

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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FEDERAL TRADE COMMISSION, <i>et al.</i> ,)	Civil Action No.: MJG-98-3455 (Consolidated with MJG-98-4091)
)	
Plaintiffs,)	
)	
v.)	
)	
UNITED INDUSTRIES CORPORATION,)	
)	
Defendant.)	
<hr/>)	

STIPULATED ORDER FOR PERMANENT INJUNCTION AND FINAL RELIEF

On October 15, 1998, plaintiffs Federal Trade Commission, the State of Florida, the State of Georgia, the Commonwealth of Kentucky, the State of Maryland, the State of New Jersey, the State of North Carolina, the State of Texas and the Commonwealth of Virginia, (collectively referred to as "plaintiffs") commenced this action by filing their complaint against defendant United Industries Corporation ("United"). On December 15, 1998, the State of Ohio and the District of Columbia (also included in the collective name "plaintiffs") filed a similar complaint, and their claims were consolidated into this action. The plaintiffs allege that the defendant engaged in unfair or deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, and various state consumer protection laws, and seek a permanent injunction and other equitable relief. United denies the plaintiffs' allegations.

The plaintiffs and defendant United have agreed to the settlement of this action upon the following terms and conditions, without adjudication of any issues of fact or law, including

8/15/98

whether United made the representations alleged by Plaintiffs or whether the representations United made had a reasonable basis.

NOW, THEREFORE, the plaintiffs and United having requested the Court to enter this Order, it is Ordered, Adjudged, and Decreed as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and has jurisdiction over defendant United. Venue in the District of Maryland is proper;
2. The activities of the defendant are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
3. Defendant United has agreed to waive all rights to seek judicial review or otherwise challenge or contest the validity of this Stipulated Order;
4. Except as herein provided, this action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law; and
5. Entry of a stipulated final order is in the public interest.

DEFINITIONS

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

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. "Clearly and prominently" shall mean as follows:
 - A. Except as provided below, in an advertisement communicated through an electronic medium (such as television, video, radio, and interactive

media such as the Internet and online services), the message shall be presented simultaneously in both the audio and video portions of the advertisement. The audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video message shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the message shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation. *Provided that*, in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the ad is presented. *Provided further that*, in a television or video advertisement fifteen (15) seconds or less in length, the message may be presented in either the audio or video portion of the advertisement. If the message is presented in the video portion only, the message must (a) appear on the screen for at least five (5) seconds, (b) be displayed in two approximately equal lines together comprising at least seventy (70) horizontal scan lines, with each line comprising approximately thirty (30) scan lines, separated by approximately ten (10) scan lines, and (c) be displayed in a legible white type against a solid contrasting background. The message shall not be obscured by visual or other elements.

- B. In a print advertisement, promotional material, or instructional manual, the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts

with the background against which it appears. In multi-page documents, the message shall appear on the first page containing a representation covered under Section II or Section III of this Order.

- C. On a product label, the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any advertisement or on any label.

3. Unless otherwise specified, "defendant" or "United" shall mean United Industries Corporation, its successors and assigns, and its officers, agents, representatives, and employees.

4. "Distributor" shall mean any purchaser or other transferee of Terminate who acquires Terminate from defendant, with or without valuable consideration, and who sells, or who has sold, Terminate to other sellers or to consumers, including but not limited to individuals, retail stores, or those who sell through catalogs.

5. "The product" or "Terminate" refers to the product that in 1998 was offered and sold to consumers under the name "Spectracide Terminate Termite Home Defense System" and to any substantially similar product.

6. "State" includes all states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories of the United States.

7. "EPA" refers to the United States Environmental Protection Agency.

I.

IT IS ORDERED that defendant, directly or through any corporation, subsidiary, division, or other device, and all persons or entities in active concert or participation with it, who received actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising and promotion, offering for sale, sale, or distribution of Terminate or other termiticide shall not, in any manner, expressly or by implication:

- A. represent that use of such product alone is effective in preventing termite infestation or damage in homes;
- B. represent that the use of such product alone is effective in eliminating active termite infestation in homes;
- C. make representations comparing the performance of Terminate to any other termite control methods; or
- D. represent through the product name or otherwise that such product provides "protection for your home against subterranean termites" or that such product is a "termite home defense system,"

unless, at the time the representation is made, defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that nothing in this Order shall prohibit defendant from using any terms or statements on the Terminate product label required by the EPA to be placed on the label pursuant to the pesticide registration requirements of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., and regulations promulgated thereunder. For this purpose, terms or statements "required" by EPA do not include terms or

statements that EPA has approved for use on the label at defendant's option. In addition, nothing in this Order shall prohibit defendant from using on such product label any of the terms listed below if the EPA, pursuant to such registration requirements, has specifically approved those terms for optional use on the label and if such terms are presented with all qualifications and accompanying statements required by the EPA with respect to their use:

