

IN THE MATTER OF

INTERNATIONAL SHOE COMPANY, ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6835. Consent Order, March 6, 1958—Set Aside Order, Jan. 30, 1985

In its *Order Reopening and Setting Aside Order Issued March 6, 1958*, the Commission notes that the public interest warrants granting the request filed by Interco Incorporated (formerly International Shoe Company) to set aside the 1958 consent order which barred the company from engaging in exclusive-dealing arrangements with shoe dealers, and providing loans and special services to those dealers who agreed to handle the firm's products exclusively. The Commission found that the same considerations that prompted its July 16, 1984 determination to set aside the 1966 Order issued against the Brown Shoe Company, Inc., 104 F.T.C. 266, which also involved a perpetual exclusive dealing order, are applicable in present action. Accordingly, this Order reopens the matter and sets aside the consent order issued against International Shoe Company on March 6, 1958 (54 F.T.C. 1120).

ORDER REOPENING AND SETTING ASIDE ORDER ISSUED MARCH 6, 1958

On October 9, 1984, respondent Interco Incorporated (formerly International Shoe Company and hereafter "Interco") filed a Request To Reopen And Set Aside Order ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and Section 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen the consent order issued on March 6, 1958 ("the order") and set it aside. Interco's request was on the public record for thirty days and no comments were received.

After reviewing respondent's Request, the Commission has concluded that the public interest warrants reopening and setting aside the order as requested by respondent. The action we take today is consistent with our recent determination in *Brown Shoe Company, Inc.*, Docket No. 7606, July 16, 1984 [104 F.T.C. 266], which also involves a perpetual exclusive dealing order in the shoe industry. The same considerations which prompted our action in *Brown Shoe* are applicable to the present request.

Accordingly, *it is ordered*, that this matter be, and it hereby is, reopened, and that the Commission's order issued on March 6, 1958, shall be of no further force and effect as of the effective date of this order.

Set Aside Order

105 F.T.C.

IN THE MATTER OF

LURIA BROTHERS AND COMPANY, INC., ET AL

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT*Docket 6156. Order, Feb. 13, 1963—Set Aside Order, Feb. 1, 1985*

After considering respondent's petition to reopen the matter and set aside the Commission's order of February 13, 1963 (62 F.T.C. 243), together with public comments and other relevant information, the Commission found that the order, which, among other things, barred the firm from entering into exclusive supplier arrangements with steel mills and receiving preferential treatment as a scrap metal supplier, no longer serves the public interest. The Commission held that in view of the present characteristics of the ferrous scrap industry, and respondent's present inability to exclude competitors through the exercise of market power, the order no longer serves any procompetitive purpose and may impede Luria's ability to compete effectively for the business of scrap consumers that desire exclusive supply arrangements. Accordingly, the Order reopens the matter and sets aside the Commission's order of February 13, 1963 as it applies to respondent Luria.

ORDER REOPENING AND SETTING ASIDE THE ORDER

ISSUED FEBRUARY 13, 1963

By petition filed on September 19, 1984, Luria Brothers & Company, Inc. (hereafter "Luria") requests that the Commission reopen the proceeding in Docket No. 6156 and set aside the order therein. Upon consideration of Luria's petition, the public comments, and other relevant information, the Commission now finds that the public interest warrants reopening the proceeding and setting aside the order as to Luria.

The record describes an industry in which Luria's use of exclusive arrangements to supply purchased iron and steel scrap to any foreign or domestic scrap consumer, including respondent mills, would have no significant anticompetitive effects. Luria's shares in the national and regional ferrous scrap markets have declined steadily since the Commission issued its complaint in this matter. In contrast to its previous dominance in the export of iron and steel scrap, Luria is now only minimally involved in that aspect of the scrap business. Moreover, concentration in the industry has decreased significantly as new firms have entered the market, thus demonstrating the absence of natural or artificial barriers to entry.

In view of the present characteristics of the ferrous scrap industry, and Luria's inability to exclude competitors through the exercise of market power, the order now serves no procompetitive purpose and

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Set Aside Order

may impede Luria's ability to compete effectively for the business of scrap consumers that desire exclusive supply arrangements. As a result, we conclude that the order no longer is in the public interest. However, the Commission will not be precluded from taking enforcement action concerning the practices that are the subject of this order when the Commission has reason to believe they violate the law.

Accordingly,

It is ordered, That this matter be and it hereby is reopened, and that the Commission's February 13, 1963 order be and it hereby is set aside as it applies to respondent Luria.

Commissioner Bailey concurred in the result.

Set Aside Order

105 F.T.C.

IN THE MATTER OF

AMERICAN MOTORS CORPORATION, ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3093. Consent Order, July 6, 1982—Set Aside Order, Feb. 14, 1985*

This Order reopens the proceeding and grants the petitions of a utility vehicle manufacturer and its subsidiary to set aside the FTC Consent Order issued on July 6, 1982 (100 F.T.C. 229 (1982)), which requires them to attach to each new Jeep CJ a sticker warning that multipurpose vehicles handle differently from ordinary passenger cars and sudden sharp turns or abrupt maneuvers may result in loss of control; and to include additional safety disclosures in Owner's Manuals and Supplements. Petitioners' request that the Order be set aside was based on changes in law and fact and on public interest considerations. The manufacturers asserted that a new regulation promulgated by the National Highway Traffic Safety Administration ("NHTSA"), which became effective on September 1, 1984, covers the same subject matter as FTC's Order and makes the Order unnecessary. Further, while the regulation requires all manufacturers of utility vehicles to place a sticker on such vehicles and to disclose in their operating manuals information "to alert drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when those vehicles are operated on paved roads," respondent is the only manufacturer of such vehicles subject to dual liability. After considering all arguments presented by petitioners, and noting that NHTSA, the federal agency with the specific statutory responsibility to regulate automobile traffic, has in effect a regulation, enforceable by the assessment of penalties, that adequately addresses the problem that led to issuance of the FTC Order, the Commission concluded that petitioners had adequately shown that changed conditions of law and fact and public interest considerations require that the Order be set aside. Accordingly, the Commission ordered the matter reopened and the consent order set aside.

ORDER REOPENING THE PROCEEDING AND SETTING ASIDE
CEASE AND DESIST ORDER

On September 13, 1984, American Motors Corporation and its wholly-owned subsidiary, Jeep Corporation, respondents in the captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rule of Practice to reopen the proceeding and set aside the Consent Order entered therein.

The Order, which was issued on July 6, 1982, requires, *inter alia*, that respondents affix a sticker to the instrument panel or windshield frame of each new Jeep CJ reading as follows:

This multipurpose vehicle handles and maneuvers differently from an ordinary passen-

may result in loss of control. Read driving guidelines in Owner's Manual and Supplement.

WEAR SEATBELTS AT ALL TIMES

The Order also requires respondents to disclose in the Owner's Manual for new Jeep CJ's and in an informational Supplement to the Owner's Manual the following:

Utility vehicles have higher ground clearance and narrower track to make them capable of performing in a wide variety of off-road applications. Specific design characteristics give them a higher center of gravity than ordinary cars. An advantage of the higher ground clearance is a better view of the road allowing you to anticipate problems. They are not designed for cornering at the same speeds as conventional 2WD vehicles any more than low-slung sports cars are designed to perform satisfactorily under off-road conditions. If at all possible, avoid sharp turning maneuvers. As with other vehicles of this type, failure to operate this vehicle correctly may result in loss of control or an accident.

The Order further mandates that respondents include the following statement in the introduction to the Supplement:

As with other vehicles of this type, failure to operate this vehicle correctly may result in loss of control or an accident. Be sure to read on-pavement and off-road driving guidelines which follow.

Petitioners' requests that the Order be set aside is based on changes in law and fact and on public interest considerations. The petition asserts that a new regulation of the National Highway Traffic Safety Administration ("NHTSA") became effective on September 1, 1984, which covers the same subject matter as the Commission's Order. 49 C.F.R. 575.105, *reprinted* in 49 FR 20016 (1984). NHTSA's regulation requires all manufacturers of utility vehicles to place a sticker on such vehicles and to disclose in their Operating Manuals information "to alert drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when those vehicles are operated on paved roads." While the sticker and the disclosures required by the NHTSA regulation were patterned after those in the Commission's Order against petitioners, the language therein differs substantively from the exact language required by the Commission's Order. Violations of both the NHTSA regulation and the Commission's Order may subject petitioners to civil penalties.

Petitioners argue that the new regulation promulgated and implemented by NHTSA constitutes a change of law. The regulation covers the same subject matter as the Commission's Order, and NHTSA is the federal agency with specific statutory authority to regulate traffic

safety. See 15 U.S.C. 1381 (1982). "In short," petitioners' assert, "the NHTSA regulation has made the Order unnecessary."

As a changed condition of fact, petitioners argue that the new NHTSA regulation ensures that they will continue to make disclosures concerning the handling of utility vehicles. The regulation applies to all utility vehicles, and AMC is the only manufacturer of such vehicles subject to dual liability. Petitioners are, therefore, injured competitively. Furthermore, they contend that they have been placed in an untenable regulatory dilemma. If they comply with the NHTSA regulation, they are in violation of the Commission's Order, and compliance with the Order constitutes non-compliance with the NHTSA regulation. Penalties are assessable for violations of both the regulation and the Order.

Finally, petitioners contend that the public interest requires that the Order be set aside because inconsistent and overlapping regulatory schemes do not serve the goal of efficient government administration.

Under Section 5(b) of the Federal Trade Commission Act and Rule 2.51 of the Commission's Rules, the Commission must reopen the proceeding and consider altering, modifying or setting aside an Order if a respondent files a request showing that changed conditions of law or fact require the Order to be altered, modified or set aside, in whole or in part, or that the public interest so requires.

The National Highway Traffic Safety Administration, the federal agency with the specific statutory responsibility to regulate automobile traffic safety, has in effect a regulation, enforceable by the assessment of penalties, that adequately addresses the problem that led to the issuance of the Commission's Order. Therefore, the Commission has concluded that petitioners have adequately shown that changed conditions of law and fact and public interest considerations require that the Order be set aside.

Accordingly, *it is ordered*, that the proceeding in this matter be reopened and the Order set aside.

IN THE MATTER OF

SENTRONIC CONTROLS CORPORATION, ET AL.

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

Docket C-3150. Complaint, Feb. 21, 1985—Decision, Feb. 21, 1985

This Consent Order, among other things, requires three Chicago, Ill. corporations and three individuals engaged in the advertising, sale and distribution of an ultrasonic pest control product called the "Pest Sentry," to cease representing that the Pest Sentry or any other ultrasonic pest control device will eliminate cockroaches, rats, mice, and other such pests from a home or place of business; eliminate them within a specified period of time; prevent them from entering or remaining in an area where the product is being used; and serve as an effective alternative to the use of conventional pest control products. The Order further bars respondents from making any performance or effectiveness claims for ultrasonic pest control devices unless they possess and rely on competent and reliable substantiating evidence when making those claims.

Appearances

For the Commission: *Edwin Dosek*.

For the respondents: *Alvin Becker, Beerman, Swerdlow, Woloshin, Berezky & Berkson, Chicago, Ill.*

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 Sentronic Controls Corporation, a corporation, International Marketing & Manufacturing, Inc., a corporation, Unigraf, Inc. a corporation, Stanley Stewart and Anne K. Stewart, individually and as officers of said Sentronic Controls Corporation and of International Marketing & Manufacturing, Inc., and Richard Muller, individually and as an officer of said Sentronic Controls Corporation and of Unigraf, Inc., 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. Respondents Sentronic Controls Corporation (SCC) and International Marketing & Manufacturing, Inc. (IMM) are I

Illinois corporations with their offices and principal places of business located at 730 North LaSalle Street, Chicago, Illinois.

Respondent Unigraf, Inc. (Unigraf) is an Illinois corporation with its offices and principal place of business located at 60 West Erie Street, Chicago, Illinois.

