for Boekamp, Inc. we distributed



to you advertisements and promotional materials concerning the Boekamp Quartz Energy Saver Heater. These materials contained a number of performance claims about the Boekamp Heater. As a result of an investigation regarding these claims by the Federal Trade Commission, we have entered into the enclosed Consent Agreement and Order.

We have agreed to recall all past advertisements and promotional materials regarding the Boekamp Heater which contain claims prohibited by the Order or which omit the disclosures required by the Order. To assure that no prohibited advertisements or promotional materials continue to be utilized, it is important that you return to us whatever advertisements and promotional materials you have received from us in the past.

Thank you for your attention.

Sincerely,

John P. White, President  
Energy Efficient Systems, Inc.

## Complaint

IN THE MATTER OF  
BOEKAMP, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3063. Complaint, April 9, 1981—Decision, April 9, 1981*

This consent order requires, among other things, a San Diego, Calif. firm and its corporate officer engaged in the manufacture, sale and distribution of an electric space heater known as the "Boekamp Quartz Heater" to cease misrepresenting the efficiency, energy savings, performance characteristics and durability of the product. Respondents are further prohibited from making any energy-related advertising claim without reliable substantiation and barred from using the term "energy saver" or similar terms in product names. The order additionally requires respondents to send a copy of a prescribed letter to all individuals or business entities engaged in the sale of the Boekamp Quartz Heater advising them of the terms of the order and requesting the return of all advertisements or promotional material which contain prohibited claims or which fail to include required disclosures.

*Appearances*

For the Commission: *Joan Gerrity, John B. Gatlin and Douglas M. Husid.*

For the respondent: *Michael Steres, Feldman & Steres, San Diego, Calif., and John T. Coyne and William Barton, Carr, Jordan, Coyne & Savits, Washington, D.C.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Energy Policy and Conservation Act, as amended, and by virtue of the authority vested in it by those Acts, the Federal Trade Commission, having reason to believe that Boekamp, Inc., a corporation, and Konrad Boekamp, individually and as an officer of the corporation, hereinafter sometimes referred to collectively as respondents, have violated the provisions of the Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Boekamp, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 8221 Arjons Drive, San Diego, California.

Respondent Konrad Boekamp is an officer of the corporate

respondent named herein. He formulates, directs and controls the acts and practices of the corporate respondent hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, advertising, promotion, offering for sale, sale and distribution of a product known as the Quartz Energy Saver Heater ("Heater").

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the Heaters to be shipped from their place of business in the State of California to purchasers throughout the United States. Respondents now disseminate and cause the dissemination of, and for some time last past have disseminated and caused the dissemination of, certain advertisements and promotional materials concerning the Heater by use of the United States mail and have advertised the Heater in newspapers of interstate circulation. Accordingly, respondents maintain, and have maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. The advertisements and promotional materials referred to in Paragraph Three include, but are not limited to, the materials marked as Appendix A and attached hereto.

## I

PAR. 5. By and through the use of the aforementioned advertisements and promotional materials, respondents have represented and are now representing, directly or by implication, that:

- a. the Heater is twice as efficient as conventional electric resistance heaters;
- b. the Heater will provide two to three times as much heat as conventional electric resistance heaters of similar wattage;
- c. the Heater provides "free" heat because its quartz tubes do not cool down during the Heater's off cycle;
- d. the Heater is capable of heating objects which are far away from it in a short period of time;
- e. the Heater evenly distributes heat throughout a typical room;
- f. the quartz tubes contained in the Heater intensify and magnify the heat generated by the electricity sent through the resistance coils enclosed in the tubes;
- g. the quartz tubes contained in the Heater are durable components.

PAR. 6. In truth and in fact, contrary to respondents' representations set forth in Paragraph Five:

- a. the Heater is not twice as efficient as conventional electric resistance heaters. All electric resistance heaters produce the same number of British Thermal Units ("BTUs") of heat per watt;
- b. the Heater will not provide two to three times as much heat as conventional electric resistance heaters of similar wattage;
- c. the quartz tubes contained in the Heater do cool down during the Heater's off cycle and the Heater does not provide "free" heat for the foregoing reason or for any other reason;
- d. the Heater is not capable of heating objects which are far away from it in a short period of time. The Heater will only be able to heat objects far away from it if the Heater has been operated for a lengthy period of time so that the air space between the Heater and the object has itself been heated;
- e. the Heater does not evenly distribute heat throughout a typical room;
- f. the quartz tubes contained in the Heater do not intensify or magnify the heat generated by the electricity sent through the resistance coils enclosed in the tubes. The quartz tubes only transfer the heat generated by the resistance coils;
- g. the quartz tubes contained in the Heater are not durable components. The quartz tubes are fragile elements which shatter easily on impact when the tubes are hot.

Therefore, said advertisements and promotional materials were, and are false, deceptive, misleading or unfair.

## II

PAR. 7. By and through the use of the aforementioned advertisements and promotional materials, respondents have represented and are now representing, directly or by implication, in addition to those representations set forth in Paragraph Five, that:

- a. a typical user of a Heater will save 50% over his/her prior home heating costs;
- b. a typical user of a Heater will drastically reduce his/her fuel bills while maintaining personal comfort;
- c. users of the Heater report dramatic utility bill savings;
- d. a single Heater will raise the temperature in an unheated room of typical size to a comfortable temperature in twenty minutes;
- e. when the outside temperature is 5 degrees Fahrenheit, one

1500 watt Heater will maintain a room temperature of 72 degrees Fahrenheit under certain stated conditions;

f. the Heater will heat a typical room more quickly than conventional electric resistance heaters;

g. the Heater provides special comfort to arthritics and others suffering from similar ailments.

PAR. 8. At the time respondents made the representations alleged in Paragraphs Five and Seven they did not possess and rely upon a reasonable basis for such representations. Therefore, the aforementioned advertisements and promotional materials were, and are, unfair, deceptive, or misleading.

PAR. 9. By and through the use of the aforementioned advertisements and promotional materials, respondents have represented and are now representing, directly or by implication, that they had a reasonable basis for the representations alleged in Paragraphs Five and Seven at the time they were made. In truth and in fact, respondents had no reasonable basis for the representations alleged in Paragraphs Five and Seven. Therefore, said advertisements and promotional materials were, and are, deceptive, misleading or unfair.

### III

PAR. 10. In the course and conduct of their business, respondents have used the term "Quartz Energy Saver" to refer to the Heater in the aforementioned advertisements and promotional materials. By and through the use of that term, respondents have represented and are now representing, directly or by implication, that the Heater consumes less electricity than other electric resistance heaters in providing the same amount of heat.

PAR. 11. In truth and in fact, contrary to respondents' representation set forth in Paragraph Ten, the Heater provides the same number of BTUs per watt as any other electric resistance heater. Therefore, the use of the term "energy saver" to refer to the Heater was, and is, deceptive, misleading or unfair.

### IV

PAR. 12. By and through the use of the aforementioned advertisements and promotional materials, respondents have represented and are now representing, directly or by implication, that the Heater will quickly and efficiently heat a whole room. In contrast, the operating instructions for the Heater, which are provided to consumers after

they purchase a Heater, caution users to avoid trying to heat a whole room with the Heater.

PAR. 13.

(a) The operating instruction referred to in Paragraph Twelve is a material fact in light of the representation made in advertisements and promotional materials as set forth in Paragraph Twelve. The aforementioned advertisements and promotional materials fail to disclose this material fact. Therefore, said advertisements and promotional materials were, and are, deceptive, misleading or unfair.

(b) The operating instruction referred to in Paragraph Twelve is materially inconsistent with the representation made in advertisements and promotional materials as set forth in Paragraph Twelve. Therefore, said advertisements and promotional materials were, and are, deceptive, misleading or unfair.

V

PAR. 14. The Heater is an unvented electric resistance heater which falls within the category of products defined as "unvented home heating equipment" in 10 C.F.R. 430.2 and as such is a "covered product" as that term is defined in Sections 321(a)(2) and 322 of the Energy Policy and Conservation Act, 42 U.S.C. 6291(a)(2) and 6292.