"Do-it-yourself termite killing system for/against subterranean termites"

"Termite killing stakes"

"Kills termites"

Defendant's use of the foregoing terms in any advertising or promotional materials for Terminate other than the product label also shall not be deemed a violation of this Order provided that EPA has specifically approved those terms for optional use and defendant has made accompanying statements in the manner and form set forth in Section III of this Order. *Provided further*, that nothing in this Order shall be construed to prohibit defendant from using "Terminate" as part of the product name.

III.

IT IS FURTHER ORDERED that defendant, directly or through any corporation, subsidiary, division, or other device, and all persons or entities in active concert or participation with it, who received actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Terminate shall not make any representation, in any manner, expressly or by implication, that such product kills termites, unless defendant states clearly and prominently, "Not recommended as sole protection against termites, and for active infestations, get a professional inspection." Provided that, for any broadcast advertisement fifteen (15) seconds or less in length, defendant may substitute the statement: "Not recommended as sole protection

against termites." In the case of multi-product advertisements, such as group photographs of the Spectrum product line or retailer advertising offering numerous other products for sale, the requirements of this section are inapplicable, unless the advertisement includes representations that pertain specifically to Terminate's ability to kill termites. Provided further, that if defendant possesses and relies upon competent and reliable scientific evidence substantiating the effectiveness of Terminate as sole protection or for active infestations, then defendant shall not be required to make the corresponding statements specified in this section.

IV.

IT IS FURTHER ORDERED that defendant, directly or through any corporation, subsidiary, division, or other device, and all persons or entities in active concert or participation with it, who received actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Terminate or other termiticide in or affecting commerce, shall not make any misrepresentation, expressly, or by implication, concerning the benefits, performance, efficacy, or use of such product.

V.

IT IS FURTHER ORDERED that defendant, directly or through any corporation, subsidiary, division, or other device, and all persons or entities in active concert or participation with it, who received actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Terminate or other termiticide in or affecting commerce, shall not make any representation, expressly or by implication, about the performance or efficacy of such product,

unless, at the time the representation is made, defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

VI.

IT IS FURTHER ORDERED that within ten (10) days of the date of the entry of this Order, defendant shall apply to the EPA for approval to change the product name to "Spectracide Terminate" and approval of the terms specified in Section II and Section III for use on the label of Terminate. Within thirty (30) days after receiving such approval from EPA, defendant shall apply to the pesticide regulatory agency in each state in which the product is currently registered for (1) approval to change the Terminate product name to "Spectracide Terminate" and (2) for permission to use the new EPA-approved label. For purposes of this Order, EPA Approval Date means the date that the EPA grants the EPA approval specified in this section. If EPA requires label changes in addition to the statements specified in Section III, that shall not affect the EPA Approval Date.

VII.

IT IS FURTHER ORDERED that this Order shall not apply to point-of-sale materials that are shipped to distributors before thirty (30) days have elapsed from the State Approval Date. For purposes of this section "point-of-sale" materials shall include:

- A. the label on the product boxes;
- B. package inserts in product boxes; and
- C. brochures that (a) are not inserted in product boxes; (b) contain only EPA-approved language and, at defendant's option, the phrases "Spectracide Terminate Termite Home Defense System" as the name of the product and

“Satisfaction Guaranteed or your Money Back;” and (c) do not contain the phrases “Do-it-yourself protection for your home against subterranean termites,” “For use in the control/prevention of subterranean termite infestations,” or “Guaranteed to protect your home from subterranean termite attack or your money back.”

- D. pallet or shelf displays that (a) contain only EPA-approved language and, at defendant’s option, the phrases “Spectracide Terminate Termite Home Defense System” as the name of the product and “Satisfaction Guaranteed or your Money Back;” and (b) do not contain the phrases “Do-it-yourself protection for your home against subterranean termites,” “For use in the control/prevention of subterranean termite infestations,” or “Guaranteed to protect your home from subterranean termite attack or your money back.”