Respondent Stanley Stewart is an officer of SCC and an officer of IMM. Respondent Anne K. Stewart is an officer of IMM. Respondent Richard Muller is an officer of SCC, and an officer and director of Unigraf. As such, they formulate, direct and control the policies, acts and practices of said corporations, including the acts and practices hereinafter set forth. Their addresses are the same as those of said corporations.

The aforesaid respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents manufacture, advertise and offer for sale, sell and distribute ultrasonic pest control products under the brand name of Pest Sentry.

PAR. 3. Respondents, at all times mentioned herein, 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. In the course and conduct of their business, and for the purpose of inducing the purchase of the Pest Sentry ultrasonic pest control product, respondents have disseminated, directly and through their marketers and distributors, various promotional materials, including "suggested advertisements", sales brochures and promotional pamphlets, which contain statements respecting the performance of the Pest Sentry ultrasonic pest control product. Examples of such promotional materials are attached hereto as Exhibits A through C.

PAR. 5. Typical statements in said promotional materials, but not necessarily inclusive thereof, are

A. NOW—ELIMINATE—FLYING and CRAWLING PESTS - RATS - MICE - ROACHES - MOSQUITOES - FLIES - WATERBUGS ULTRASONICALLY.

B. PEST SENTRY eliminates flying and crawling pests . . . safely, economically . . . in 2-6 weeks. WITHOUT . . . calling in expensive pest control services or spending your valuable time using poisonous powders, messy sprays, dangerous chemicals or unsightly traps.

C. You will notice results in a few days and within 4 to 6 weeks you will be free of the entire list of crawling and flying, pests as long as PEST SENTRY "stands guard".

D. THE PEST SENTRY protects indoor facilities from:

- Rats
- Mice
- Flies
- Roaches
- Mosquitoes
- Waterbugs
- Chipmunks
- Squirrels

and other kinds of crawling and flying pests. Research data available upon request from manufacturer.

E. SAY GOOD-BYE TO ANNOYING PESTS! Let Pest Sentry eliminate roaches, rats, mice, mosquitoes, flies, water bugs, and other crawling and flying pests from your home.

F. NOW . . . YOU CAN PROTECT YOUR HOME AND FAMILY FROM FLYING AND CRAWLING PESTS with an all-new Sound Solution to Pest Control!

G. One Pest Sentry covers a very large area, 1500 - 2000 sq. ft. (16,000 cubic ft. for 8 ft. ceilings). The Pest Sentry sound will penetrate doors, drywall and plastered rooms.

H. PEST SENTRY eliminates setting unreliable traps, using messy and often dangerous chemicals and hard-to-control poisonous sprays.

I. [T]he PEST SENTRY is a professional answer for homes, restaurants, warehouses, schools, farm buildings . . . garages, retail stores, hospitals, nursing homes—any indoor location where flying and crawling pests are a problem.

J. Ultra - Effective Pest Eliminator.

COUNT I

Pest Elimination Claims

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four and Five are incorporated by reference herein.

PAR. 6. Through the use of the statements referred to in Paragraph Five and others not specifically set forth therein, respondents have represented, and are now representing, directly or by implication, that use of the Pest Sentry:

1. Eliminates rats, mice, cockroaches, and other pests from a purchaser's home or place of business.
2. Eliminates rodent and insect problems from a purchaser's home or place of business within two to six weeks.
3. Prevents rodents and insects from entering or remaining in an area in a purchaser's home or place of business where the Pest Sentry device is in use.

PAR. 7. The representations set forth in Paragraph Six are false because use of the Pest Sentry does not:

1. Eliminate unwanted rats, mice, cockroaches, or other pests from a purchaser's home or place of business.
2. Eliminate rodent and insect problems from a purchaser's home or place of business within two to six weeks.
3. Prevent rodents and insects from entering or remaining in an area in a purchaser's home or place of business in which such product is in use.

Therefore, the representations set forth above constitute deceptive and unfair acts or practices.

Complaint

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COUNT II

Ability To Control Pest Claims

Alleging further violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four and Five are incorporated by reference herein.

PAR. 8. Through the use of the statements referred to in Paragraph Five, and others not expressly set out therein, respondents have represented, and are now representing, directly or by implication, that the Pest Sentry:

1. Controls effectively rats and mice in the home or place of business.
2. Controls effectively insects, such as cockroaches, in the home or place of business.
3. Eliminates the need to use, in the home or place of business, alternative rodent or insect control products such as traps, powders, sprays or other chemicals.

PAR. 9. In truth and in fact, contrary to the representations made by respondents set forth in Paragraph Eight, the Pest Sentry:

1. Is ineffective for controlling rodents in the home or place of business. Any reaction by rodents to the Pest Sentry would, at best, only be of short duration. Rodents habituate to ultrasound and will return to their chosen nesting or feeding habitats even in the presence of such ultrasonic products.
2. Is ineffective for controlling insects in the home or place of business.
3. Does not eliminate the need to use alternative pest control products such as chemicals, sprays, powders, or traps in the home or place of business.

Therefore, the representations set forth herein constitute deceptive and unfair acts or practices.

COUNT III

Area Coverage Claims

Alleging further violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four and Five are incorporated by reference herein.

PAR. 10. Through the use of the statements referred to in Paragraph Five, and others not expressly set out therein, respondents have represented, and are now representing, directly or by implication, that the Pest Sentry will effectively cover an area of 1500 to 2000 square feet in the home or place of business.

PAR. 11. In truth and in fact, contrary to the representations made by respondents alleged in Paragraph Ten, the Pest Sentry will not effectively cover areas of 1500 to 2000 square feet in the home or place of business because among other reasons, ultrasound:

1. Loses intensity as it travels;
2. Is absorbed by soft objects such as carpeting, curtains and drapes;
3. Is reflected by hard surfaces such as partitions, appliances, furniture, cabinets and shelving creating sound "shadows"; or
4. Is unable to penetrate to places of nesting and feeding that are behind and within recesses of walls, under floors or within cracks or crevices.

Therefore, the representations set forth herein constitute deceptive and unfair acts or practices.

COUNT IV

Reasonable Basis - Substantiation

Alleging further violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four and Five are incorporated by reference herein.

PAR. 12. Through the use of the statements referred to in Paragraph Five, and others not expressly set out therein, respondents have represented and are now representing, directly or by implication, that at the time of making the representations respondents possessed and relied upon a reasonable basis for those representations. In truth and in fact, at such times, respondents did not possess and rely upon a reasonable basis for making such representations because, among other reasons, respondents had not conducted appropriate tests or had improperly applied results of tests done by others. Therefore, said representations constituted and now constitute deceptive and unfair acts or practices.

PAR. 13. The use by respondents of the aforesaid representations, as set forth in Count I-IV, and the placement in the hands of distributors and retailers of promotional materials through which others may have conveyed those representations, have had the capacity and tendency to mislead consumers and to induce the purchase of respondents' ultrasonic pest control products.


PAR. 14. The acts and practices of respondents, as herein alleged, constituted, and now constitute unfair and 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.

Chairman Miller dissented.

Complaint

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EXHIBIT A-1



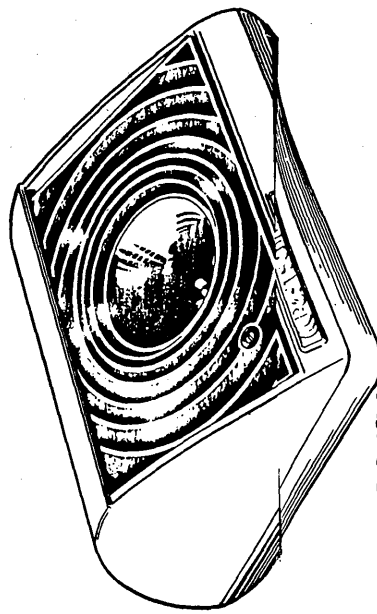
NOW

**ELIMINATE... FLYING AND CRAWLING
PESTS • RATS • MICE • ROACHES
MOSQUITOES • FLIES • WATERBUGS
ULTRASONICALLY**

The all-new, high technology, PEST SENTRY is a compact (7½" W x 7¾" D x 3½" H) electronic, solid-state system that broadcasts high intensity ultrasonic waves on a continually changing frequency. The ultrasonic waves seriously affect the auditory and nervous system of rats, mice, roaches, flies, mosquitoes, and other crawling and flying pests. PEST SENTRY will eliminate "resident" pests in 2-6 weeks and

no new crawling or flying pests will enter a PEST SENTRY protected area (1500-2000 sq. feet).
Developed for indoor use, the PEST SENTRY is a professional answer for homes, restaurants, warehouses, schools, farm buildings (chicken coops, barns, out-buildings, storage silos), garages, retail stores, hospitals, nursing homes - any indoor location where flying and crawling pests are a problem.

EXHIBIT A-1 (CONT'D)



<p>PEST SENTRY simply plugs into any 110 volt AC outlet. It uses only 4 watts of power—making it an economical as well as professional way to eliminate crawling and flying pests.</p>	<p>PEST SENTRY will not interfere with electronic burglar and fire alarms, TV reception or other sophisticated electronic devices.</p>	<p>PEST SENTRY eliminates setting unreliable traps, using messy chemicals and hard-to-control poisonous sprays.</p>	<p>STORE NAME</p>
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DM, INC.
 Electronic Controls Corp.
 AD # PS-100
 4 Col. x 16" B&W Ad

EXHIBIT A-2

PEST SENTRY

PEST SENTRY

The professional ultrasonic sound wave system

PEST SENTRY

The professional ultrasonic sound wave system

PEST SENTRY

The professional ultrasonic sound wave system

PEST SENTRY

The professional ultrasonic sound wave system

The professional ultrasonic sound wave system

ELIMINATES FLYING AND CRAWLING PESTS...SAFELY, ECONOMICALLY

ELIMINATES FLYING AND CRAWLING PESTS...SAFELY, ECONOMICALLY

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ELIMINATES FLYING AND CRAWLING PESTS...SAFELY, ECONOMICALLY

PEST SENTRY

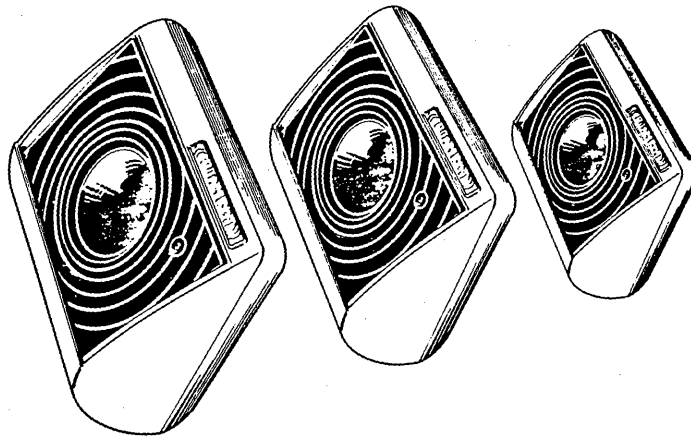
will not harm people, household pets, farm animals, birds, plants, flowers.

PEST SENTRY

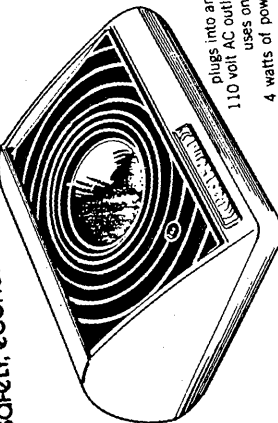
will not interfere with electronic burglar alarms, TV reception or other sophisticated electronic devices.

PEST SENTRY

eliminates setting unreliable traps, and often dangerous chemicals and hard-to-control poisonous sprays.



PEST SENTRY
ELIMINATES FLYING AND CRAWLING PESTS...
SAFELY, ECONOMICALLY... IN 2-6 WEEKS.



plugs into any
110 volt AC outlet
uses only
4 watts of power

WITHOUT...
calling in expensive pest control services or
spending your valuable time using poisonous
powders, messy sprays, dangerous chemicals
or unsightly traps.

will not harm people, household pets, farm animals, birds, plants,
flowers. • will not interfere with electronic burglar and fire
alarms, TV reception or other sophisticated electronic devices.