PAR. 15. In the course and conduct of their business, on and after November 10, 1978, respondents have made, and continue to make, representations, directly or by implication, respecting the energy consumption of the Heater or the cost of energy consumed by the Heater, including the representations set forth at subparagraphs (a), (b) and (c) of Paragraph Five.

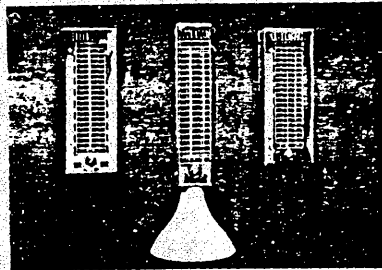
The aforesaid representations do not fairly disclose the results of tests conducted on the Heater in accordance with the test procedures applicable to "unvented home heating equipment" as prescribed by the Secretary of the Department of Energy at 10 C.F.R. 430.22(g) and 10 C.F.R. Subpart B, Part 430, Appendix G. Therefore, and pursuant to 42 U.S.C. 6293(c) and 6303(c), the representations were, and are, deceptive, misleading or unfair.

PAR. 16. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in or affecting commerce with individuals, firms, and corporations engaged in the manufacture, distribution and sale of space heaters and other products for which energy related claims are made.

PAR. 17. The use by respondents of the aforementioned false, deceptive, misleading or unfair representations, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that the representations were and are true and complete, and into the purchase of substantial quantities of the Heater by reason of this erroneous and mistaken belief.

PAR. 18. The acts and practices of respondents, as herein alleged, were and are to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

APPENDIX A



**MODEL 201**  
**SCREENED WALL MODEL**  
 An built-in Energy Checker...  
**MODEL 202**  
**PORTABLE MODEL**  
 An built-in Energy Checker...  
**MODEL 201-B**  
**SURFACE HEAVY MODEL**  
 An built-in Energy Checker...

...Energy Checker on the front of all models is a special feature found only on the Queen Energy Heater...  
 ...Boekamp, Inc. 1975...  
 ...Boekamp, Inc. 1975...

**Boekamp, Inc.**

1.2017 °C 87/81/79 to Present

Introducing a Space Heater  
 Like You've Never Sold Before



**Boekamp, Inc.**



# Quartz Energy Saver<sup>™</sup> Heater

The modern Quartz Energy Saver Heater from Reschman is a highly efficient heater that is safe, reliable and easy to use. It is the most efficient heater available today. It is the only heater that is safe, reliable and easy to use. It is the only heater that is safe, reliable and easy to use. It is the only heater that is safe, reliable and easy to use.

The Quartz Energy Saver Heater is a highly efficient heater that is safe, reliable and easy to use. It is the most efficient heater available today. It is the only heater that is safe, reliable and easy to use. It is the only heater that is safe, reliable and easy to use. It is the only heater that is safe, reliable and easy to use.

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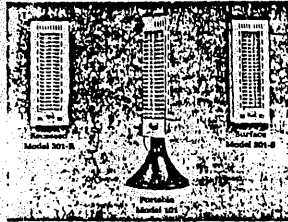


### Quartz Heaters Are Different . . .

Reschman's Quartz Energy Saver<sup>™</sup> Heater is a new product that really works. The superior engineering resulting from 8 years of development and testing have resulted in a U.S. Patent of exceptional quality and durability. And the benefits apply to all models as well as to the great economy, safety and cost savings. Look here — here's why:

- |  |   |
|--|---|
| <p><b>Quartz Heaters</b></p> <ul style="list-style-type: none"> <li>• Warm and pleasant without circulating air</li> <li>• Warmth affects the room as a whole, comfortable temperature</li> <li>• Temperature difference between floor and ceiling — usually less than 5°</li> <li>• Heat is efficiently retained by highly polished surfaces</li> <li>• Rooms warmest in shortest space because of the efficient circulating principle and constant efficiency</li> <li>• Rooms warmest in unobstructed study and efficiency because windows are treated and treated, heat cannot get back, heat is retained until an efficient constant heat source</li> </ul> | <p><b>Convection Heaters</b></p> <ul style="list-style-type: none"> <li>• Warm and pleasant air which is heavy, heavy odors</li> <li>• Warmth from floor up above — because heat rises from floor and heat from the top down</li> <li>• Temperature difference between floor and ceiling — usually 10° to 15°</li> <li>• Average room temperature — approximately 65°</li> <li>• Heat is absorbed by a fan, or by rising hot air only</li> <li>• Rooms warmest in shortest space because of the air which is heated first, then the odors and people</li> <li>• Rooms warmest in unobstructed study and efficiency because of the heat rising to the ceiling where there is the greatest loss of heat through the roof</li> </ul> |
|--|---|

APPENDIX A-2



	Model	Volts	Amperes	Watts	B.T.U.
PORTABLE MODELS	800-1214	120	12.4	1488	8100
DECKBOARD WALL MODELS	800-1215	120	10	1200	6000
	800-1216	240	8	1920	6000
SURFACE MOUNT MODELS	800-1217	120	10	1200	6000
	800-1218	240	8	1920	6000

All models feature the exclusive Energy Controller and are fully UL Listed. Portable models feature 3 prong grounded plug. Designed to help you combat the high cost of energy while providing comfort and style in localized heating... get your Boekamp Quartz Energy Saver Heater today!

- USES:
- Living Rooms
  - Stables/Homes
  - Petals
  - Bathrooms
  - RVs/Motorhomes
  - Boats
  - Workshops
  - Family Rooms
  - Mobile Homes
  - Offices

**Quartz Energy Saver Heater**  
**Boekamp, Inc.**  
 San Diego, California

Available from:

*Introducing a Space Heater  
 Like You've Never Used Before*



**Boekamp**

## Boekamp...The ORIGINAL Quartz Energy Saver Heater

Designed and developed to combat the high costs of energy, the U.S. made Boekamp Heater is the sensible solution to effective, efficient heating. Features:

- Total personal comfort in just minutes
- Deeply pleasing, infrared radiant heat

- Heat projected by polished reflector — no fan or blower necessary
- Localized warmth allows temperature and cost of heating rest of house to drop
- Exclusive Energy Controller offers precise control of heat output and energy consumption

Easily and permanently installed, the surface mount model is ideal for keeping you warm in the garage or workshop.



This portable unit can be moved anywhere to provide hourly warmth in just minutes, and features a Tip-Over Safety Switch that shuts the heater off if it is knocked over.

The attractive recessed wall model adds warmth and heating efficiency to a living room, study room, bathroom or wherever you wish to install one.



### Quartz Heaters are Different . . .

#### BOEKAMP QUARTZ ENERGY SAVER®

- Room is quickly warmed to an even, comfortable temperature
- Heat is efficiently projected through the air to solid objects by highly polished reflector; there's no need for circulating air
- Temperature difference between floor and ceiling — usually less than 1°
- Average coil temperature — approximately 1800°
- Room comfort is achieved quickly because people and objects are warmed directly
- Room comfort is maintained easily because objects are heated and re-radiate heat; natural air leaks have a minimal effect on comfort maintenance

#### OLD-FASHIONED CONVECTION HEATERS

- Room is slowly heated from top down because hot air rises
- Heat is directed into the room by fan, or rising hot air only; the air must then heat the objects in the room
- Temperature difference between floor and ceiling — usually 30° to 60°
- Average coil temperature — approximately 1800°
- Room comfort is achieved slowly because air must first be heated, then objects and people are heated
- Room comfort is maintained inefficiently because of heat loss through the ceiling and natural air leaks throughout the room

AP 117 10 01/07/73 in Present

COMPARATIVE ANALYSIS

QUARTZ HEATERS vs. CONVENTIONAL-TYPE HEATERS

Prepared by:

Malcolm D. Casswell  
Senior Staff Scientist  
Materials Research

Comparative tests to quantitatively compare the performance of quartz heaters versus convection-type heaters is difficult because of the infinite number of possible conditions of variables. This is further complicated by the difficulty of assessing human responses. However, key heater versus only one purpose -- to provide comfort to people and furnish the basic difference between the Bestech Quartz Energy Saver Heater and the typical convection-type electric heater.