State Approval Date means the date that the States of Florida, Texas, Ohio, Georgia, North Carolina, New Jersey, Virginia, Kentucky, Maryland, California, South Carolina, Oklahoma, Tennessee, Alabama, Arizona, Mississippi, Missouri, Arkansas, Illinois, Kansas, New Mexico, Pennsylvania, Michigan, West Virginia, Iowa, Nebraska, Nevada, Delaware, and the District of Columbia, and fifty percent (50%) of the other states in which the product is registered have granted the state approvals specified in Part VI and United has received notice from these states, verbally or in writing, of said approval; excluding, however, any state in which the product is not registered at the time defendant seeks such state approvals.

VIII.

If a consumer returns a warranty registration card to United that indicates that the consumer bought the product to help control an active infestation, then United shall promptly

mail to that consumer an informational paper or brochure. That paper or brochure shall describe the proper steps the consumer should take to address an active infestation as set forth by the then EPA-approved label language for Terminate. Within sixty (60) days of the date of entry of this Order, United shall mail such informational paper or brochure to each consumer who previously returned a warranty registration card to United that indicated that the consumer bought the product to help control an active termite infestation.

IX.

Within fourteen (14) days after the entry of this Order, United shall pay reimbursement to the State of Florida, the State of Georgia, the Commonwealth of Kentucky, the State of Maryland, the State of New Jersey, the State of North Carolina, the State of Texas, the Commonwealth of Virginia, the State of Ohio and the District of Columbia, in the amount of Forty Thousand Dollars (\$40,000) each, for their attorney's fees, costs, and investigative expenses incurred in connection with this matter. Other than as provided above, each party shall bear its own costs, fees, and expenses in connection with this matter.

X.

United presently has a program under which it sends refunds to dissatisfied Terminate consumers. United shall promptly provide refunds to consumers who purchased Terminate prior to or after the date of entry of this Order who are dissatisfied with their purchase of Terminate and who provide satisfactory proof of purchase within fifteen (15) months of their purchase of Terminate. Consumers may send their request for refund and proof of purchase to United at:

Consumer Services Department
Attn: Karen Holder
United Industries Corporation
8494 Delport Drive
St. Louis, MO 63114.

Satisfactory proof of purchase includes a warranty registration card on file at United, return of the product carton or portion thereof specified by United, return of the stake insertion tool, a purchase receipt, or a previously unspent warranty card. United may take reasonable steps to avoid multiple refunds for one product purchase; for example, limiting refunds to one per address, unless a consumer provides satisfactory proof of multiple purchases (e.g. return of multiple stake insertion tools).

XI.

IT IS FURTHER ORDERED that defendant, and its successors and assigns, shall, for three (3) years after the last date of dissemination of any representation covered by this Order, maintain and upon written request make available to the Federal Trade Commission or any plaintiff state for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that constitute the basis relied upon for the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation,

including complaints and other communications with consumers or with governmental or consumer protection organizations.

XII.

If any plaintiff has questions concerning a particular consumer's experience or dissatisfaction with Terminate, then that plaintiff may contact:

James Olsen
United Industries Corporation
8825 Page Boulevard
St. Louis, MO 63114

Such contacts shall be limited to informal inquiries concerning a particular consumer's experience with the product. All contacts other than those specified in this section and Section X and all written communication with United shall be addressed to:

Matthew McCarthy, Esq.
Vice President and General Counsel
United Industries Corporation
8825 Page Boulevard
St. Louis, MO 63114

In addition, any communication concerning this lawsuit or compliance with this Order shall also be addressed to:

J. William Newbold, Esq.
Thompson Coburn
One Mercantile Center
St. Louis, MO 63101.

XIII.

IT IS FURTHER ORDERED that defendant, and its successors and assigns, shall deliver a copy of this Order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having

responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendant shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

XIV.