Complaint

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EXHIBIT B-1-1



NEW ULTRASONIC SOUND WAVE SYSTEM ELIMINATES

RATS, MICE, ROACHES, FLIES, MOSQUITOES AND OTHER FLYING & CRAWLING PESTS

The newly introduced PEST SENTRY (PS-1500) broadcasts high intensity ultrasonic waves on a continually changing frequency. This seriously affects the auditory and nervous systems of rats, mice, roaches, flies, mosquitoes and other flying and crawling pests.

While "resident" pests are completely eliminated in 2-6 weeks, PEST SENTRY will not harm people, household pets, birds, farm animals, plants or flowers, electronic alarms, TV receivers or related technical equipment. And...no new crawling or flying pests will enter a PEST SENTRY-protected area (1,500 to 2,000 sq. feet).

Using only 4 watts of power, the PEST SENTRY is an economical and professional way to eliminate crawling and flying pests without resorting to baiting and setting unreliable traps or spreading and spraying hard-to-control poisons and chemicals.

In addition...PEST SENTRY is easy-to-install and use. Just plug it into any 110 volt AC outlet, turn on the switch, and let PEST SENTRY introduce you to the benefits of utilizing this fully warranted, maintenance-free device that protects you from crawling and flying pests 24 hours a day. PEST SENTRY has a red indicator light and a low buzzing sound from the electronic components (not the ultrasound) to show that the unit is performing continuously. It is UL listed (85G4).

The PEST SENTRY can be adapted to DC operation and is available in various power supplies to meet export requirements. Suggested retail price is \$99.95.

Developed for indoor use, the PEST SENTRY is a professional answer for homes, restaurants, warehouses, schools, farm buildings (chicken coops, barns, out-buildings, storage silos), garages, retail stores, hospitals, nursing homes -- any indoor location where flying and crawling pests are a problem.

We would be pleased to provide you with additional information.

Cordially,

SENTRONIC CONTROLS CORP.

A handwritten signature in cursive script that reads "Stanley B. Stewart". Below the signature, the name "Stanley B. Stewart" is printed in a small, sans-serif font.

SBS/aa
encls.

- over -

DELIVERED CONTAINER ONLY

Complaint

EXHIBIT B-1-2

7/5/54
 Dear Sir
 I have a small
 single apartment in L.A.
 Is it OK to lease the
 "PEST SENTRY" on continuous?
 It is not harmful is it?
 P.S. I really work.

Signature
 Jack A. Murtz
 9518 Laurel Canyon Blvd.
 Hollywood, CA 91607

Albert Bros.

PAINTS - HARDWARE - MILL SUPPLIES
Wholesale & Retail

2207 BELLMORE AVENUE • BELLMORE, NEW YORK 11710 • SUset 5-2262

Dear Mr. Stewart:

A month ago, we had a serious problem with rodents. We had mice in our main store and warehouses, they were destroying the packages of grass seeds and fertilizers. Since we installed the "Pest Sentry" Ultrasonic Soundwave Units, we have had no further problems with any rodents at all. We also noticed that the warehouses are free of insects. Please feel free to use me as a reference for any potential customers you may have.

Sincerely
Mark Albert

Signature



Dear Mr. Stewart:

As you know, we had a serious problem concerning roaches and rodents. Since the installation of six of your "Pest Sentry" Ultrasonic Sound Wave System units, two months ago, we are happy to state that we have not seen any vermin in the affected areas in question.

Sincerely,

Signature
 Steve Lombardo, Sr.
 Finance Manager

Gentlemen:

It has now been approximately 6 weeks since we installed the "Pest Sentry" flying insect and rodent repeller in our fine chemical bottling room, an area that was mildly infested with cockroaches. I am pleased to report that since the installation of the "Pest Sentry" we have observed no roaches or crawling insects in this area. Very truly yours,
 FANSTIEHL LABORATORIES, INC.
Signature
 Edward S. Holstein
 Vice-President

FEDERAL TRADE COMMISSION DECISIONS

Complaint

105 F.T.C.

EXHIBIT B-1-3

 **SENTRONIC CONTROLS CORP.**
Suite 200 730 North LaSalle Street
Chicago, Illinois 60610 Telephone (312) 787-1511

50 E. WOOD ROAD GRAFTON, WISCONSIN 53074 TELEPHONE (414) 377-6755

March 3, 1982

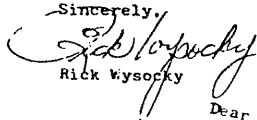
Gentlemen:

I would like to express our delight with the perfect results of our pest sentry. For over twelve years we have had field mice in our basement and each year hired a pest control service. After three months use of our pest sentry we have had no field mice, spiders or bugs in our basement area.

The results are phenomenal. I can only applaud the fantastic results we have had with this new innovation in pest control. It is simple to use, neat and clean and most important rids the property of the rodents in a most efficient manner.

May we add our compliments and applause to this sensational device. It really works and solves the pest control problem.

Sincerely,


Rick Wysocky

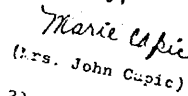
Dear Mr. Stewart:-

Feb. 5th, 1982.

We have a horrible infestation of roaches in our fifteen apartment building due to three dirty, lazy and belligerent men in one apartment.

After spending 375 in assorted spray liquid cans, powders, motels, bay leaves, bombs and Osage Orange, with no results, saw your ad in a December Sunday's paper made we run to the store immediately. Needless to say was plugged into work pronto and giving excellent results working twenty four hours without a stop.

Sincerely,


(Mrs. John Cupic)

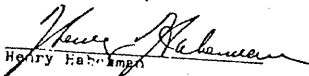
23-36 31st Road,
L.I. City, N.Y. 11106

Chery, Dismant
Martinique 97223
French West Indies
December 28, 1981

Gentlemen:

I purchased your Pest Sentry in New York, sometime in November of this year; and brought it down to my home in Martinique. Amazingly, I found it very workable; for there is a decided relief and difference between this and the past few years.

Very truly yours,


Henry Haberman

Complaint

EXHIBIT B-1-4

February 12, 1982

Dear Mr. Steward:

I switched units with my mother and her unit seems to be keeping the pests away, and while we were waiting for the replacement units she did have a mouse come in and begin chewing in the walls when she plugged my unit in, it stopped, I then added a replacement unit to the other end of the house, and she has not had a problem since. It would seem that the furniture etc. were just absorbing too much of the sounds.

Sincerely yours,

Charles V. Feely Jr.
Charles V. Feely Jr.
P. O. Box 43
Brookfield, Illinois 60513

P.S. I would like to buy another unit too, so possibly would a co worker

S. It works very well.

I recently bought one of your pest Sentry from Hinkley's Dept Store in New York City.

Judith Kaplan #
101 West 160th St.
NY 10032

I wish to purchase another one like the one I bought but the store no longer have them in stock

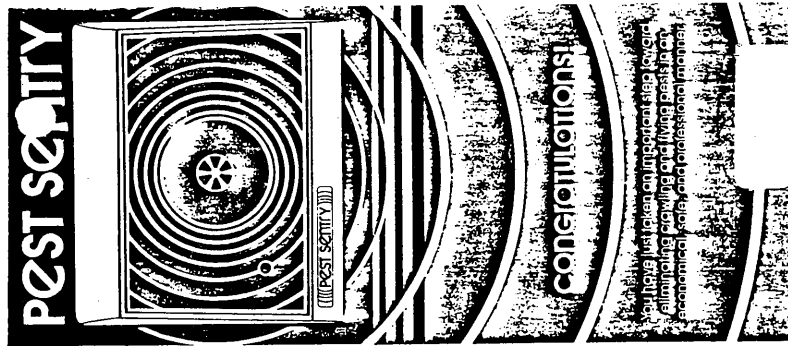
but as you see, it is in use about 3 weeks and I have seen results. I live in a 2 family house, after six weeks or so do I leave to buy leaving it on or can I have it off.

Please ship to my home COO

Thank you
Mrs. Marie L. Krakowicz
1052-27th St
Astoria N.Y.
11105

MYRA HANSHAW
133 W. 90th Street
apt 5D
NEW YORK 10024
NY.

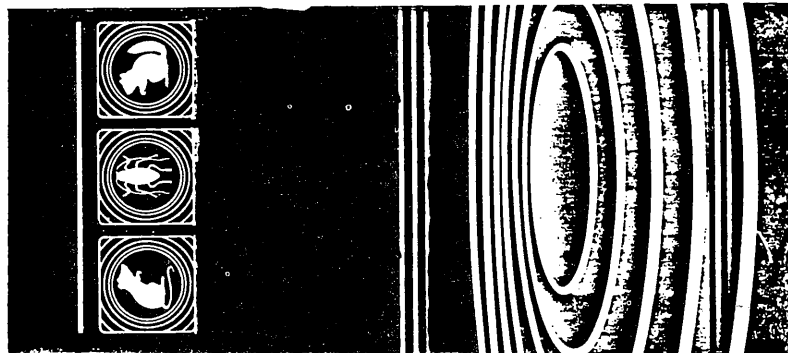
EXHIBIT B-2-1



A WORD OF CAUTION:

It takes 2 to 6 weeks to completely eliminate crawling and flying pests. Pests with favorite nests, hiding places and feeding stations will endure a high degree of pain before they give up their shelter, water and food sources. You will notice results in a few days and within 4 to 6 weeks you will be free of the entire list of crawling and flying pests as long as PEST SENTRY stands guard.

SENTRONIC CONTROLS CORP.
730 North LaSalle St.
Chicago, IL 60610



PEST SENTRY

ELIMINATES FLYING AND CRAWLING PESTS... SAFELY, ECONOMICALLY... IN 2-6 WEEKS.



The professional
ultrasonic sound
wave system

WITHOUT...

calling in expensive pest control services or spending your valuable time using poisonous powders, messy sprays, dangerous chemicals or unsightly traps.

PEST SENTRY is a compact (7 $\frac{1}{4}$ " W. x 7 $\frac{1}{4}$ " D. x 3 $\frac{1}{4}$ " H.) electronic, solid-state system that broadcasts high intensity ultrasonic waves on a continually changing frequency. The waves seriously affect the auditory and nervous system of rats, mice, roaches, flies, mosquitoes and other flying and flying pests. "Resident" pests can be totally eliminated in 2 to 6 weeks. And, you will be free of the entire list of "undesirables" for as long as you continue to use the PEST SENTRY. Plugging into any 110 volt AC outlet, the

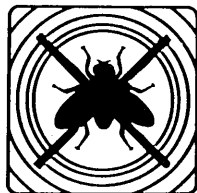
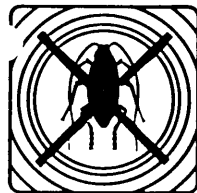
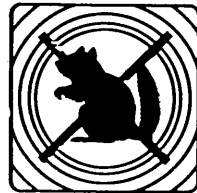
maintenance-free PEST SENTRY Ultrasonic Sound Wave System protects from 1500-2000 square feet in any indoor location. The PEST SENTRY operates on only 4 watts of electrical power. It's a professional answer to the age-old problem of pest control. The PEST SENTRY is perfect for homes, basements, garages, warehouses, factories, schools, retail stores, enclosed farm buildings, food service facilities, hospitals and nursing homes - any indoor location where crawling or flying pests are a problem.

 **ultrasonic controls corp.**



Complaint

EXHIBIT B-4-2



PEST SENTRY

simply plugs into any 110 volt AC outlet. It uses only 4 watts of power—making it an economical as well as professional way to eliminate crawling and flying pests.

PEST SENTRY

will not harm people, household pets, farm animals, plants, birds, flowers.

PEST SENTRY

will not interfere with electronic burglar alarms, TV reception or other sophisticated electronic devices.