Most electric heaters circulate a small portion of the room air over the heating elements. This is accomplished with either natural convection or a fan which pulls cold air into the heater and pushes warmed air out. Convection is the natural movement of warm air as it heats and becomes lighter and is then replaced by the heavier cold air. It requires large heater areas to move sufficient air to produce reasonable temperature elevations. Fan-driven designs can enter, but can be more complex in size.

Both types produce a comfortable living environment by raising the temperature of the entire volume of air in the room. In the process, however, they must also heat the contents of the room over which the air flows. Once the room is warmed, the heater continues to consume power to make up for inherent heat losses from the area.

A convection-type heater relies on the air being heated as it passes through the heater. The hot air, being lighter in density, rises to the ceiling. Although objects are warmed by the circulating air, the room, in general, heats from the top down. When the air temperature just a few feet off the floor is comfortable for people, the air temperature near the ceiling (where it is not needed) may be as much as 20 degrees higher. This results in a high percentage of the energy consumed being lost through ceilings and upper walls.

The quartz heater-and heater consists of a coil of special resistance wire encased in a quartz tube. The coil is heated to a temperature range between 1800 and 2000 degrees Fahrenheit -- a temperature that exceeds the coil temperature of a convection-type heater by as much as 500 degrees. At these temperatures, some of the electrical energy supplied is converted into electromagnetic radiation, which is emitted from the coil. The "glow" of any hot wire is the radiation which is in the visible range, i.e., detectable by the human eye. However, this is less than one percent of the total radiation emitted. Most of the remainder is in the "infrared" region.

Quartz is used for several specific reasons: It supports and protects the hot coil and will survive the excessive operating temperatures; it is highly heat efficient, virtually eliminating any heat loss from the coil and is relatively transparent to the infrared radiation.

The quartz elements are mounted in front of a high-efficiency reflector so that nearly all of the radiant heat generated is beamed in the desired direction. Contrary to the mode of operation of the typical convection-type heaters, very little of the room air is heated directly. However, the radiation emitted from the quartz heater passes through the air with only minimal energy (heat) loss, and strikes any solid object in its path. When this happens, the radiation is "absorbed" and objects are heated. These objects, in turn, emit heat.

The basic difference in mode of operation: Quartz versus Convection, appears in several ways for the reduced cost of operating a quartz heater. First, with quartz heat, the objects in the room (including people) are heated to comfortable levels long before the room temperature would provide a comfortable environment. Thus, the quartz heater uses less energy to provide body comfort. There is a tremendous advantage in the energy savings since the instant response of the quartz heater eliminates the costly efforts of pre-heating an area to be comfortable.

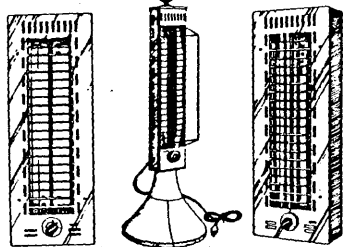
Only a small amount of the energy consumed by a well-designed quartz heater is expended in excessive heating of the air in the vicinity of the heater. Therefore, there is much less of a temperature difference from floor to ceiling and the ceiling temperature and heat losses are considerably less. With the people being heated directly by radiant heat, the overall air temperature can be very low, which minimizes heat losses through the walls and ceilings, as well as doors. These facts are primarily responsible for the lower power consumption required to maintain the comfort level once it has been reached.

As with any heating system, quartz heaters must be properly installed and used to the full advantage of their inherent features. Since radiant heat is directional heat, use of two small quartz heaters with energy saving features, to heat a large room from both directions is more efficient than one large heater. They should also be directed away from windows and all other sources of great heat loss. These practices will further enhance the efficiency of the unit.

In conclusion, in a typical residential situation, advanced design quartz infrared heaters, such as those manufactured by Bestech, Inc., can provide satisfactory comfort levels at half or less the normal operating costs of other types of electric heating. The unparalleled performance of the quartz heater enables the user to achieve immediate local comfort levels without the attendant and costly luxury of having to heat the whole house to be comfortable in just one room or area.

APPENDIX A-4

### The ORIGINAL Bockamp Quartz Energy Saver Heater...



**All Other Space Heaters Are Suddenly Old-Fashioned**

The Bockamp Quartz Energy Saver is like no other heater you've ever used... designed in Europe and built in the USA, this unique quartz heater keeps you cozy warm while saving you energy!

- Personal comfort achieved in just minutes
- Deeply pleasuring radiant heat
- Exclusive Energy Controller
- Completely UL Listed
- Full 1 year Warranty
- 3 Attractive models to choose from

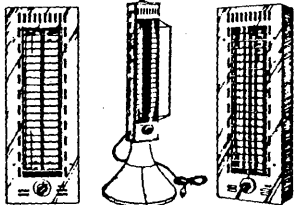
Two quartz tubes in front of a polished reflector project soothing, radiant warmth -- no need for a fan or blower to consume additional energy!

The heater of the future is here... get yours today!

YOUR  
IMPRINT  
HERE

ONLY \$

### QUARTZ Makes the Difference!



**The Bockamp Quartz Energy Saver Heater...**

is different from any other space heater you've ever used, because it keeps you warm while saving you energy... because:

- Deeply pleasuring, radiant heat
- Exclusive Energy Controller
- Completely UL Listed
- Full 1 year Warranty
- 3 Models to Choose From

The unique Bockamp design features two quartz tubes in front of a polished reflector, projecting soothing, radiant warmth -- no need for a fan or blower to consume additional energy!

Get the Bockamp Quartz Energy Saver! ...

YOUR  
IMPRINT  
HERE

ONLY \$

NEW PRODUCT

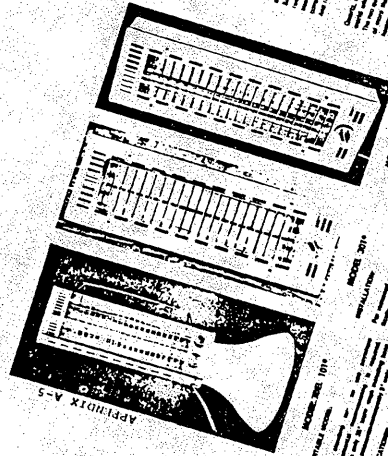
**Quartz Energy Saver**  
Reduce Heating Expense Without Sacrificing Comfort

Save up to 20% on energy bills with Quartz Energy Saver.

Quartz Energy Saver is a revolutionary new product that allows you to reduce your heating expenses without sacrificing comfort. It works by controlling the flow of heat energy through your home's ductwork, preventing heat loss and ensuring that the heat stays where it's needed most.



Heat Control in One Step



APPENDIX A-5

Model	Capacity (sq. ft.)	Price
Model 1019	100 - 150	\$125.00
Model 2019	150 - 250	\$175.00
Model 3019	250 - 400	\$225.00

Quartz Energy Saver is available in three models to meet your needs. Each model is designed to fit standard ductwork and is easy to install. For more information, contact Boekamp, Inc. at 1000 West Main Street, San Jose, CA 95128. Phone: (415) 281-1234.

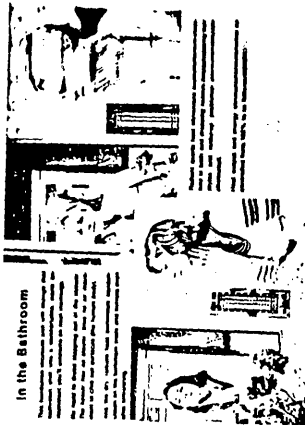
**Portable Comfort — Anywhere**

...the most comfortable and convenient way to enjoy the outdoors. ...the most comfortable and convenient way to enjoy the outdoors. ...the most comfortable and convenient way to enjoy the outdoors.