IT IS FURTHER ORDERED that defendant, United Industries Corporation, and its successors and assigns shall:

- A. Within fifteen (15) days after the EPA Approval Date, send by first class certified mail, return receipt requested, to each distributor of Terminate with whom defendant has done business since March 1, 1998, (1) an exact copy of the letter attached hereto as Attachment A; and (2) important usage notes in a form substantially similar to Attachment B hereto, to be posted by the distributor, pursuant to the instructions set forth in Attachment A, at the location where it is currently selling Terminate;
- B. In the event that defendant learns that, subsequent to receipt of Attachments A and B, any distributor is (1) using or disseminating any advertisement or promotional material that contains any representation prohibited by this Order, or (2) failing to post the important usage notes (Attachment B) pursuant to the instructions set out in Attachment A, defendant shall immediately notify the distributor that defendant will cease selling Terminate to the distributor if it (1) continues to use such

advertisements and promotional materials and/or (2) fails to post the important usage notes (Attachment B) pursuant to the instructions set forth in Attachment A; and

- C. Cease selling Terminate to any distributor if defendant learns that such distributor has, after receipt of the notice required by subpart B of this part, (1) continued to use advertisements or promotional materials that contain any representation prohibited by this Order and/or (2) failed to post the important usage notes (Attachment B) pursuant to the instructions set forth in Attachment A.

XV.

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order, defendant, its successors and assigns, shall notify the Commission and each plaintiff state of any proposed change in the structure of defendant, United Industries Corporation, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or other action that would result in the emergence of a successor corporation, or any other change that may affect compliance obligations arising out of this Order, at least thirty (30) days prior to the effective date of any proposed change; *provided, however, that, with respect to any proposed change in the corporation about which defendant learns less than thirty (30) days prior to the date*

such action is to take place, defendant shall notify the Commission and each plaintiff state as soon as is practicable after learning of such proposed change;

- B. Sixty (60) days after the date of entry of this Order, defendant shall provide a written report to the Commission and each plaintiff state, sworn to under penalty of perjury, setting forth in detail the manner and form in which the defendant has complied and is complying with this Order;
- C. Upon written request by a representative of the Commission or any plaintiff state, defendant shall submit additional written reports (under oath, if requested) and produce documents on thirty (30) days' notice with respect to any conduct subject to this Order;
- D. For purposes of the compliance reporting required by this part, the Commission and each plaintiff state are authorized to communicate directly with defendant; and
- E. For the purposes of this Order, defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director, Division of Enforcement
Federal Trade Commission
6th & Pennsylvania Ave., N.W.
Washington, D.C. 20580
Re: FTC v. United Industries Corp.

and, unless otherwise directed by the respective authorized representatives of the plaintiff states, mail all written notifications to the plaintiff states to:

Bennett Rushkoff
Senior Counsel
Office of the Corporation Counsel
One Judiciary Square
441 4th Street, N.W.
Washington, DC 20001

Robert Buchner
Assistant Attorney General
Office of the Attorney General
110 S.E. Sixth Street
Ft. Lauderdale, FL 33301

Paul L. Weisbecker
Assistant Attorney General
Office of the Attorney General
40 Capitol Square, S.W.
Atlanta, GA 30334-1300

David R. Vandeventer
Assistant Attorney General
Consumer Protection Division
1024 Capitol Center Drive
Frankfurt, KY 40601

Carmen M. Shepard
Deputy Attorney General
Office of the Attorney General
200 Saint Paul Place
Baltimore, MD 21202-2021

Christopher J. Dalton
Deputy Attorney General
Department of Law and Public Safety
Division of Law
104 Halsey Street
P.O. Box 45029
Newark, NJ 07101

David N. Kirkman
Assistant Attorney General
Office of the Attorney General
114 West Edenton Street
P.O. Box 629
Raleigh, NC 27602

Cheryl R. Hawkinson
Assistant Attorney General
Consumer Protection Section
State Office Tower
30 East Broad Street
25th Floor
Columbus, OH 43215

D. Esther Chavez
Assistant Attorney General
Consumer Protection Division
P.O. Box 12548
Austin, TX 78711-2548

Natalie Harris
Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, VA 23219

XVI.

IT IS FURTHER ORDERED that the Commission and each plaintiff state are authorized to monitor defendant's compliance with this Order by all lawful means.

XVII.

IT IS FURTHER ORDERED that the Court retains jurisdiction of this matter for purposes of enforcement of this Order.