PEST SENTRY

eliminates setting unreliable traps, using messy and often dangerous chemicals and hard-to-control poisonous sprays.

THE PEST SENTRY

Protects indoor facilities from:
 • Rats • Mosquitoes
 • Mice • Waterbugs
 • Flies • Chipmunks
 • Roaches • Squirrels
 and other kinds of crawling and flying pests. Research data available upon request from manufacturer.

SPECIFICATIONS:

Dimensions 7 $\frac{1}{2}$ " W x 7 $\frac{1}{4}$ " D x 3 $\frac{1}{4}$ " H
 Power 105-120 Volts
 Supply AC 60 Cycle
 Power Consumption 4 Watts
 Shipping Weight 2 lbs
 Packed 12 to master or individually
 Frequency Random frequency sweep
 Range 30,000 - 60,000 Hz

INSTALLATION:

Simply remove your new PEST SENTRY and plug it into any 110 volt AC outlet. Turn the switch to "on" and make sure the red indicator light goes on. You will hear a very low buzz coming from the electronic components which is not the ultrasound that eliminates crawling and flying pests.

A WORD OF CAUTION:

It takes 2 to 6 weeks to completely eliminate crawling and flying pests. Pests with favorite nests, hiding places and feeding stations will endure a high degree of pain before they give up their shelter, water and food sources. You will notice results in a few days and within 4 to 6 weeks you will be free of the entire list of crawling and flying pests as long as PEST SENTRY "stands guard."

PEST SENTRY

The Professional Ultrasonic Sound Wave System

SENTRONIC CONTROLS CORP. Suite 200 • 730 N. LaSalle St • Chicago, IL 60610 • (312) 787-1511

This Product is Listed by **UNDERWRITERS LABORATORIES INC.** and Bears the Mark: 85G4

Distributed by

INTRODUCTORY OFFER ONLY
\$79.50

PEST SENTRY
eliminates flying and crawling pests... safely... economically... in 2 to 6 weeks

The professional ultrasonic sound wave system



PEST SENTRY simply plugs into any 110 volt AC outlet. It uses only 4 watts of power — making it an economical as well as professional way to eliminate crawling and flying insects.

THE PEST SENTRY

Protects indoor facilities from:

- Bats
- Mosquitoes
- Mice
- Fleas
- Bees
- Squirrels

and other kinds of crawling and flying pests. Research data available upon request from manufacturer.

SPECIFICATIONS:

Dimensions: 7 1/2" W x 4 1/2" L x 3 1/2" H
 Power: 25-50 Volt
 Supply: AC, 60 Cycle
 Power Consumption: 4 Watts
 Shipping Weight: 2 lbs.
 Packed: 10 to 100 lbs.
 Frequency Range: Random frequency sweep: 30,000 - 60,000 Hz

INSTALLATION:

Simply remove your new PEST SENTRY and plug it into any 110 volt AC outlet. Turn the switch to "on" and make sure the red indicator light goes on. You will hear a very low "buzz" coming from the electronic components which is not the ultrasound that eliminates crawling and flying pests.

A WORD OF CAUTION:

It takes 2 to 6 weeks to completely eliminate crawling and flying pests. Pests with burrowed nests and feeding stations will require a high degree of patience before they give up their shelter, water and food sources. You will notice results in a few days and within 4 to 6 weeks you will be free of the entire lot of crawling and flying pests as long as PEST SENTRY stands guard!

NEUKAM & ROTHERT S&T
 Phone 536-3923 — Holland, Indiana
 So Much More Than A Hardware Store

SAY GOOD-BYE TO ANNOYING PESTS!

Let PEST SENTRY eliminate roaches, rats, mice, mosquitoes, flies, waterbugs and other crawling and flying pests from your home.



PEST SENTRY

ONLY \$99.95

A DENVER STORE DENVILLE HARDWARE
 Everything You Need Starts to Build

Phone 298-8888
 627-2980



PEST SENTRY

Complaint

EXHIBIT C-2-2

NOW ELIMINATE
FLYING AND CRAWLING
PESTS: RATS, MICE, ROACHES,
MOSQUITOES, FLIES, WATERBUGS
ULTRASONICALLY



The PEST SENTRY is a compact, solid state system that broadcasts high intensity ultrasonic waves at changing frequencies. These waves seriously affect the auditory & nervous system of crawling & flying pests. PEST SENTRY ~~kills~~ resident pests in 2 to 6 weeks & protects a 1,500 to 2,000 sq. ft. area from further pest invasions. PEST SENTRY is for indoor use anywhere pests are a problem.

Reg. \$99.99
SALE \$79.99

Plugs into any 110 volt AC outlet.
Uses only 4 watts of power.

WITHOUT...
calling in expensive pest control services or spending your valuable time using poisonous powders, messy sprays, dangerous chemicals or unsightly traps. Will not harm people, household pets, farm animals, birds, plants, flowers. Will not interfere with electronic burglar & fire alarms, TV reception or other sophisticated electronic devices.

True Value
HARDWARE STORES

HOURS: M-F 8:30-6:30, SAT 8:30-6, SUN 10-2
7532 N. ARMENIA 933-1500
(Between Sligh and Waters)



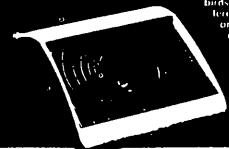
NEW!
Pest Sentry

Ultrasonically eliminates flying and crawling pests. Protects Area 1500-2000 Sq. Ft. Uses only four watts of power. Will not harm people, dogs, cats and plants. No PS 15.

Reg. \$99.99
\$79.88
SAVE \$20 Ea.

ULTRA-EFFECTIVE Pest Eliminator

Pest Sentry eliminates flying and crawling pests without deadly chemicals, unsightly traps, or expensive (and often ineffectual) pest control services. It broadcasts high intensity ultrasonic waves that actually drive pests away by affecting their auditory and nervous systems. Flies, mosquitoes, chipmunks, squirrels, rodents, and roaches - gone completely in 2 to 6 weeks! And they stay away as long as Pest Sentry stands guard. It's safe for people, household pets, farm animals, birds, plants, and flowers. Won't interfere with TV reception, electronic burglar or fire alarms, or other sophisticated electronic devices. Just plug it into any AC outlet. It draws only 4 watts. One ultrasonic and 4 ultra-effective frequencies for an area up to 2000 feet in homes, warehouses, stores, farm buildings, anywhere pests are a problem.



PS15000 \$99.95

Shop Hess's For Your Needs...



The Professional Ultrasonic Sound Wave System

SAVE \$19!
Pest Sentry Eliminates Flying and Crawling Pests

\$80
 reg. 99.99

Eliminate resident pests in 2-6 weeks. High intensity ultrasonic waves seriously affect the auditory system of rats, mice, roaches, flies, mosquitoes and other flying and crawling pests.

HARDWARE

- Will not harm people, pets, or plants
- Will not interfere with electronic alarms or TV reception
- Eliminates unreliable traps, messy chemicals.

EXHIBIT C-2-4

NOW Eliminate...
 Flying & crawling pests, rats, mice, roaches, flies, mosquitoes, waterbugs & other pests...

ULTRASONICALLY!



The PEST SENTRY is a compact, solid state system that broadcasts high intensity ultrasonic waves at changing frequencies. These waves seriously affect the auditory & nervous system of crawling & flying pests. PEST SENTRY kills resident pests in 2 to 6 weeks & protects a 1500 to 2000 sq. ft. area from further pest invasions. PEST SENTRY is for indoor use anywhere pests are a problem!

PEST SENTRY
 Ideal for restaurants, businesses, offices & homes!

<p>PEST SENTRY will not harm people, household pets, farm animals, birds, plants, flowers.</p>	<p>PEST SENTRY will not interfere with electronic burglar and fire alarms, TV reception or other sophisticated electronic devices.</p>	<p>PEST SENTRY eliminates setting unreliable traps, using messy and often dangerous chemicals and hard-to-control poisonous sprays.</p>
--	--	---

only \$88⁸⁸ at
FOREST CITY

West Side
 • 10800 Brookpark Rd.
 • 8201 Day Drive
 • 2001 Center Ridge Rd.

East Side
 • 6420 Mayfield Rd.
 • 436 Northfield Rd.
 • 7830 Plaza Drive
 • 17905 St. Clair Ave.

Complaint

105 F.T.C.

EXHIBIT C-2-5

SAY GOOD-BYE TO ANNOYING PESTS!

Let **PEST SENTRY** eliminate
roaches, rats, mice, mosquitoes, flies,
waterbugs and other crawling and flying
pests from your home.



Pest Sentry is a revolutionary new concept in indoor pest control. A compact, (7 1/2 x 7 1/2 x 3 1/2") electrical solid state unit that broadcasts high frequency ultrasonic waves to drive pests away in droves.

Ultrasonic waves cause pests discomfort. The ultrasonic waves affect the nervous and auditory systems of bothersome insects and rodents, causing them discomfort. Rather than endure this, they leave.

It's simple and economic to operate. It plugs into any 110 volt AC outlet. You can leave the Pest Sentry on day and night because it draws only 4 watts of power.

People, dogs, cats, birds, plants, and flowers are not affected. Nor are electronic systems like your TV, microwave oven and burglar alarm. Only insects and rodents will hear the sound. And run from it!

One Pest Sentry covers a very large area, 1500-2000 sq. ft. (10,000 cubic ft. for 8 ft. ceilings). The Pest Sentry sound will penetrate doors, drywall and plastered rooms.

You will see results in 2-4 weeks! There will be an improvement in a few days and by six weeks time you will be free of annoying pests.

Consider this — The Pest Sentry is ideal for apartments, homes, schools, warehouses, restaurants and stores. We all know how high the cost of exterminating can be and how many follow-up visits it may take to solve your problem. Take an important step towards eliminating crawling and flying pests in an economical, safe and professional manner.

ONLY **\$99.95**

Atlantic Aluminum
Paddlers Village
Monasquan, N.J.

Atlantic Aluminum Products
Lavallette, N.J.

Energy Cave
Forked River, N.J.

A's Garden Center
Lanoka Harbor, N.J.

Hendrick's Equipment Co.
Howell, N.J.

Distributed by Elcom Distributors Inc., Parsippany, N.J.

Complaint

EXHIBIT C-2-6

NOW ELIMINATE
FLYING AND CRAWLING PESTS - RATS - MICE
ROACHES - MOSQUITOES - FLIES - WATERBUGS
ULTRASONICALLY



The new high technology PEST SENTRY is a compact (7 1/2" x 7 1/2" x 2 1/2") electronic sound wave system that broadcasts high intensity ultrasonic waves on a continuous changing frequency. The ultrasonic waves naturally affect the auditory and nervous system of rats, mice, roaches, flies, mosquitoes, and other crawling and flying insects. PEST SENTRY will eliminate any crawling or flying pests and other insects (up to 2000 sq. ft.) in your home.

Designed for indoor use, the PEST SENTRY is a professional grade device for homes, restaurants, hotels, schools, farm buildings, garages, shops, and buildings. (Through lines) garages, retail stores, hospitals, nursing homes, and other locations where flying and crawling pests are a problem.

PEST SENTRY
 will not harm people, household pets, birds, fish, reptiles, amphibians, and other animals.

PEST SENTRY
 will not interfere with electronic burglar & fire alarm, TV, radio, tape or other electronic devices.

PEST SENTRY
 automatically getting rid of flies, mosquitoes, and other insects, roaches, and other household pests.


Available now at these participating Dealers!

CAROL STREAM E-G Home Center 110 E. North Ave.	DOWNERS GROVE E-G Home Center 1112 Ogden Ave.	LA GRANGE Gee Lumber 15 North Spring	PLAINFIELD Gee Lumber 215 Main St.
DARIEN Hardy Andy Home Improvement Center 7415 Cass Avenue	HINSDALE Gee Lumber 30 S. Lincoln	LEMONT Lemont Hardware 102-106 Stephen Street	VILLA PARK Gee Lumber 207 W. St. Charles Road

ULTRA-EFFECTIVE Pest Eliminator.