**On the Patio**

...the most comfortable and convenient way to enjoy the outdoors. ...the most comfortable and convenient way to enjoy the outdoors. ...the most comfortable and convenient way to enjoy the outdoors.



**In the Bathroom**



**For that favorite new Room**

...the most comfortable and convenient way to enjoy the outdoors. ...the most comfortable and convenient way to enjoy the outdoors. ...the most comfortable and convenient way to enjoy the outdoors.

EXHIBIT "H"

APPENDIX A-6

**new**  
from:

**Boekamp, Inc.**

press release by  
  
 Fall  
 Enterprises  
 Inc.  
 6723 Hollywood Avenue  
 Suite 201  
 San Diego, California 92121

QUARTZ ENERGY SAVER HEATER INTRODUCED BY BOEKAMP

The new Quartz Energy Saver Heater has just been released by Boekamp, Inc. of La Mesa, California after 5 years of development and testing. Quartz heaters, an effective and efficient means of localized heating, have been used in Europe for over 15 years to combat the high costs of heat and energy. Of the few quartz heaters manufactured in the U.S., none were designed to operate in the upright or vertical position. But the unique Quartz Energy Saver Heater, which is fully UL Listed, does operate vertically. It carries a 1 year limited warranty for domestic use, and is now available for warming the home, office, patio, workshop, or wherever localized heating is desired.

The heater functions by electrically heating two quartz tube elements that produce a deep-heating, radiant heat. The quartz tubes are positioned in front of a highly polished, corrosion-resistant aluminum reflector which effectively projects the heat into the room, eliminating the need for a fan or blower. The heater quickly and effectively heats everything in its path, including furniture, carpets, draperies, and people, providing total localized comfort in just minutes. As the heater creates a comfortable environment in the part of the house being occupied, the heat level in the rest of the house is allowed to drop, offering potentially tremendous savings in utility expenses.

The Quartz Energy Saver Heater, with suggested retail prices ranging from \$59.90 to \$79.90, is available in three models, including one free-standing floor model and two wall models. Of the two wall units, Model 301 mounts flush or recessed and model 301-B attaches to the surface of the wall. These two can run on either 120V or 240V current, are rated at 1200 Watts, and have a BTU rating of 4094.

Free-standing Model 101 comes with its own attractive stand and runs on regular 120V house current. With its 1500 Watt current draw, it is rated at 5120 BTUs and has a thermostat which can be set to prevent overheating. In addition, it features a Tip-Over Safety Switch that automatically shuts the unit off in the event the heater is accidentally upset.

The Energy Controller mounted on the face of all three models offers the user wide control over the heat output and energy consumption of the Quartz Energy Saver Heater. It works by cycling the heater on and off over a 30-second period, allowing the heater to be in the on part of the cycle from 25% to 100% of the time. And even though there is no current draw when the heater is in the off part of the cycle, the radiant heat from the hot quartz tubes continues to warm the environment. The Energy Controller can also offer substantial savings in the heater's consumption of electricity. For example, the floor model left on for one hour at a 50% setting would draw only 750 Watts/hour instead of the full 1500 Watts/hour. With most users finding that the heater maintains a comfortable personal environment at a setting of 50% or less, these savings can really add up.

For more information on the Quartz Energy Saver Heater and where to find one, contact:

BOEKAMP, INC.  
 8140 Center Street  
 La Mesa, CA 92041



CAN 1011 - 03/01/73 to Present

APPENDIX A-7

**BOEKAMP INC.**8400 Magnolia Avenue, Suite "1" • Santa Ana, California 92701  
Telephone (714) 562-2931**FACT SHEET****BOEKAMP QUARTZ -- QUIET COMFORT**

Why buy the Boekamp quartz heater when a conventional heater with a blower can be purchased at a lesser cost? A logical question which requires sound, logical answers; and here they are.

The Boekamp quartz heater is a high-value, worthwhile buy for so many reasons. Here are just a few: the type of heat; the quantity of heat; the trouble-free, long-life characteristics of the heater and the economical operation of the unit.

The heater produces radiant, dry heat; heat that warms objects in its path -- people -- almost instantly. Personal comfort is obtained immediately without heating large quantities of space; though the space is subsequently warmed as a result. The heater is designed for people and because the heat is dry and radiant, it's of great comfort to arthritics and others suffering from similar body discomforts. Quiet comfort; no blower, no noise. Because no blower is used, evaporative cooling of wet surfaces (the human body) is minimized and not increased by the constant movement of air. And the radiant, dry heat serves to prevent mirrors from fogging; eliminates sagging hair styles and ladies' make-up problems.

The quartz heater generates more heat because it operates at higher temperatures than the conventional electric heater and the surface area of the quartz tubing is much greater than that of an electric strip or coil heater. The superior quality of wire used in the element of the Boekamp heater and the inherent heating capabilities of the quartz permit much higher operating temperatures without jeopardizing the efficiency or the life of the unit. The two quartz tubes offer more than 40 square inches of radiant heat source area. The heat source area of the conventional heater does not compare.

Our heater is trouble-free. The best available electrical components and the quartz tubes are long-life items. There is absolutely no blower motor to fail.

The Boekamp heater is most economical to operate. The energy-saving controller permits ON/OFF cycling of the unit, and you pay the utility company ONLY for the "ON" time -- ONLY for the heat that you need. The quartz elements retain and radiate heat during the "OFF" cycle, thus "ON" time can be held to a minimum. Likewise, energy consumption is held to a minimum. At the same time, optimum room temperature is attainable.

The ease of installation of the wall units and the true portability of the portable units, combined with their attractive appearance and their energy-saving capabilities make them valuable and worthwhile investments. But these things are obvious -- those mentioned above may not be.

\*QUIET, RADIANT HEAT \*\*INTENSE HEAT \*\*\*TROUBLE-FREE \*\*\*\*ECONOMICAL

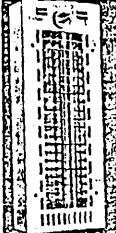
**New Construction/Room Addition  
Beat The Oil Shortage**  
with the  
**QUARTZ ENERGY SAVER®**

The QUARTZ ENERGY SAVER is the sensible solution to effective, economical heating.

- For SAFETY, COMFORT, EFFICIENCY
- developed in BRITAIN to cut heating costs
- operates at 100% capacity for 24 hrs.
- ENERGY SAVING CONTROLLER for automatic control of desired ambient level
- automatic heat to one room
- Directly radiates heat into the room
- Model #201 will heat 240 sq. ft.
- IR. Limited-life span guarantee

ALSO AVAILABLE IN RECESS & PORTABLE MODELS

SPECIFICATIONS:  
1200 WATTS, 120V, 10 AMP  
1200 WATTS, 240V, 5 AMP  
4094 BTU



**SURFACE QUARTZ HEATER**  
Model # 201S  
1200 WATTS, 120V/240V  
4094 B.T.U. 12W AMPS

RECESSED ..... 16 2/8"  
SURFACE ..... 16 7/8" PORTABLE ..... 17 3/8"

ALSO IDEAL FOR: COTTAGES, BOATS, MOBILE HOMES,  
VANS, GREENHOUSES, PORCHES, OFFICES, ETC.