STIPULATED AND AGREED TO BY:

PLAINTIFFS

FEDERAL TRADE COMMISSION

Dated:

March 22, 1999

By:

David C. Fix
Michelle Chua

David C. Fix
Michelle Chua
Attorneys
Federal Trade Commission
6th St. & Pennsylvania Ave., NW
Washington, DC 20580
(202) 326-3248
(202) 326-3392 (facsimile)

DISTRICT OF COLUMBIA

JOHN M. FERREN
Corporation Counsel

ROBERT R. RIGSBY
Deputy Corporation Counsel, Enforcement

CHARLOTTE W. PARKER
Director, Civil Branch

Dated:

March 22, 1999

By:

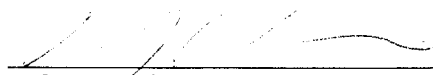
Bennett Rushkoff

Bennett Rushkoff, Bar No. 025071
Senior Counsel
Consumer and Regulatory Actions
Office of the Corporation Counsel
One Judiciary Square, Room 6N05
441 4th Street, N.W.
Washington, DC 20001
(202) 727-3500
(202) 727-6014 (facsimile)

STATE OF FLORIDA

ROBERT A. BUTTERWORTH
Attorney General


Dated: 1/25/99

By: 
Robert Buchner
Assistant Attorney General
Office of the Attorney General
110 S.E. Sixth Street
Ft. Lauderdale, FL 33301
(954) 712-4600
(954) 712-4658 (facsimile)

STATE OF GEORGIA

THURBERT E. BAKER
Attorney General

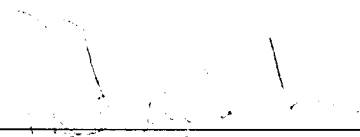
Dated: 2/25/99

By: 
Paul L. Weisbecker, Ga. Bar No. 746464
Assistant Attorney General
Office of the Attorney General
40 Capitol Square, S.W.
Atlanta, GA 30334-1300
(404) 657-3202
(404) 656-0677 (facsimile)

COMMONWEALTH OF KENTUCKY

ALBERT B. CHANDLER III
Attorney General

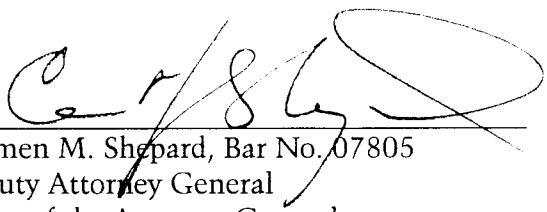
Dated: 4/24/99

By: 
David R. Vandeventer
Assistant Attorney General
Consumer Protection Division
1024 Capitol Center Drive
Frankfurt, KY 40601
(502) 696-5389
(502) 573-8317 (facsimile)

STATE OF MARYLAND

J. JOSEPH CURRAN, JR.
Attorney General

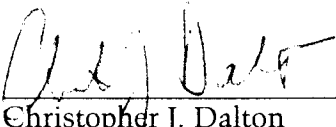
Dated: 2/25/97

By: 
Carmen M. Shepard, Bar No. 07805
Deputy Attorney General
Office of the Attorney General
200 Saint Paul Place
Baltimore, MD 21202-2021
(410) 576-6300
(410) 576-7003 (facsimile)

STATE OF NEW JERSEY

PETER VERNIERO
Attorney General

Dated: 2/23/97

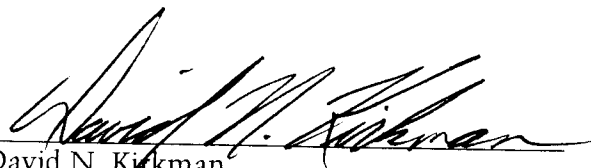
By: 
Christopher J. Dalton
Deputy Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101
(973) 648-3070
(973) 648-7462 (facsimile)

STATE OF NORTH CAROLINA

MICHAEL F. EASLEY
Attorney General

Dated: Feb. 18, 1999

By:



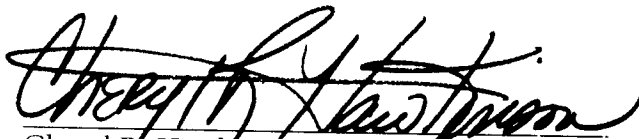
David N. Kirkman
Assistant Attorney General
Office of the Attorney General
114 West Edenton Street
P.O. Box 629
Raleigh, NC 27602
(919) 716-6000
(919) 716-6050 (facsimile)

STATE OF OHIO

BETTY D. MONTGOMERY
Attorney General

Dated: FEB. 22, 1999

By:



Cheryl R. Hawkinson
Assistant Attorney General
Office of the Attorney General
Consumer Protection Section
State Office Tower
30 East Broad Street
25th Floor
Columbus, OH 43215
(614) 752-6732
(614) 466-8898 (facsimile)