Pest Sentry eliminates flying and crawling pests without deadly chemicals, unsightly traps, or expensive (and embarrassing) pest control services. It broadcasts high intensity ultrasonic waves that actually drive pests away by affecting their auditory and nervous systems. Flies, mosquitoes, roaches, spiders, cockroaches, and ticks - gone completely as they work! And the good news is that being a Pest Sentry household is safe for people, household pets, farm animals, birds, plants, and flowers. Won't interfere with TV, radio, phonograph, tape, or burglar alarm - in other words, it's called the home defense and pest control device. At only \$99.95, only \$6 walls. One ultrasonic unit is sufficient for an area up to 2000 sq. ft. in homes, warehouses, stores, farm buildings, anywhere pests are a problem.

PS15000 \$99.95



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 Bureau of Consumer Protection 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, an 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, 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. Respondents Sentronic Controls Corporation and International Marketing and Manufacturing, Inc. are Illinois corporations with their offices and principal places of business located at 730 North LaSalle Street, Chicago, Illinois.

Respondent Unigraf, Inc. is an Illinois corporation with its principal place of business located at 60 West Erie Street, Chicago, Illinois.

Respondent Stanley Stewart is an officer of SCC and an officer of IMM. Respondent Anne K. Stewart is an officer of IMM. Respondent Richard Muller is a director of SCC and an officer and director of Unigraf.

As such, the individual respondents formulate, direct and control the policies, acts and practices of said corporations, and their business addresses are the same as those for said corporations.

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

PART I

It is ordered, That respondents Sentronic Controls Corporation, a corporation, its successors and assigns, and its officers, International Marketing & Manufacturing, Inc., a corporation, its successors and assigns, and its officers, Unigraf, Inc., a corporation, its successors and assigns, and its officers, and Stanley Stewart, Anne K. Stewart and Richard Muller, individually and as officers of said corporations, and respondents' agents, representatives, distributors, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Pest Sentry (PS-1500) or any other pest control product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission act, do forthwith cease and desist from:

A. Representing, directly or by implication, that respondents' Pest Sentry (PS-1500) or any such ultrasonic product will:

- (1) eliminate cockroaches, rats, mice and other pests from a home or place of business;
- (2) eliminate rodent and insect problems from a home or place of business within two to six weeks, or within any other specified period of time;
- (3) prevent rodents and insects from entering or remaining in an area where the ultrasonic product is in use in a home or place of business;
- (4) protect, from rodent and insect infestations, areas up to 1500 square feet in a home or place of business, or within any other specified square footage area;
- (5) serve as an effective alternative to the use of conventional products such as sprays, powders, traps or other chemicals in providing protection from insect and rodent infestation.

B. Representing, directly or by implication, any performance characteristic of any pest control product unless at the time of making such representation respondents possess and rely upon competent and reliable evidence which substantiates the representation. Evidence shall be competent and reliable only if tests, experiments, analyses, research studies, or other evaluations are conducted in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant professions or sciences to yield accurate, reliable, and reproducible results.

C. Representing, directly or by implication, that any pest control product is effective in providing protection from insect and

infestation in a home or place of business unless at the time of making such representation respondents possess and rely upon competent and reliable evidence which either directly relates to such home or place of business use conditions or which can properly be applied to such conditions.

PART II

It is further ordered, That for three years after the last date of dissemination of the relevant representation respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of all materials relied upon to support any representation covered by Part I of this Order, and copies of all documents in respondents' possession that contradict, qualify, or otherwise call into question any such representations, including complaints from consumers.

PART III

It is further ordered, That respondents shall for a period of three years:

- A. Distribute a copy of this Order to all managerial employees, distributors, independent sales agents and retailers present and future.
- B. Notify each present and future distributor or sales representative that the failure to comply with the Order may result in cancellation of the distributorship or other selling agreement with respondents.
- C. Require all distributors, independent sales agents and retailers report to respondents semi-annually all consumer requests to recall and their action taken in response to such requests.

PART IV

is further ordered, That for a period of ten years:

Respondents shall notify the Commission at least thirty (30) days to any proposed change in the corporate respondents, such as merger, acquisition, assignment, or sale resulting in the emergence of a new corporation, the creation or dissolution of subsidiaries, or other change in the corporation that may affect compliance obligations arising out of this Order.

Each individual respondents named herein shall promptly notify the Commission of the discontinuance of their present pest control business or employment and of their affiliation with any new pest control product business or employment, stating the nature of the business or employment in which the individual is newly engaged.

SENTRONIC CONTROLS CORP., ET AL.

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Decision and Order.

as well as a description of duties and responsibilities in connection with such new business or employment and the address of such new business and employment.

PART V

It is further ordered, That respondents shall, within sixty (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.

Chairman Miller dissented.

IN THE MATTER OF
CHEVRON CORPORATION, ET AL.

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

Docket C-3147. Consent Order, Oct. 24, 1984—Modifying Order, March 13, 1985

After a "Request For Termination of Hold Separate Agreement" (Request) filed by a respondent in a divestiture order issued on October 24, 1984, had been placed on the public record for ten days and no comments had been received, the Commission reviewed the Request and concluded that the public interest warranted modifying Paragraph II(c) of the Order, so that the Agreement To Hold Separate, attached to the Order as Appendix I, "shall continue in effect until such time as Gulf's stock interest in Colonial Pipeline Company has been divested." The Commission held that the Hold Separate Agreement had accomplished its primary objectives with the divestitures of Gulf's refining and marketing assets in the Southeast and of its interest in Colonial Pipeline Company, and the potential harm resulting from the costs of continuing the Agreement outweighed any further need to maintain it in effect.

ORDER MODIFYING DECISION AND ORDER ISSUED OCTOBER 24, 1984

On February 21, 1985, respondent Chevron Corporation ("Chevron") filed a "Request For Termination Of Hold Separate Agreement" (Request). Since Paragraph II(c) of the decision and order issued on October 24, 1984 ("the order") incorporates the Agreement To Hold Separate, which is attached to the order as Appendix I, the Request, in effect, seeks modification of the order to terminate the Hold Separate Agreement. The Request was on the public record for ten days and no comments were received.

Paragraph II(c) of the order provides that the Agreement to Hold Separate "shall continue in effect until such time as the Schedule A properties have been divested. . . ." As the Request notes, the Hold Separate Agreement is not limited to the assets that Chevron is required to divest pursuant to the order but is applicable to all of Gulf's domestic oil and gas assets and operations. Chevron has now submitted divestiture applications covering all of the assets it is required to divest and the Commission has approved the divestitures with the exception of the divestiture of 51 percent of Gulf's interest in the West Pipeline Company. The latter divestiture proposal is awaiting Commission action.

In reviewing respondent's Request, the Commission has concluded that the public interest warrants reopening the order and modifying Paragraph II(c) so that the Hold Separate Agreement will

terminate on the consummation of the divestiture of Gulf's interest in Colonial Pipeline Company. The Commission has concluded that the potential harm resulting from the costs of continuing the Hold Separate Agreement outweighs any further need to maintain it in effect. The Commission is of the opinion that, with the divestitures of Gulf's refining and marketing assets in the Southeast and of its interest in Colonial Pipeline Company, the Hold Separate Agreement has accomplished its primary objectives. On the other hand, Chevron has demonstrated that the continuation of the Hold Separate Agreement, which is applicable to all of Gulf's domestic oil and gas assets and operations, is imposing considerable costs on Chevron and Gulf. These costs have been estimated to exceed \$1 million a day and are being incurred because the Hold Separate Agreement prevents the realization of efficiencies that are expected to flow from integrating the operations of the two companies. Such efficiencies include those that can be achieved in combining the Chevron and Gulf work forces; increasing operating efficiencies and eliminating the duplication of functions resulting from overlapping operations in various areas; and combining desirable aspects of the technologies of the two companies. Chevron has also demonstrated that the Hold Separate Agreement is contributing to the loss of a considerable number of skilled employees who are difficult to replace and is adversely affecting the morale and productivity of Gulf employees.

Accordingly, *it is ordered*, that this matter be, and it hereby is, reopened, and that Paragraph II(c) of the Commission's order issued on October 24, 1984, be, and it hereby is, modified to read as follows:

(c) The Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I, shall continue in effect until such time as Gulf's stock interest in Colonial Pipeline Company has been divested, and Chevron and Gulf shall comply with all terms of said Agreement.

Commissioner Calvani voted in the negative.

IN THE MATTER OF

COMMODORE BUSINESS MACHINES, INC.

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

Docket C-3151. Complaint, March 22, 1985--Decision, March 22, 1985

This Consent Order requires a West Chester, Pa. marketer of computer products, among other things, to cease, in connection with the advertising, sale or distribution of the Commodore 64 or any other hardware or software computer product, representing the availability or capability of a product, unless at the time of the claim the product is available for public sale in reasonable quantities, or has the claimed capability. The Order further bars the company from making any representations concerning the future availability or capability of a computer product unless the firm has a reasonable basis for the claim at the time the representation is made. Respondent is additionally required to maintain specified records for a period of three years.

Appearances

For the Commission: *Reid B. Horwitz and Joel Winston.*

For the respondent: *James R. Wendelgass*, in-house counsel, West Chester, Pa.

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 Commodore Business Machines, Inc. ("Commodore"), hereinafter at times referred to as respondent, has violated the provisions of the 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. Commodore 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 1200 Wilson Drive, West Chester, Pennsylvania.

PAR. 2. Commodore has been and now is engaged in the business of manufacturing, advertising, offering for sale, sale and distribution of Commodore 64 computer and other computer hardware and software products to the public.

PAR. 3. Among the products available as accessories for computers

are microprocessors, which enable the computer to utilize different software operating systems. These operating systems allow the use of various software programs. One such operating system is CP/M, which enables the computer to process hundreds of software programs.

PAR. 4. The respondent, in connection with the marketing of computer products, has disseminated, and now disseminates, advertisements and promotional material for the purpose of promoting the sale of Commodore products.

PAR. 5. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices set forth herein, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 6. Typical statements and representations in said advertisements and promotional materials, but not necessarily all-inclusive thereof, are found in advertisements attached hereto as Exhibits A - E.

PAR. 7. Through the use of the statements and representations referred to in Paragraph Six and others, respondent has represented, directly or by implication, that:

(a) The Z80 microprocessor, for use with the Commodore 64 computer, was generally available for sale to the public.

(b) The Commodore 64 computer could be equipped to use the CP/M operating system, and thereby process CP/M software, through purchase of the Z80 microprocessor.

PAR. 8. In truth and in fact:

(a) At the time of the dissemination of said statements and representations, the Z80 microprocessor for use with the Commodore 64 computer was not generally available for sale to the public.

(b) At the time of the dissemination of said statements and representations, the Commodore 64 computer could not be equipped to use the CP/M operating system, and was therefore incapable of processing CP/M software, because the Z80 microprocessor was not generally available for sale to the public.

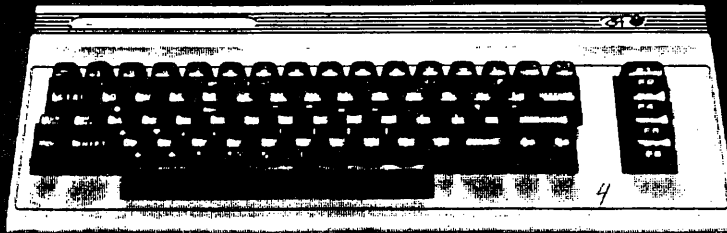
Therefore, the statements and representations referred to in Paragraphs Six and Seven were false, misleading and deceptive.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices, has had the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were true and complete, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 10. The 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 and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

ATTACHMENT A

**IF YOUR SCHOOL
SYSTEM BUYS AN
APPLE II+ INSTEAD OF
A COMMODORE 64,
ALL YOU'LL BE OUT IS
16K, HIGH-RESOLUTION
GRAPHICS, A MUSIC
SYNTHESIZER AND
\$900.00.**



THE COMMODORE 64. ONLY \$595.
What nobody else can give you at twice the price.