WRITE OR CALL FOR DEMONSTRATION

**ECONO HEAT OF CROMWELL**  
P.O. Box 62, Cromwell, Ct. 633-2800  
WE WILL SHIP ANYWHERE IN U.S.A.

374051 Econo Heat of Cromwell REAL ESTATE home sect.

sun, may 27 dan-43 46 proofs to 25 margo

Complaint

97 F.T.C.

APPENDIX A-9

**New Concept in Efficient Heating  
Reduce Home Heating Costs**  
and be totally comfortable

**QUARTZ HEAT**  
The sensible solution to effective  
ECONOMICAL HEATING.

- For SAFETY, COMFORT, EFFICIENCY
- developed in EUROPE to cut heating costs
- operates at 100% capacity for 24Hrs. (based on Hartford region electric rate)
- ENERGY SAVING CONTROLLER for selection of desired comfort level
- thermostat control
- safety TIP-OVER switch
- maximum heat in one minute
- NO INSTALLATION plus in any outlet
- designed as practical heat system
- will solve any heating problem
- proven in MORTHEAST, winter 77-78
- U.S. based one year guarantee

QUARTZ HEAT, CHICWILL CT 06416  
P.O. BOX 62 (203) 633-2800

Please rush me:

One Portable QUARTZ HEATER, model #101 at purchase price of \$72.50 plus \$2.00 shipping & handling.

Enclosed is  check or  money order for \$\_\_\_\_\_

CHARGE IT!  
 VISA  MASTER CHARGE  
Credit Card # \_\_\_\_\_

Exp. date \_\_\_\_\_ / \_\_\_\_\_

Conv. res. please add 7% sales tax

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_  
State \_\_\_\_\_ Zip \_\_\_\_\_

**PORTABLE QUARTZ HEATER**  
Model # 101  
1500 WATTS 120V  
\$72.50  
30-Day Money-Back  
GUARANTEE

You must be satisfied with your QUARTZ HEATER's performance or return anytime within 30 days for prompt refund of purchase price. (except shipping & handling)

QUARTZ HEAT IS BARRD CHICWILL CT

APPENDIX A-10

**NEW PRODUCT**  
**"Quartz Energy Saver"**

**"QUARTZ" HEATING**

The sensible solution to effective **ECONOMICAL** heating.

The **QUARTZ ENERGY SAVER™**, EUROPE'S answer to efficient heating with high cost energy is now available in the United States.

Introducing the world's only vertical **QUARTZ TUBE PORTABLE** heater and built-in and surface mounted wall units.

They contain:

- Built-in **ENERGY SAVING CONTROLLER** for selection of desired comfort level to control and minimize consumption of electricity.
- Thermostatic control and safety **TIP-OVER** switch (portable models).
- Quality in design and workmanship.

Operates at 100% capacity for 8 1/2 hours (based on Hartford, CT utility rate).

Designed for **SAFETY, COMFORT, ECONOMY** and a long lifespan.

Even distribution of heat.

Total comfort achieved in one minute.

Adequate heat for any room in the house. Ideal for 1000 uses.

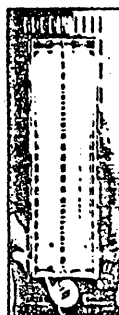
No installation required, just plug in any wall outlet. (Wall models designed for cord or direct wiring)

Effectively used: tested and proven in the Northeast.

**ELIMINATES NEED TO MAINTAIN CONSTANT HEAT IN LIVING AREAS UNTIL ROOM IS IN USE.**

**CALL FOR, NO OBLIGATION, HOME DEMONSTRATION.**

UL approved — Guaranteed for one year.



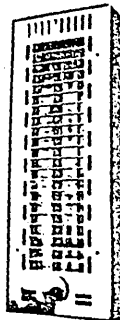
RECESSED  
MODEL #301R

**SPECIFICATIONS AND COST:**

MODEL #	WATTS	VOLTS	AMPS	BTU	PRICE
101P	1600	110	12.8	9120	62.00
301R-120	1200	110	10	4094	60.00
301R-240	1200	220	5	4094	60.00
301S-120	1200	110	10	4094	74.00
301S-240	1200	220	5	4094	74.00



PORTABLE  
MODEL #101



SURFACE  
MOUNTED  
MODEL #301S

Exclusively distributed by



## Quartz Heating, The Sensible Solution To Effective and Efficient Heating.

APPENDIX A-12

### BASIC FACTS ON QUARTZ HEATING AND ANSWERS TO QUESTIONS REGARDING IT.

#### WHY CONSIDER QUARTZ HEATING?

Conventional sources of energy (oil, electric baseboard, natural gas and firewood) are expensive. QUARTZ HEATERS are designed to provide instant heat, negating the need to extensively pre-heat areas to achieve comfort, thereby saving money for the user. QUARTZ HEATERS permit the user to heat living space only when in use.

#### WHO DEVELOPED QUARTZ HEAT?

German scientists developed QUARTZ HEATERS ten years ago to combat Europe's high cost of energy, resulting in efficient and effective heating used extensively today.

#### WHAT IS THE BASIC PRINCIPLE OF QUARTZ HEATING?

QUARTZ is one of four (Diamonds, rubies, charcoal and quartz) known elements in the world that produces pure radiant heat.

QUARTZ HEATERS utilize conventional electric resistance coils encased in quartz tubes to magnify and intensify heat, reflect it off a polished shield and radiate it to surrounding areas. This carefully designed combination of components produces instantaneous heat.

#### ARE QUARTZ HEATERS SAFE?

Yes. QUARTZ HEATERS have been extensively tested and approved for use by Underwriters Laboratories (UL).

#### HAS QUARTZ HEATING BEEN TESTED IN THE UNITED STATES?

QUARTZ HEATING has been used for residential and commercial purposes for four years in the United States with an extensive test market conducted in the Northeast during the winter of 1977-78. All users have been extremely satisfied with the results.

#### HOW DO QUARTZ HEATERS SAVE MONEY?

QUARTZ HEATERS provide instant heat within one minute of operation, rapidly raising room temperatures to the comfort level in 20 minutes, permitting users to reduce heating levels in unoccupied rooms until their planned use.

Each model QUARTZ HEATER contains a QUARTZ ENERGY SAVER CONTROLLER which cycles the flow of energy to the heating elements to reduce power consumption.

#### WHERE ARE QUARTZ HEATERS MOST EFFECTIVE?

In any living space. Users initially purchase QUARTZ HEATERS to solve specific heating problems in cold rooms. After initial use, they discover that QUARTZ HEAT is an economical solution to heating the entire house.

QUARTZ HEAT, for example, eliminates condensation on bathroom mirrors while showering.

#### HOW MANY QUARTZ HEATERS ARE REQUIRED TO EFFECTIVELY HEAT A HOUSE?

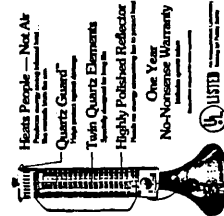
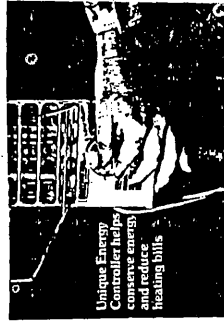
This requirement varies depending on the house, its room sizes, amount of heat loss, ceiling heights, room configuration, etc. It suggests 100 watts per 18 to 22 sq. ft. for planning purposes. recommends purchasing one QUARTZ HEATER for use in your most frequently occupied room. When the QUARTZ HEATER'S effectiveness is self proven then consider purchasing additional QUARTZ HEATERS for other areas. Keep in mind, each 1200 watt heater utilizes 10 AMPS of available capacity of a typical 15 or 20 AMP circuit.

#### IS SERVICE READILY AVAILABLE FOR QUARTZ HEATERS?

Yes. QUARTZ HEATERS are guaranteed for one year from date of purchase, but are specifically designed for a long lifespan. Replacement parts and service is available, if necessary. For

#### OTHER APPLICATIONS FOR QUARTZ HEATERS:

QUARTZ HEATERS are designed for effective use any place that people are cold. They should be considered for use in professional offices, restaurants, pleasure boats, mobile homes, garage workshops, laundry areas, patios, summer cottages and other areas.



*The First & The Finest*  
**Boekamp**  
**Quartz Energy**  
**Saver**  
**Heater**  
*We are charged to the way people keep warm*

APPENDIX A-13

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Energy Policy and Conservation Act, as amended; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Boekamp, Inc. is a corporation organized existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 8221 Arjons Drive, in the City of San Diego, State of California.