STATE OF TEXAS

JOHN CORNYN
Attorney General

ANDY TAYLOR
First Assistant Attorney General

LINDA S. EADS
Deputy Attorney General for Litigation

DEAN SCHAFFER
Chief, Consumer Protection Division

Dated: ^{MC} March 16, 1999

By: Esther Chavez ^{MC}
D. Esther Chavez
Assistant Attorney General
Consumer Protection Division
P.O. Box 12548
Austin, TX 78711-2548
(512) 475-4628
(512) 473-8301 (facsimile)
State Bar No. 04162200

COMMONWEALTH OF VIRGINIA

MARK L. EARLEY
Attorney General

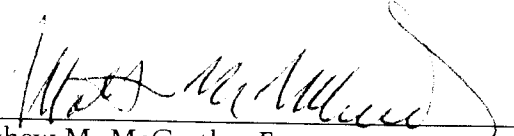
Dated: 5/24/99

By: Natalie Harris
Natalie Harris
Assistant Attorney General
900 East Main Street
Richmond, VA 23219
(804) 786-2071
(804) 786-0122 (facsimile)

DEFENDANT

UNITED INDUSTRIES CORPORATION

Dated: 2/5/99

By: 

Matthew M. McCarthy, Esq.
Vice President and General Counsel
8825 Page Boulevard
St. Louis, MO 63114
(314) 427-0780
(314) 427-6945 (facsimile)

ATTORNEY FOR DEFENDANT

THOMPSON COBURN

Dated: Feb. 5, 1999

By: 

WILLIAM NEWBOLD
One Mercantile Center
St. Louis, MO 63101
(314) 552-6000
(314) 552-7000 (facsimile)

IT IS SO ORDERED:

Dated: _____

MARVIN J. GARBIS
United States District Judge

Attachment A

BY CERTIFIED MAIL RETURN RECEIPT REQUESTED
[To Be Printed on United Industries Corporation letterhead]

[date]

Dear [distributor's name]:

United Industries Corporation ("United") recently settled a civil dispute with the Federal Trade Commission (FTC) and several states' attorneys general involving advertising claims for our Spectracide Terminate baiting product. Our records indicate that you are a distributor or seller of Terminate. As a part of the settlement, we must make sure that you help us comply with the FTC order.

Our settlement with the FTC and state attorneys general requires us not to represent to consumers that use of Terminate alone is effective in preventing termite infestations or eliminating active termite infestations, that Terminate provides "protection for your home against subterranean termites," or that Terminate is a "termite home defense system" unless we possess scientific evidence sufficient to substantiate those claims. Under our agreement, United is permitted to continue using its current packaging and certain point of sale material until new packaging and point of sale material is approved by EPA and the appropriate state pesticide regulatory agencies.

In addition, the settlement with the FTC and states' attorneys general requires that the attached IMPORTANT USAGE NOTES be posted clearly, and in close proximity to the Terminate display, for a period of one hundred eighty (180) days from the date of your receipt of this letter. If you fail to post this notice, we are required to stop selling Terminate to you.

Although we do not admit that the FTC's and the states' allegations are true, we have agreed to send this letter as a part of our settlement with the FTC and the states.

Thank you very much for your assistance. If you have any questions, please call Jim Olsen at (800) 242-1166.

Attachment B

IMPORTANT USAGE NOTES

1. USE LIMITATIONS

Terminate is not recommended for use by homeowners as the sole protection against termite damage to the home.

2. FOR ACTIVE INFESTATIONS, GET A PROFESSIONAL INSPECTION.

For active infestations, we recommend an inspection by a competent professional.

3. IN AREAS WITH FORMOSAN TERMITES, WE RECOMMEND INSPECTION BY A COMPETENT PROFESSIONAL. TERMINATE IS NOT DESIGNED TO BE EFFECTIVE AGAINST DRYWOOD TERMITES.

If you live near coastal areas in the Southeast, Gulf Coast or Southern California, you may have a termite known as the Formosan termite. Formosan termites are a very difficult-to-control termite species. If you live in these areas of the country, regular inspections by a competent professional are recommended to determine if Formosan termites are in your home. Terminate will not work against drywood termites, which are also located in these areas of the country. A professional inspector can determine if you have drywood termites.

4. DETAILED INSTRUCTIONS APPEAR ON THE TERMINATE LABEL AND IN A BROCHURE IN THE TERMINATE BOX.

We recommend that you read the entire label and the brochure before using Terminate.