Complaint

105 F.T.C.

FEATURES	COMMODORE 64	APPLE II+*	IBM* PC	TANDY TRS 80* III	ATARI 800*
Base Price*	\$595	\$1530	\$1565	\$999	\$899
Advanced Personal Computer Features					
Built-in User Memory	64K	48K	16K	16K	16K
Programmable	YES	YES	YES	YES	YES
Real Typewriter Keyboard	YES (66 keys)	YES (52 keys)	YES (83 keys)	YES (65 keys)	YES (61 keys)
Graphics Characters (from Keyboard)	YES	NO	NO	NO	YES
Upper and Lower Case Letters	YES	Upper Only	YES	YES	YES
Maximum 5 1/4" Disk Capacity Per Drive	170K/1000K	143K	160K	178K	96K
Audio Features					
Sound Generator	YES	YES	YES	NO	YES
Music Synthesizer	YES	NO	NO	NO	NO
Hi-Fi Output	YES	NO	NO	NO	YES
Video Features					
TV Output	YES	EXTRA	EXTRA	NO	YES
Input/Output Features					
"Smart" Peripherals	YES	NO	NO	NO	YES
Software Features					
CP/M* Option (Over 1,000 Packages)	YES	YES	YES	YES	NO

*Manufacturer's Suggested Retail Price: July 1, 1982. Disk drives and printers are not included in prices. The 64's price may change without notice.

Multiply what the Commodore 64™ gives you (and saves you) by the number of computers you're planning to buy for your school system. The numbers you wind up with will be impressive, to say the least.

Because with 64K of memory and a suggested retail price of \$595, the Commodore 64 is less than half the price of competitive units that can't measure up to its power.

Which, of course, means you can get twice as many students behind Commodore 64s for the same amount of money.

A fact that should please students, faculties, school boards and, especially, taxpayers.

TAP IT INTO YOUR PRESENT SYSTEM.

For years, Commodore has been a major force in educational computing.

To take advantage of this dominance, the Commodore 64 is PET* compatible. Which means that with the optional PET Emulator, you can use most of the PET programs you may already have.

So you not only save money on software, you save the time it takes to build it up.

Naturally, because the basic price of the Commodore 64 is so low, you can add peripherals and still realize considerable economies compared with other systems.

If your needs include programming in PILOT, LOGO, BASIC or USCD Pascal, the 64 can run them all. Plus hundreds of programs in CP/M* with the optional Z80+ microprocessor.

What all this amounts to is that the software available for the 64 is virtually limitless.

VIDEO QUALITY THAT COMMANDS ATTENTION.

The 64 has exceptionally high video resolution, including 16 available colors, 3D Sprite graphics and a wide range of charts and graphs.

CP/M* is a registered trademark of Digital Research, Inc.

All of which combine to make the 64 as visually exciting a computer as you'll find anywhere.

And, while you might discourage it during school hours, the Commodore 64 will play an extensive assortment of game cartridges, besides running games which students can invent themselves.

SOUND TO TEACH OR ENTERTAIN.

The Commodore 64 has excellent sound effects in its game mode. As a music synthesizer, its sound is incredible.

It features a built-in ADSR (attack, decay, sustain, release) envelope, 3 voices (each with a 9-octave range) and 4 waveforms.

And it shows you your music note by note as you compose or play back, as well as being adaptable to playback through an audio system, so the whole class can hear what's going on.

SAVE NOW FOR A BETTER EDUCATION.

If you're looking to upgrade your present computers or buy computers for the first time, look long and hard at the Commodore 64.

Its combination of power, graphics, music and software makes it perfect for every application from junior highs to grad schools.

And its price makes it perfect, period.

Commodore Business Machines/Personal Systems Division
P.O. Box 500, Conshohocken, Pennsylvania 19428


Please send me more information on the Commodore 64

Name _____

Address _____

City _____ State _____ Zip _____

Phone _____



ATTACHMENT B

"THE COMMODORE 64 COULD BE THE MICROCOMPUTER INDUSTRY'S OUTSTANDING NEW PRODUCT INTRODUCTION SINCE THE BIRTH OF THIS INDUSTRY."

-SHEARSON/AMERICAN EXPRESS

The Commodore 64™ to judge from the above comment, is generating as much excitement among the people who invest in companies as it is among the people who run them.

The reason for this is that, for the first time, high-level computer power is limited only by the inclination to have it, rather than the means.

HALF THE COST = TWICE THE PRODUCTIVITY

This simple equation reflects the Commodore 64's most basic—and outstanding—qualifications.

Its standard memory is 64K. Which is unusual enough in a micro at any price.

At \$595, it is astonishing.

Compared, for example, with the Apple II+,* the Commodore 64 offers 33% more power at considerably less than 50% of the price.

Compared with anything else, it's even more impressive.

And if you're a businessman, it can effectively double your computer-equipped work force.

PILE ON THE PERIPHERALS.

Because the basic cost of the Commodore 64 is so low, you can afford more peripherals for it. Like disk drives, printers and a telephone modem.

For about the price of an Apple II+ computer alone, you could equip your company with a Commodore 64, disk drive, printer and modem.

HARD FACTS ABOUT SOFTWARE.

The Commodore 64 will be able to run virtually any program important to business and industry.

Commodore software will include an electronic spreadsheet, business graphics (including printout); a user-definable diary/calendar; word processing; mailing lists, an electronic mail program; and much more.

Even programs that can teach operators how to program.

It is programmable in BASIC.

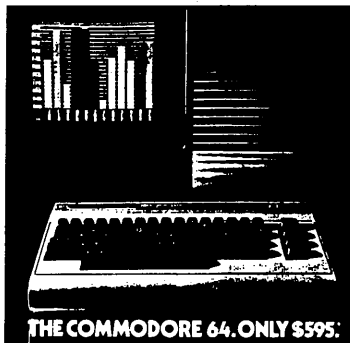
With the added CP/M† option, you can have access to hundreds of existing software packages.

In short, its applications are virtually limitless.

THE FUN SIDE OF POWER.

The Commodore 64 can become very playful at a moment's notice.

You can use it with Commodore's game cartridges or invent your own diversions. All will be enhanced by brilliant video quality and high resolution graphics (320 x 200 pixels, 16 available colors, 3D Sprite graphics), plus its own unique music synthesizer.



NOW'S YOUR CHANCE.

If you've been waiting for the "computer revolution," consider it as having arrived.

Through its 25 years of existence, Commodore has been committed to delivering better products at lower prices.

Today, the company's vertical integration has resulted in the Commodore 64's price performance breakthrough heralded by Shearson/American Express.

So if you run a company, you couldn't make a more cost-efficient capital investment.

For more information, contact your local Commodore dealer, or send in this coupon.

Commodore Business Machines, Personal Systems Division
P.O. Box 500 Conshohocken, Pennsylvania 19428

Please send me more information on the Commodore 64

Name _____
Title _____ Company _____
Address _____
City _____ State _____
Zip _____ Telephone _____

 **commodore**
COMPUTER

Complaint

105 F.T.C.

ATTACHMENT C

**WHEN WE ANNOUNCED
THE COMMODORE 64 FOR \$595, OUR COMPETITORS
SAID WE COULDN'T DO IT.
THAT'S BECAUSE THEY COULDN'T DO IT.**

The reason is that, unlike our competitors, we make our own IC chips. Plus all the parts of the computer they go into.

So Commodore can get more advanced computers to market sooner than anybody else. And we can get them there for a lot less money.

WHAT PRICE POWER?

For your \$595,* the Commodore 64™ gives you a built-in user memory of 64K. This is hundreds of dollars less than computers of comparable power.

Let's you think that the Commodore 64 is some stripped-down loss leader, a look at its available peripherals and interfaces will quickly convince you otherwise.

SOFTWARE THAT WORKS HARD.

The supply of software for the Commodore 64 will be extensive. And with the optional plug-in Z80 microprocessor, the Commodore 64 can accommodate the enormous amount of software available in CP/M.†

Add in the number of programs available in BASIC and you'll find that there are virtually no applications, from word processing to spreadsheets, that the Commodore 64 can't handle with the greatest of ease.

PERIPHERALS WITH VISION.

The Commodore 64 interfaces with all the peripherals you could want for total personal computing: disk drives, printers and a telephone modem that's about \$100, including a free hour's access to some of the more popular computer information services. Including Commodore's own Information Network for users.

RUN YOUR BUSINESS BY DAY.**SAVE THE EARTH BY NIGHT.**

At the end of a business day, the Commodore 64 can go into your briefcase and ride home with you for an evening's fun and games.

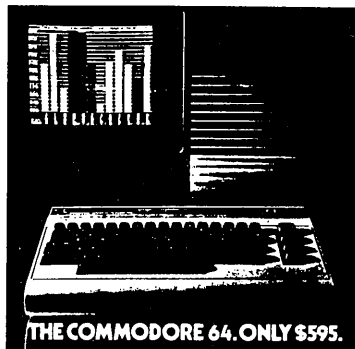
Because of its superior video quality (320x200 pixel resolution, 16 available colors and 3D Sprite graphics), the Commodore 64 surpasses the best of the video game machines on the market. Yet,

because it's such a powerful computer, it allows you to invent game programs that a game machine will never be able to play; as well as enjoy Commodore's own video game cartridges.

ATTACK, DECAY, SUSTAIN, RELEASE.

If you're a musicologist, you already know what an ADSR (attack, decay, sustain, release) envelope is. If you're not, you can learn this and much more about music with the Commodore 64's music synthesizing features.

It's a full-scale compositional tool. Besides a programmable ADSR envelope generator, it has 3 voices (each with a 9-octave range) and 4 waveforms for truly sophisticated composition and playback—through your home audio system, if you



wish. It has sound quality you'll find only on separate, music-only synthesizers. And graphics and storage ability you won't find on any separate synthesizer.

DON'T WAIT.

The predictable effect of advanced technology is that it produces less expensive, more capable products the longer you wait.

If you've been waiting for this to happen to personal computers, your wait is over.

See the Commodore 64 soon at your local Commodore Computer dealer and compare it with the best the competition has to offer.

You can bet that's what the competition will be doing.

Commodore Business Machines
Personal Systems Division
P.O. Box 500, Conshohocken, Pennsylvania 19428

Please send me more information on the Commodore 64™

Name _____ Title _____

Company _____

Address _____

City _____ State _____

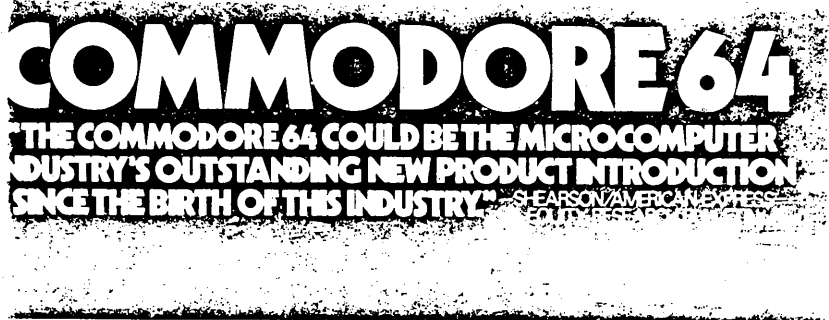
Zip _____ Phone _____

commodore
COMPUTER

8110

*Manufacturer's Suggested Retail Price: July 1, 1982. Disk drives and printers are not included in price. The 64's price may change without notice.
CP/M™ is a registered trademark of Digital Research, Inc.