Respondent Konrad Boekamp is an officer of said corporation. He formulates, directs, and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.



## ORDER

## I

For the purposes of this Order, each of the terms listed below, as applied to the respondents named herein, is defined as follows:

1. A *competent and reliable scientific test* is one in which one or more persons, qualified by professional training, education and experience, formulate and conduct a test and evaluate its results in an objective manner using testing procedures which are generally accepted in the professions to attain valid and reliable results. The test may be conducted or approved by (a) a reputable and reliable organization that conducts such tests as one of its principal functions, (b) by an agency or department of the state or federal government, or (c) persons employed or retained by respondents if they are qualified (as defined above in this paragraph) and can conduct and evaluate the test in an objective manner.

2. An *energy related claim* is any oral or written, general or specific, representation that, directly or by implication, describes or refers to the energy cost saving capability, energy saving capability, efficiency, conservation quality or insulating property of any product, or otherwise refers to the energy consumed or generated by any product.

## II

*It is ordered.* That respondents, Boekamp, Inc., a corporation, its successors and assigns, and its officers, and Konrad Boekamp, individually and as an officer of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the electric resistance heater now known as the Quartz Energy Saver Heater ("Heater"), or any other product for which an energy related claim is made, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Representing orally or in writing, directly or by implication, including through the use of testimonials that:

- (i) the Heater is more efficient or produces more heat than other electric resistance heaters of similar wattage;
- (ii) the Heater provides "free" heat of any kind at any time;

- (iii) the Heater is capable of heating objects which are far away from it in a short period of time;
- (iv) the Heater evenly distributes heat throughout a typical room;
- (v) the quartz tubes contained in the Heater are durable components;
- (vi) the quartz tubes contained in the Heater intensify or magnify the heat generated by the electricity sent through the resistance coils enclosed in the tubes, or that the quartz tubes in any way increase the amount of heat generated by the Heater.

B. Making any representation, orally or in writing, directly or by implication, including through the use of testimonials, which relates to the heating capabilities, energy saving potential or other performance capabilities of the Heater or making any energy related claim for any other product unless: (1) such representation is true, and (2) at the time of making such representation, the representation is fully and completely substantiated in writing by competent and reliable scientific tests which remain available for inspection by the staff of the Federal Trade Commission for at least three (3) years following the final use of the representation.

C. Making any representation, orally or in writing, directly or by implication, including through the use of testimonials, respecting the energy consumption of or the cost of energy consumed by the Heater or any other covered product (as "covered product" is defined in Sections 321(a)(2) and 322 of the Energy Policy and Conservation Act, 42 U.S.C. 6291(a)(2) and 6292 or any amendments thereto) unless: (1) such substantiation includes tests conducted on the Heater or other covered product in accordance with test procedures prescribed by the Secretary of the Department of Energy pursuant to Section 323 of the Energy Policy and Conservation Act, 42 U.S.C. 6293 or any amendments thereto, with complete written documentation of such tests remaining available for inspection by the staff of the Federal Trade Commission for at least three years following the final use of the representation, and (2) such representation fairly discloses the results of such tests.

D. Misrepresenting orally or in writing, the purpose, content, or conclusion of any test or study pertaining to the Heater or any product for which an energy related claim is made.

E. Using the term "energy saver", or any other words or phrases of similar import or meaning, to name or designate the Heater.

F. Representing orally or in writing, directly or by implication, including through the use of testimonials, that use of the Heater or

any product for which an energy related claim is made will result in any energy savings or energy cost savings unless there is clear and conspicuous disclosure, in close conjunction with such representation, of all the circumstances and conditions that must be met if the purchaser is to experience similar savings.

G. Making any representation, orally or in writing, directly or by implication, including through the use of testimonials, in connection with the advertisement or promotion of the Heater or any product for which an energy related claim is made, which is inconsistent in any material respect with any representation concerning the Heater or other said product made, directly or by implication, in post-purchase materials supplied to the purchasers of the Heater or other said product.

H. Making any representation, orally or in writing, directly or by implication, including through the use of testimonials, regarding the durability or life span of the Heater, including representations regarding warranties or guarantees for the Heater, or regarding any life tests performed on the quartz tubes or resistance coils, without disclosing in close conjunction therewith, in print at least as large as the print in which the representation is made, or in an oral presentation, in speech as clear and distinct as that delivered in the rest of the presentation, that: (1) the quartz tubes contained in the Heater are fragile, unless the representation relates to a Heater in which the tubes are supported or protected in such a manner that they will not break when the Heater is tipped over; and (2) the quartz tubes contained in the Heater are not covered by the warranty or guarantee for the Heater, unless the quartz tubes are in fact covered by the warranty or guarantee.

I. Representing, orally or in writing, directly or by implication, including through the use of testimonials, that the Heater can heat or raise the temperature of a room, without disclosing in close conjunction therewith the following statement in print at least as large as the print in which the presentation is made, or in an oral presentation, in speech as clear and distinct as that delivered in the rest of the presentation, with nothing to the contrary or in mitigation of this statement:

HEATING OR RAISING THE TEMPERATURE OF A ROOM IS ONLY POSSIBLE AFTER EXTENDED, CONTINUOUS USE OF THE HEATER.

J. For purposes of this Part II of the Order, when representations are made in television advertising which give rise to a required disclosure, such disclosure must be made simultaneously in both

audio and visual without any distracting sounds and with a clear background.

### III

*It is further ordered,* That respondents, within twenty (20) days from the date of service of this Order, send a copy of the letter as set forth in Exhibit A hereto via first class mail to each individual, partnership, corporation or other business entity to whom advertisements or promotional materials relating or referring to the Heater which contained a representation or testimonial prohibited by this Order or omitted a disclosure required by this Order were disseminated in the past and whom respondents are able to locate. Respondents shall use their best efforts to locate all such individuals, partnerships and corporations.

### IV

*It is further ordered,* That respondents forthwith deliver a copy of this Order to: (1) all present and future employees, agents and representatives engaged in any way in the advertising, promotion, offering for sale, sale or distribution of the Heater or any other product for which an energy related claim is made; and (2) all present and future individuals, partnerships or corporations to whom the respondents sell or distribute the Heater or any other product for which an energy related claim is made, and which are engaged in the resale or distribution of the Heater or other said product; and that respondents secure a signed statement acknowledging receipt of the Order from each such person or entity referred to herein.

### V

*It is further ordered,* That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this Order the individual respondent shall promptly notify the Commission of his affiliation with a new business or employment whose activities include the manufacture, purchase, advertising, promotion, offering for sale, sale or distribution of any product for which an energy related claim is made, or of his affiliation with a new business or employment in which his duties and responsibilities involve the manufacture, purchase, advertising,

promotion, offering for sale, sale, or distribution of any product for which an energy related claim is made. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of all duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

## VI

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order; *provided, however,* that in the event the giving of notice thirty (30) days prior to a proposed transfer, sale or assignment of all or a substantial part of the business or assets of the corporate respondent would prevent the consummation of such transfer, sale or assignment, respondents will be deemed to have complied with this Part VI of the Order if the respondents:

(a) give the Commission as much advance notice as possible regarding the proposed transfer, sale or assignment; and

(b) obtain a signed written agreement from the transferee, purchaser or assignee to be bound by the terms of this Order and file such agreement with the Commission prior to the consummation of the transfer, sale or assignment.

## VII

A. *It is further ordered,* That respondents shall maintain all records that relate to any compliance obligations arising out of this Order for a period of not less than three (3) years and shall make such records available to the staff of the Commission.

B. *It is further ordered,* That respondents herein shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Date  
8221 Arjons Drive  
San Diego, California 92126  
(714) 578-3710

RE: Recall of Advertisements and Promotional Materials

Dear Customer:

Some time ago we distributed to you advertisements and promotional materials concerning the Boekamp Quartz Energy Saver Heater. These materials contained a number of performance claims about the Quartz Heater. As a result of an investigation regarding these claims by the Federal Trade Commission, we have entered into the enclosed Consent Agreement and Order.

