

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Robert Pitofsky, Chairman
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III
Christine A. Varney

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In the Matter of)
)
RUSTEVADER CORPORATION,)
a/k/a)
RUST EVADER CORPORATION,)
a corporation,)
d/b/a)
REC TECHNOLOGIES,)
and)
DAVID F. McCREADY,)
individually, and as an officer)
of said corporation.)
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DOCKET NO. 9274

DECISION AND ORDER
WITH RESPECT TO
RESPONDENT
DAVID F. MCCREADY

The Commission having heretofore issued its complaint charging David F. McCready (hereinafter "respondent") and RustEvader Corporation with violation of Section 5 of the Federal Trade Commission Act, as amended, and respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondent, his attorney, 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 complaint, a statement that the signing of said 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, or that the facts alleged in such complaint, other than jurisdictional facts, are true, 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The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with §3.25(c) of its Rules; and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, and having duly considered the comments received, now in further conformity with the procedure prescribed in §3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. RustEvader Corporation, a/k/a Rust Evader Corporation, sometimes d/b/a REC Technologies(REC)is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1513 Eleventh Avenue, Altoona, Pennsylvania 16603.

Respondent David F. McCready has been an owner, officer and director of said corporation. At times material to the complaint herein, he formulated, directed, and controlled the policies, acts, and practices of said corporation. His address is RD 4 Box 92 B, Altoona, Pennsylvania 16601.

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

* * * *

Definitions

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

- A. "Electronic corrosion control device" shall mean any device or mechanism that is intended, through the use of electricity, static or current, to control, retard, inhibit or reduce corrosion in motor vehicles.
- B. "Rust Evader" shall mean the electronic corrosion control device sold under the trade names Rust Evader, Rust Buster, Electro-Image, Eco-Guard, and any other substantially similar product sold under any trade name.

- C. "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.

I.

IT IS ORDERED that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of the Rust Evader, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from representing, in any manner, directly or by implication, that such product is effective in preventing or substantially reducing corrosion in motor vehicle bodies.

II.

IT IS FURTHER ORDERED that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from making any representation, directly or by implication, concerning the performance, efficacy or attributes of such product unless such representation is true and, at the time such representation is made, respondent possesses and relies upon competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence, that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or

distribution of any product for use in motor vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, interpretations or purpose of any test, study, or survey.

IV.

IT IS FURTHER ORDERED that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that any demonstration, picture, experiment or test proves, demonstrates or confirms any material quality, feature or merit of such product.

V.

IT IS FURTHER ORDERED that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of the Rust Evader in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from employing the terms Rust Evader or Rust Buster in conjunction with or as part of the name for such product or the product logo.

VI.

IT IS FURTHER ORDERED that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any consumer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act and actually costing the consumer more than five dollars (\$5.00), shall forthwith cease and desist from conditioning any written or implied warranty of such product on the consumer's purchase or use, in connection with such product, of any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name.

VII.

IT IS FURTHER ORDERED that respondent David F. McCready, individually and as an officer of RustEvader Corporation, his successors and assigns, shall be liable for consumer redress in the amount of two hundred thousand dollars (\$200,000.00) as provided herein:

- A. Not later than five (5) days from the date this Order becomes final, respondent shall deposit into an escrow account to be established by the Commission for the purpose of receiving payment due under this Order ("Commission escrow account"), the sum of two hundred thousand dollars (\$200,000.00).
- B. **Provided however,** that if, at the time this Order becomes final, respondent has not completed the sale of respondent's property known as RD 4 Box 92B, Altoona,

Pennsylvania 16601, then respondent shall deposit, into the Commission escrow account, not later than five (5) days from the date this Order becomes final, the sum of forty thousand dollars (\$40,000.00). Respondent shall deposit the remaining one hundred sixty thousand dollars (\$160,000.00) into the Commission escrow account upon the sale of respondent's property known as RD 4 Box 92B, Altoona, Pennsylvania 16601 at the time of the sale of said property or six months from the date that this Order becomes final, whichever first occurs. Respondent shall provide security for the one hundred sixty thousand dollars (\$160,000.00) by means of a mortgage on the property known as RD 4 Box 92B, Altoona, Pennsylvania 16601. Such mortgage shall be in a form, and shall be entered into by such date as agreed to by the parties, but no later than five (5) days from the date this Order becomes final.

- C. In the event of any default in payment to the Commission escrow account, which default continues for more than ten (10) days beyond the date of payment, respondent shall also pay interest as computed under 28 U.S.C. Section 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.
- D. The funds deposited by respondent in the Commission escrow account, together with accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of the Rust Evader in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondent shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.
- E. At any time after this Order becomes final, the Commission may direct the agent for the Commission escrow account to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. The Commission,

or its representative, shall, in its sole discretion, select the escrow agent.

- F. Respondent relinquishes all dominion, control and title to the funds paid into the Commission escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondent, respondent acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VIII.

IT IS FURTHER ORDERED that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent David F. McCready, or his successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All materials that were relied upon in disseminating such representation; and
- B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IX.

IT IS FURTHER ORDERED that respondent David F. McCready shall, for a period of ten (10) years from the date of issuance of this Order, notify the Federal Trade Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

X.

IT IS FURTHER ORDERED that this Order will terminate on October 30, 2016, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; **provided, however**, that the filing of such complaint will not affect the duration of:

- A. Any paragraph in this Order that terminates in less than twenty (20) years;
- B. This Order's application to any respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XI.

IT IS FURTHER ORDERED that respondent David F. McCready shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: October 30, 1996