ATTACHMENT D

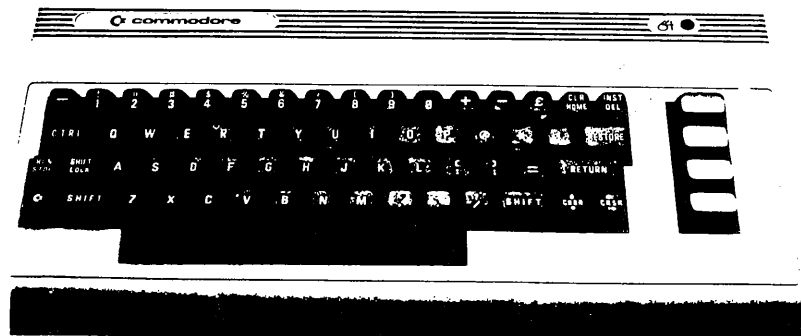


**FOR \$595, YOU GET WHAT
NOBODY ELSE CAN GIVE YOU
FOR TWICE THE PRICE.**

Even at twice the price, you won't find the power of a Commodore 64* in any personal computer. The Commodore 64 has a built-in memory of 64K. That fact alone would have sent computer critics

and analysts such as Shearson American Express to the typewriter for the kind of praise you read on the cover.

But there's more. As a quick read here on the cover...



**THE 64, QUITE SIMPLY, HAS NO COMPETITION.
AS A QUICK LOOK AT OUR COMPETITION WILL TELL YOU.**

2 of 4

Features	COMMODORE 64	APPLE II+*	IBM* PC	TANDY TRS-80* III	ATARI 800*
Base Price*	\$595	\$1530	\$1565	\$999	\$899
Advanced Personal Computer Features					
Built-in User Memory	64K	48K	16K	16K	48K
Programmable	Yes	Yes	Yes	Yes	Yes
Real Typewriter Keyboard	Yes (66 keys)	Yes (52 keys)	Yes (83 keys)	Yes (65 keys)	Yes (61 keys)
Graphics Characters (from Keyboard)	Yes	No	No	No	Yes
Upper and Lower Case Letters	Yes	Upper Only	Yes	Yes	Yes
5 1/4" Disk Capacity Per Drive	170K	143K	160K	178K	96K
Audio Features					
Sound Generator	Yes	Yes	Yes	No	Yes
Music Synthesizer	Yes	No	No	No	No
Hi-Fi Output	Yes	No	No	No	Yes
Video Features					
TV Output	Yes	Extra	Extra	No	Yes
Input/Output Features					
"Smart" Peripherals	Yes	No	No	No	Yes
Software Features					
.P/M* Option (Over 1,000 Packages)	Yes	Yes	Yes	Yes	No
Game Machine Features					
Cartridge Game Slot	Yes	No	No	No	Yes
Game Controllers	Yes	Yes	Yes	No	Yes

*Manufacturer's Suggested Retail Price July 1, 1982. Disk drives and printers are not included in prices. The 64's price may change without notice. And, after they get a look at this chart, you can count on the competition to change their prices.

**WITH A COMPUTER THAT'S LIGHT YEARS AHEAD OF ITS COMPETITION,
WE THOUGHT IT APPROPRIATE
THAT ITS SOFTWARE SHOULD BE AT LEAST A FEW YEARS AHEAD.**

Here's how we did it.

PART I. THE FIRST ORDERLY APPROACH TO SOFTWARE

Commodore's programmers examined the whole range of software available today—literally hundreds of programs—and isolated the most popular and most useful.

Then they made them better. The result: a variety of highly refined, perfected programs for home, business and education.

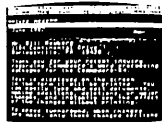
PART II. AN ALMOST INFINITE ARRAY OF SOFTWARE

Independent makers of software have already hopped on the 64 bandwagon. They've come to Commodore or training on the 64 and are adapting

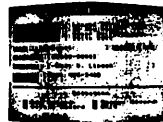
the world's most popular programs to the 64.

Further, the 64 is compatible with CP/M*. Which means a simple optional add-on opens up over 2,000 additional useful programs.

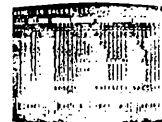
Plus—and a big plus this is for educators—you can also have access to programs developed for the Commodore PET* as it uses the same BASIC language as the Commodore 64.



WORD PROCESSING



DATA BASE



ELECTRONIC SPREADSHEET

**WHY DID THE 64 COME FROM COMMODORE AND NOT SOMEBODY ELSE?
BECAUSE WE MAKE OUR OWN CHIPS.**

Commodore is one of the few companies that design and manufacture their own chips.

So, unlike other computer companies that have to buy their chips, when Commodore wants to alter

a design or create a new one, their designers and engineers work hand in hand.

The result: a lot more computer for a lot less money.



OH, BY THE WAY, THE 64 JUST SO HAPPENS TO BE THE MOST BRILLIANT GAME MACHINE YOU CAN BUY.



With the 64, not only will you have an amazing array of terrific games (just a few are pictured here), but what's really amazing is how you'll see them. With a variety of colors that's never been offered

before, with a full range of sound, and with a resolution that truly rivals arcades.

Since the 64 is a true computer, you can actually invent your own sophisticated (or unsophisticated) games

WHAT DOES THE COMMODORE 64 DO? WHAT DO YOU WANT IT TO DO?

Whether you're in business and want a personal computer for spreadsheet calculation or word and text processing or mailing lists or data storage and retrieval...

Or whether you're a musician looking for a music

synthesizer (or a beginner who wants to learn how to play one).

The 64, quite simply, can do almost anything you want it to. And all with graphics that have an incredible resolution.

FOR ABOUT \$100 EXTRA, THE COMMODORE 64 CAN GET INFORMATION AND PROGRAMS FROM MULTI-MILLION DOLLAR COMPUTERS.

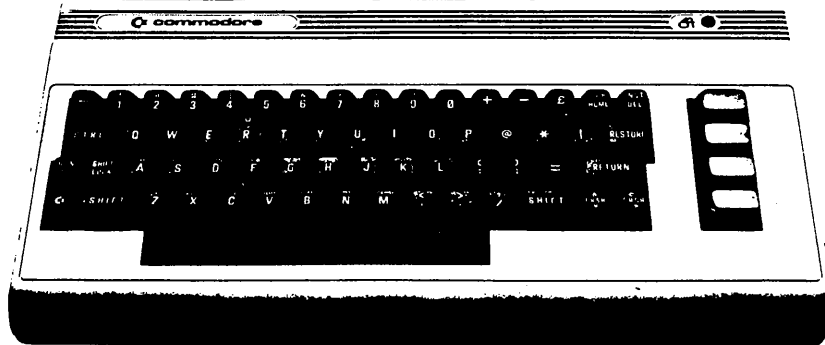
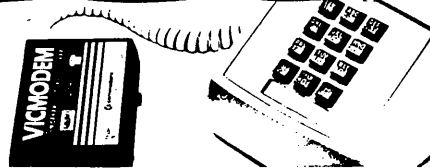
A modem is a device that connects your computer to your phone.

Telecomputing, they call it. They used to also call it

expensive. A personal computer and modem would go for at least \$1,500 and be judged "reasonable."

What happens when, for less than half that figure, the Commodore 64 hooks up with your telephone?

Just about anything, such as stock quotes, news updates, electronic mail and computer shopping—to name a few. In addition, Commodore has its own information network accessible through CompuServe*



Complaint

105 F.T.C.

COMMODORE SYSTEM SPECIFICATION

1 of 1

SYSTEM UNIT

Microprocessor 6510 designed and produced by Commodore's MOS Division. Uses the same instruction set as the 6502 but has additional input/output lines.

Memory 64K of RAM. 39K are user accessible for BASIC programs, 52K for machine language programs.

ROM 20K of internal ROM contain the operating system and Commodore BASIC language.

Keyboard Full size typewriter style 66 keys upper and lower case. Four unassigned programmable function keys.

Color and the full set of 64 PET graphics can be selected directly from keyboard.

Display 40 columns by 25 lines. 255 combinations of border/background colors. 16 text colors and use of all 64 PET graphic characters. High resolution graphics mode of 320 x 200 pixels for exceptional detail and clarity in games or animation. Can use 16 colors simultaneously. 8 independently movable Sprites can be created for games and animation. Each is 21 x 24 pixels, and may contain up to three colors.

Sound 6581 Sound Interface Device provides music and sound to rival even some dedicated music synthesizers.

Produces three independent voices, each with a range of nine octaves. Four waveforms are available: sawtooth, triangle, variable pulse and noise.

Includes programmable ADSR (attack, decay, sustain, release) generator. Programmable filter can be individually selected for each voice, provides low pass, high pass, band pass or notch outputs.

Variable resonance and master volume control.

COMMUNICATIONS

The Commodore 64 accepts a low-cost VICMODEM™ through its eight bit user port, giving it access to other computers over ordinary telephone lines.

The modem allows users to gain access to large data bases such as The Source, CompuServe and Dow Jones News/Retrieval Service.

PERIPHERALS

The Commodore 64 will support

Datassette Recorder A low cost tape unit which allows the storage of programs and data on standard audio tape cassettes.

Single Disk Unit Uses standard 5 1/4 inch floppy disks to store programs and data. Each diskette holds up to 179,000 characters of information. Disk units include their own microprocessors and memory systems, and therefore don't require memory resources from the Commodore 64 main unit. The Commodore 64 will support up to 10 single disk units.

Printer The VIC 1515 printer attaches directly to the Commodore 64 without additional interfaces. Prints 30 characters per second dot matrix. Uses plain tractor feed paper.

Interface Cartridges Specialized cartridges allow the Commodore 64 to use various standard devices including printers, controllers, and modems.

PET Emulator Allows users to run most of the programs designed for PET systems with little or no modification.

Audio and Video Connections Direct outputs from the Commodore 64 connect audio signals to high quality stereo systems, and video signals to a monitor.

Cartridge Slot Will accept games and other applications designed for Commodore 64 or Max Machine™ or plug-in cartridges.

Other interfaces provide access for two disk drives, game controller or a lightpen.

SOFTWARE

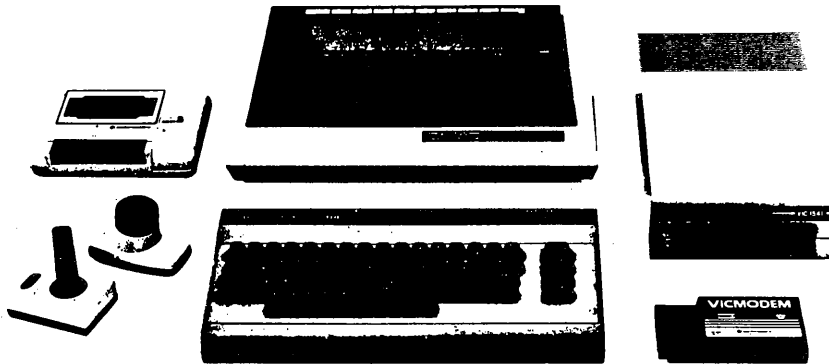
Commodore has already created a variety of programs in several categories for the 64 and has plans for much more. Business, personal, entertainment and educational applications make the Commodore 64 an enormously useful and versatile tool.

CP/M

A Z80 microprocessor on a plug-in cartridge makes an enormous amount of software available to users of the 64 system. By plugging the optional microprocessor into the 64's 8 bit user port, the user enables the Commodore to run programs written in CP/M.

CP/M is a registered trademark of Digital Research, Inc. For more information, see page 105 of this report.

COMMODORE 64



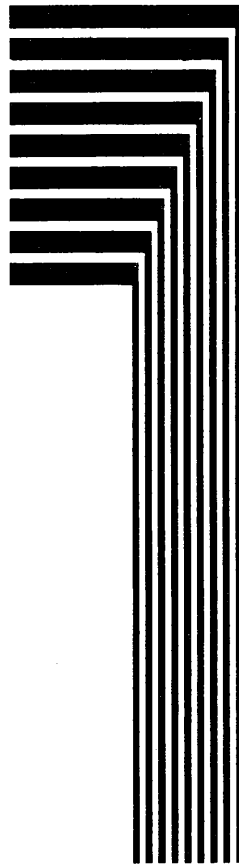
COMMODORE
COMPUTER

Complaint

ATTACHMENT E



**THE MOST COMPLETE
MICROCOMPUTER LINE**



COMMODORE'S COMPLETE

Congratulations! By expressing interest in Commodore computers, you have taken the first step towards joining the computer revolution. Experts speculate that by the dawn of the 21st century, computers and electronic information technology will be firmly established in America's homes, businesses, and schools. Don't be left behind. Compare us to the competition, you'll quickly realize that Commodore offers the most advanced computing features at the lowest prices.