We have agreed to recall all past advertisements and promotional materials regarding the Heater which contain claims prohibited by the Order or which omit the disclosures required by the Order. To assure that no prohibited advertisements or promotional materials continue to be utilized, it is important that you return to us whatever advertisements and promotional materials you have received from us in the past.

Thank you for your attention.

Sincerely,

Konrad Boekamp, President  
Boekamp, Inc.

Complaint

97 F.T.C.

IN THE MATTER OF  
TELEDYNE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket 9131. Complaint, Nov. 27, 1979—Decision, April 13, 1981*

This consent order requires, among other things, a Los Angeles, Calif. manufacturer of oral irrigating devices and other consumer products to cease misrepresenting the content, results or conclusions of any survey or opinion research; failing to base preventive or therapeutic claims about devices upon other than competent and reliable scientific tests or other evidence; and claiming that the American Dental Association recommends the Water Pik unless such claim is in fact authorized by the ADA. Further, the order requires that claims regarding the ability of a device to prevent, mitigate or treat periodontal disease be based upon clinical tests which are well-controlled using acceptable testing procedures and that the firm maintain records substantiating its claims for three years after disseminating advertisements affected by this order.

*Appearances*

For the Commission: *Randell C. Ogg, John Clewett, Roberta L. Gross and David Axelrad.*

For the respondent: *Peter K. Bleakley, Daniel M. Lewis, Maxwell J. Mehlman, Carol A. Cichowski, and Vicki J. Divoll, Arnold & Porter, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Teledyne, Inc., Teledyne Industries, Inc., and J. Walter Thompson Company, hereinafter sometimes referred to as Respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Teledyne, Inc., (Teledyne) is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware with its executive office and principal place of business located at 1901 Avenue of the Stars, Los Angeles, California.

Respondent Teledyne Industries, Inc. is a corporation, organized,

existing and doing business under and by virtue of the laws of the State of California with its executive office and principal place of business located at 1901 Avenue of the Stars, Los Angeles, California.

PAR. 2. Respondent J. Walter Thompson Company (Thompson) is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive office and principal place of business located at 420 Lexington Ave., New York, New York.

PAR. 3. Respondent Teledyne, through corporate devices under its control, to wit, Teledyne Industries, Inc. and its division Teledyne Water Pik, now, and for some time past has been engaged in the distribution, sale and advertising of oral irrigating devices and other consumer products to the public.

PAR. 4. Respondents Teledyne and Teledyne Industries, Inc. through Teledyne Water Pik, cause the said products when sold to be transported from their places of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Teledyne and Teledyne Industries, Inc. maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondents Teledyne and Teledyne Industries, Inc., at all times mentioned herein have been and now are in competition in commerce with individuals, firms and corporations engaged in the sale and distribution of oral irrigators and other consumer products.

PAR. 6. Respondent Thompson is now, and for some time past has been, an advertising agency of the respondent Teledyne, Inc., and Teledyne Water Pik and now and for some time past has prepared and placed for dissemination, advertising material to promote the sale of various consumer products including the Water Pik oral irrigating device.

PAR. 7. Respondent Thompson, at all times mentioned herein, has been, and now is, in substantial competition in or affecting commerce with other advertising agencies.

PAR. 8. In the course and conduct of their businesses, and for the purpose of inducing the sale of Water Pik oral irrigators and other consumer products, respondents have disseminated and caused the dissemination of advertising in national magazines distributed by mail and across state lines, and in television and radio broadcasts transmitted by television and radio stations located in various States



of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines.

PAR. 9. Typical of the statements and representations in said advertisements, disseminated as previously described but not necessarily inclusive thereof, are found in advertisements attached hereto as Exhibits A, B, C, and D.

PAR. 10. Through the use of said advertisements referred to in Paragraphs Eight and Nine, and other advertisements not specifically set forth herein, respondents have represented and now represent directly or by implication that:

1. four out of five dentists recommend Water Pik to their patients;
2. four out of five dentists recommend the Water Pik because, in their medical judgment, the Water Pik plays a significant role in the prevention of gum disease;
3. the Water Pik when used with other methods of dental care plays a significant incremental role in the prevention of gum disease;
4. the use of the Water Pik will significantly diminish the chances of getting gum disease.

PAR. 11. At the time of the first dissemination of the representations contained in Paragraph Ten, respondents did not possess and rely upon a reasonable basis for making these representations. Therefore, the making and dissemination of said representations as alleged, constituted and now constitute unfair or deceptive acts or practices.

PAR. 12. Through the use of said advertisements referred to in Paragraphs Eight and Nine and other advertisements not specifically set forth herein respondents have represented and now represent directly or by implication that they possessed and relied upon a reasonable basis for the representations set forth in Paragraph Ten at the time of their initial and each subsequent dissemination.

PAR. 13. In truth and in fact, respondents did not possess or rely upon a reasonable basis for those representations at the time of their initial and each subsequent dissemination. Therefore, said representations are and were deceptive or unfair.

PAR. 14. Through the use of the advertisements referred to in Paragraph Eight and Paragraph Nine and others substantially similar thereto Respondents have represented and now represent, directly or by implication, that an appropriately designed, conducted, and analyzed survey of dentists proves the representations in Paragraph Ten (1) and Ten (2).

PAR. 15. In truth and in fact, the aforementioned survey does not

prove the representation in Paragraph Ten for reason that the alleged survey of the recommendations of dentists was not designed, conducted, and analyzed in accordance with accepted survey standards. Therefore, the representation referred to in Paragraph Fourteen was and is deceptive or unfair.

PAR. 16. Through the use of the advertisements referred to in Paragraph Eight and attached hereto as Exhibit D and others not specifically set forth herein, respondents Teledyne and Teledyne Industries, Inc. have represented directly or by implication that the Water Pik oral irrigating device is approved by the American Dental Association.

PAR. 17. In truth and in fact at the time of dissemination of such advertisements as referred to in Paragraph Eight, and attached hereto as Exhibit D, the Water Pik oral irrigating device was not approved by the American Dental Association. Therefore, said representation is false, misleading, deceptive and unfair.

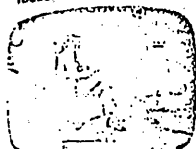
PAR. 18. The use by the Respondents of the aforesaid false, misleading, deceptive or unfair statements and representations, has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of oral irrigators sold by respondent Teledyne by reason of said erroneous and mistaken belief.

PAR. 19. The aforesaid acts and practices of Respondents, as herein alleged, were and are, all to the prejudice and injury of the public and of Respondents' competitors, and constituted, and now constitute, unfair or deceptive acts or practices in commerce and unfair methods of competition, in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

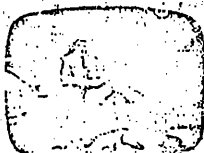
Complaint

97 F.T.C.

Bank TELEDYNE WATER PIK  
Product: WATER PIK



GREAT EVIDENCE: Even though your teeth are healthy, you can still lose them.



In fact, one out of 10 adults in America lose all their teeth to gum disease... gum disease that could be prevented.

Title: "Pre-senter"  
Length: 60 SECONDS



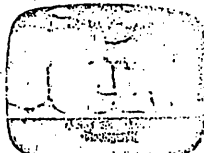
The regular use of the Water Pik Appliance can help. Because Water Pik does something 'easy' that no other form of home dental care can.



These powerful jets of water help move the debris that can lead to gum disease.



It washes away the debris loosened by flossing.



and it clears away hard-to-reach food particles your toothbrush misses... and while



Water Pik stimulates and massages your gums, it actually flushes away plaque from beneath the gum line.



When the Water Pik is used as part of a complete program of oral hygiene, it can help reduce the causes of gum disease. 160 women out of 500 in a survey recommended it.



Use the Water Pik. It works. Ask your dentist.

TELEDYNE  
WATER PIK

Complaint

EXHIBIT B



J. WARREN THOMPSON/SAN FRANCISCO  
Creative Department

*MB*

TELEVISION

No. YDMP 6693  
TELEDYNE WATER PIK  
Water Pik

Title "Proseptor"  
Length 1:30  
Approval No. 1h 3/17/76  
NS PRODUCTION

ACKY FULLER ON CAMERA IN DEN.

AUDIO  
ROBERT FULLER: One out of 10 adults in America lose all their teeth to gum disease, but the Water Pik appliance can help.

TO HIGH-SPEED FOOTAGE OF WATER PIK IN ACTION.

Its powerful jets of water help remove food debris that can lead to gum disease... from under the gumline-- places a brush misses -- while it massages, stimulates gums.

BACK TO FULLER.

Used as part of a complete oral hygiene program, the Water Pik can help reduce the causes of gum disease. No wonder 4 out of 5 dentists surveyed recommend the Water Pik.

PRODUCT SHOT

It works. Ask your dentist.

FEDERAL TRADE COMMISSION DECISIONS

Complaint

97 F.T.C.

EXHIBIT C



J. WALTER THOMPSON/SAN FRANCISCO  
Creative Department

1st BROADCAST  
CUT 2:44 Mon 7/17  
SHOW  
AIR DATE: 11/30/77  
TIME:  
"Robert Fuller"

TELEVISION

Job No. Client Product	Title Length Approval
TDWP 7423 Toledyne Water Pik Water Pik	AS PRODUCED 7/14/77 mm
<b>VIDEO</b>	<b>AUDIO</b>
OPEN ON ROBERT FULLER IN HIS DEN.	<b>ROBERT FULLER:</b> Have you tried the Water Pik yet? We literally get thousands of letters from dentists who recommend Water Pik and we're going to show you why. . . Even after brushing, the Water Pik removes food particles and even microscopic debris and bacteria you can see. . . Odor causing particles that also lead to gum disease. The sink shows why the Water Pik is one appliance every family should have and one reason why 4 out of 5 dentists surveyed recommend it.
CUT TO CLOSE UP/SLOW MOTION OF TEETH	
CUT TO SINK SHOWING DEBRIS.	
CUT BACK TO FULLER IN BATHROOM.	
PRODUCT SHOT WITH SUPER WATER PIK: IT WORKS.	The Water Pik. It works. Ask your dentist.

They used to call it pyorrhea. Now they call it periodontal disease. By either name it steals the teeth right out of your mouth. Perfectly good teeth become loose and fall out when the gums go bad. And three-fourths of all of the teeth people lose after the age of 40 are good teeth lost due to gum gums.

Now, there is a weapon with which we can fight back. It's now possible for your family to keep a full set of natural teeth for a lifetime. The weapon that's been added to the toothbrush and to regular dental attention, the newest weapon is a oral irrigating device - the Water Pik. Approved by the American Dental Association, the Water Pik is recommended by 4 out of 5 dentists.

Even if your teeth are bunched, even if you wear bridge-work or braces, now you can clean them with a jet stream of water which also stimulates and firms your gums and takes less than 90 seconds. I Water Pik my teeth at bedtime. And get a Water Pik device for your family, for your whole family, from your drug department or discount store. And then over, around and in-between your Water Pik teeth will be hydraulically clean.

(3/30/76)

## DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(d) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Teledyne, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1901 Avenue of the Stars, in the City of Los Angeles, State of California.

2. Respondent Teledyne Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1901 Avenue of the Stars, in the City of Los Angeles, State of California.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

## ORDER

## Part I

*It is ordered*, That respondents, their successors and assigns, and their officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other entity, in connection with the consumer advertising, offering for sale, sale or distribution of any consumer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the content, results or conclusions of any survey or opinion research.

B. Employing, in any advertisement for any product, the word "survey" (or any comparable term), or basing any claim upon one or more surveys in whole or in part which states, either expressly or by implication, the beliefs, opinions, practices, recommendations, or endorsements of any group, unless:

(1) a representative, unbiased and fair sampling from the population referred to in the advertisement is questioned;

(2) a projectable sample was used and the sample size of and the response rate to the survey were sufficiently large so as to allow meaningful projections to the population referred to in the advertisement with a reasonable degree of confidence, unless there is a clear and conspicuous disclosure in the advertisement that the survey may not be representative of the population referred to in the advertisement;

(3) the survey was completed within three (3) years prior to the date of the representation, unless there is other appropriate data which establish a reasonable basis for concluding that the beliefs, opinions, practices, recommendations or endorsements of the members of the group referred to in the advertisement have not materially changed since the completion of the survey; and

(4) the survey was designed, executed and analyzed in a competent and reliable manner.

C. Representing, directly or by implication, that the beliefs, opinions, practices, recommendations or endorsements of members of any group have been surveyed or sampled unless the survey or sample directly solicits the beliefs, opinions, practices, recommendations, or endorsements of the members of that group.

D. Representing, directly or by implication, that a professional body or any portion thereof has some belief, opinion, recommenda-



tion, endorsement or follows some typical course of conduct unless and only to the extent such representation is true.

## Part II

*It is further ordered.* That respondents, their successors and assigns, and their officers, representatives, and agents and employees, directly or through any corporation, subsidiary, division or other method, in connection with the consumer advertising, offering for sale, sale or distribution to a consumer of a "device," as "device" is defined in the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. (1) Making any statements or representations, directly or by implication, concerning the preventative or therapeutic abilities of such devices unless at the time the statements or representations are made, respondents possess and rely on a reasonable basis for such statements or representations, which shall consist of competent and reliable scientific tests as defined in Paragraph A(2) hereafter, or other competent and reliable evidence that substantiates such representation.

(2) For the purposes of this Order, a scientific test is one in which a person with skill and expertise in the field, conducts the test and evaluates its results in a disinterested manner using those testing procedures generally accepted in the profession which best ensure accurate and reliable results.

B. (1) Making any statements or representations, directly or by implication, concerning the ability of such devices to prevent, mitigate, or treat periodontal disease unless, at the time the statements or representations are made, respondents possess and rely on a reasonable basis for such statements or representations, which shall include a competent and reliable clinical test and may also include other competent and reliable evidence including competent and reliable opinions of experts who are qualified by professional training, education, and experience to render competent and reliable judgments in such matters.

(2) For purposes of this Order, a "clinical test" is one in which a person with skill and expertise in the field conducts a well-controlled test on human subjects, using those testing procedures generally accepted in the profession which ensure accurate and reliable results, and evaluates its results in a disinterested manner. The results of the test must be clinically significant, which requires that the test be, among other things, of sufficient duration to ensure that

the results are not materially distorted by any unusual short term practices or temporary physical conditions of the test subjects (as such practices or conditions related to the test conditions).

### Part III

*It is further ordered,* That respondents, their successors and assigns, and their officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other entity in connection with the advertising, offering for sale, distribution or sale of the Water Pik oral irrigating device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication that the Water Pik oral irrigation device is accepted, approved or endorsed by the American Dental Association unless (1) such claim is expressly authorized in writing, and unless (2) there is good reason to believe that at the time of such claims the American Dental Association subscribes to the facts or opinion therein contained.

### Part IV

*It is further ordered,* That respondents, for the period of three years after respondents last disseminated the advertisements of the products covered by this Order, shall retain all test results, data, and other documents or information on which it relied for their advertisements or any documentation which contradicts, qualifies or calls into serious question any claim included in such advertisements which were in their possession during either their creation or dissemination. Such records may be inspected by the staff of the Commission upon reasonable notice.

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondents such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

*It is further ordered,* That the respondents shall forthwith distribute a copy of this Order to each of their operating divisions, and to each of their officers, agents, representatives or employees who are engaged in the preparation and placement of advertisements.

*It is further ordered,* That the respondents shall, within sixty (60)

days after this Order becomes final and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by a responsible officer for respondents, setting forth in detail the manner and form in which they have complied with this Order.

Commissioner Pitofsky did not participate.