VIC 20™



Memory:

- 5K expandable to 32K

Features:

- User supplied color monitor or TV
- 4 internal amplifiers including 5 octaves total range, 3-tone (music) generators, 1 sound effects generator
- 22 col x 23 line screen
- Programmable function keys & characters
- 16 colors
- Plug-in program/memory cartridges
- Joystick, paddles, lightpen
- Self-teaching materials
- High resolution graphics (178 x 184 dots)
- Basic 2.0
- Serial bus
- Numerous video game cartridges

COMMODORE 64™



Memory:

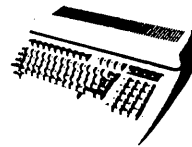
- 64 K of RAM

Features:

- Basic 2.0
- VIC Serial bus
- 40 col x 25 line screen display
- User supplied color monitor or TV
- Music synthesizer produces 3 independent voices, each with a range of 9 octaves
- 4 waveforms are available: sawtooth, triangle, variable pulse and noise
- 4 programmable function keys
- Uses 6510 microprocessor
- Optional Z80 microprocessor to allow CP/M™ compatibility
- 16 text colors
- 8 independently moveable sprites for "3 D graphics"
- Range of business software
- Optional IEEE-488 cartridge

CP/M™ is a registered trademark of Digital Research, Inc.

C128-80



Memory:

- 128K RAM expands to 256K internally, 640K externally totalling 896K

Features:

- Basic 4.0
- IEEE-488 bus
- RS232 interface
- 8 bit user port
- 80 col x 25 line screen display
- Works with user supplied monitor
- 6509 microprocessor
- Optional future processors planned are Z-80 for CP/M, 8088 for CP/M 86
- Direct Audio-Video Output
- Programmable function keys and numeric keyboard
- Compatible with CBM peripherals

Commodore computer systems are standard BASIC, have full size typewriter keyboard, upper and lower case, full screen editing capabilities, and have a high degree of upward compatibility.

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 respondents with violation of the Federal Trade Commission Act; and

The respondent, its 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 aforesaid draft of 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, 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, 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 Commodore Business Machines, 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 1200 Wilson Drive, in the City of West Chester, State of Pennsylvania.
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

This order shall not apply to representations made by respondent exclusively outside the United States and its possessions and territories.

I

It is ordered, That respondent Commodore Business Machines, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of the Commodore 64 computer, or any other computer hardware or software product, 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:

a. That any such product is available for sale to the public or has any capability, unless at the time such representation is made such product is then available for sale in reasonable quantities to the public or has said capability.

b. That any such product will be available for sale to the public or will have any capability, unless at the time of such representation respondent possesses and relies upon a reasonable basis for said representation.

II

It is further ordered, That respondent or its successors or assigns maintain accurate records of all materials that were relied upon by respondent in disseminating any representation covered by this order.

Such record shall be retained by respondent or its successors or assigns for three (3) years from the date that the representations to which they pertain are last disseminated. It is further ordered that any such records shall be retained by respondent or its successors or assigns and that respondent or its successors or assigns shall make such documents available to the Commission for inspection and copying upon request.

III

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in 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

230

Decision and Order

IV

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

V

It is further ordered, That respondent shall, within sixty (60) days after service 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.

Set Aside Order

105 F.T.C.

IN THE MATTER OF

LURIA BROTHERS AND COMPANY, INC., ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT*Docket 6156. Order, Feb. 13, 1963—Set Aside Order, March 28, 1985*

In response to a petition filed by Luria Brothers and Company, Inc. ("Luria"), the Commission, on February 1, 1985, reopened the proceedings in Docket No. 6156 and set aside the order issued on February 13, 1963, 65 F.T.C. 243, as it applied to Luria, on ground that it no longer served any procompetitive purpose and may impede the company's ability to compete effectively for the business of scrap consumers that desire exclusive supply arrangements. [105 F.T.C. 192] However, the commission determined that this action would only provide partial relief as long as the corresponding prohibitions against the purchasers of iron and steel scrap remained in effect. It therefore issued to respondent mills still in operation, orders to show cause why the proceedings in Docket 6156 should not be reopened to set aside Paragraph 2(a), which prohibited the mills from purchasing scrap exclusively from Luria, and giving the firm preferential treatment as a broker or supplier of scrap. Having received no objections to the proposed action, the Commission has reopened the proceeding and set aside Paragraph 2(a) holding that in view of its set aside order as it applied to Luria, setting aside Paragraph 2(a) of the 1963 order is in the public interest.

ORDER SETTING ASIDE PARAGRAPH 2(a) OF THE ORDER ISSUED
FEBRUARY 13, 1963

In response to a petition filed by Luria Brothers and Company, Inc. ("Luria"), the Federal Trade Commission on February 1, 1985, reopened the proceedings in Docket No. 6156 and set aside the order as it applied to respondent Luria. [105 F.T.C. 192] In doing so, the commission concluded that the order no longer serves any procompetitive purpose and that it may impede unnecessarily Luria's ability to compete effectively for the business of scrap consumers that desire exclusive supply arrangements. However, the Commission believes that setting aside the order as to Luria alone would provide only partial relief as long as order Paragraph 2(a)'s corresponding prohibitions against scrap purchasers remain in effect. Paragraph 2(a) prohibits the respondent mills from purchasing all or almost all of any plant's requirement of scrap iron and steel from Luria, and from giving Luria preferential status or favored treatment as a broker or supplier of iron and steel scrap.

On February 1, 1985, the Commission, pursuant to Section 3.72 of its Rules of Practice and Procedure, 16 C.F.R. 3.72, issued to the

respondent mills still in operation¹ orders to show cause why the proceedings in Docket No. 6156 should not be reopened to set aside Paragraph 2(a) of the order. Respondent mills were provided an opportunity to object to the proposed action, and having failed to do so, are now deemed to have consented to such action. In view of the Commission's set aside of the order as it applied to Luria, the Commission believes that the set aside of Paragraph 2(a) of the order, barring the respondent mills from using Luria as their exclusive scrap broker or supplier, is in the public interest.

Accordingly,

It is hereby ordered, That this matter be, and it hereby is, reopened and that Paragraph 2(a) of the order shall be set aside as of the effective date of this order.

Commissioner Bailey concurs in result.

¹ The Commission issued show cause orders to the following respondent mills: Bethlehem Steel Corporation; United States Steel Corporation; Phoenix Steel Corporation; Empire-Detroit Steel Division, Cyclops Corporation; ITT Grinnell Corporation; Standard Steel Division, Titanium Metals Corporation; McLouth Steel Corporation; Edgewater Corporation; Bucyrus-Erie Company; Weirton Steel Corporation; CF & I Steel Corporation and National Steel Corporation. Respondent mill formerly known as the Granite City Steel Company is now a division of the National Steel Corporation.

Modifying Order

105 F.T.C.

IN THE MATTER OF

THE AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2856. Consent Order, Dec. 14, 1976—Modifying Order, March 29, 1985*

In response to a petition filed by the American Academy of Orthopaedic Surgeons ("AAOS"), this Order reopens the matter of Docket C-2856, and modifies the consent order entered against AAOS, 88 F.T.C. 968, by deleting Paragraph II(B) of the Order which bars the organization from advising in favor of or against any relative value scale developed by third parties, and inserting a provision identical to one contained in the FTC's order in *Michigan State Medical Society (Michigan State)*, Docket No. 9129, 101 F.T.C. 191, that permits AAOS more freedom to discuss reimbursement issues with third-party payers and governmental entities. The Commission noted that it had recently modified a similar order entered against the American College of Obstetricians and Gynecologists ("ACOG"), Docket No. C-2855, [104 F.T.C. 524 (1984)] after finding that the benefits derived from its restriction on ACOG's ability to discuss relative value scales with third-party payers and governmental entities were outweighed by the resulting injury to ACOG and the public, and that finding was applicable to AAOS. Accordingly, the Commission has modified the AAOS order in the same manner as it modified the ACOG order, and that modification is also consistent with the Commission's decision in *Michigan State*.

ORDER REOPENING AND MODIFYING FINAL ORDER

By petition filed November 19, 1984, the American Academy of Orthopaedic Surgeons ("AAOS") asked the Commission to reopen and modify the Commission order in Docket No. C-2856 entered by consent against AAOS on December 14, 1976 ("Order") [88 F.T.C. 968]. AAOS requested that the Commission modify the Order by a) deleting Paragraph II(B) of the Order, which prohibits AAOS from advising in favor of or against any relative value scale developed by third parties (except that AAOS is permitted to provide historical data), and b) inserting a provision identical to a provision contained in the Commission's Order in *Michigan State Medical Society*, Docket No. 9129, 101 F.T.C. 191 (1983) ("*Michigan State*") that would allow AAOS more freedom to discuss issues relating to reimbursement with third-party payers and governmental entities. AAOS's petition was placed on the public record and no comments were received.

Upon consideration of AAOS's petition and other relevant information, the Commission finds that the public interest would be served by deleting Paragraph II(B) of the Order and by inserting the relevant provision contained in the order in *Michigan State*. The Commission's

order against the American College of Obstetricians and Gynecologists ("ACOG") in Docket No. C-2855 is similar to the AAOS order, and the Commission recently reopened and modified the ACOG order, finding that its restriction on ACOG's ability to discuss relative value scales with third-party payers and governmental entities had caused injury to ACOG and the public that outweighed any benefit that might be derived from the restriction. [104 F.T.C. 524 (1984)] AAOS's petition is based on ACOG's petition and the Commission has determined that its finding in ACOG is applicable to AAOS. Accordingly, the Commission has modified the AAOS order in the same manner as it modified the ACOG order. The modification is also consistent with the Commission's decision in *Michigan State*.

The Order continues to prohibit AAOS from developing and circulating its own relative value guide for use by its members. In addition, although the Order no longer will prohibit AAOS from discussing relative value scales with governmental entities and third-party payers, serious antitrust concerns would arise were AAOS to negotiate or attempt to negotiate an agreement with any such party or engage in any type of coercive activity to effect such an agreement.

Accordingly,

It is ordered, That this matter be, and it hereby is, reopened and that the Order in Docket No. C-2856 be modified 1) to delete Paragraph II(B) and to redesignate Paragraphs II(C) and II(D) of the Order Paragraphs II(B) and II(C) respectively; 2) to renumber Paragraphs III, IV and V of the Order Paragraphs IV, V and VI respectively; and 3) to insert the following:

III.

It is further ordered, That this order shall not be construed to prevent AAOS from:

A. Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government, executive agency, or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding.

B. Providing information or views, on its own behalf or on behalf of its members, to third-party payers concerning any issue, including reimbursement.

Complaint

105 F.T.C.

IN THE MATTER OF

WARD CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9160. Complaint, March 9, 1982—Decision, April 5, 1985*

This Consent Order, among other things, requires five Rockville, Maryland builders and sellers of residential housing, together with a corporation officer, to cease failing to fully honor valid warranty claims within a reasonable period of time; representing that materials are defect-free, unless defects due to faulty material, workmanship or design are corrected or remedied within a reasonable period of time; failing to provide purchasers with building lots substantially conforming to the physical characteristics represented by the sellers; and failing to disclose, prior to the signing of a sales contract, all disclaimers or limitations of the firms' responsibilities with regard to the physical condition of the lot. The text of all written warranties must be clearly and conspicuously displayed in sales offices and model homes, and a copy of such warranties must be provided to prospective buyers if requested. In addition, the firms are required to provide future purchasers with an opportunity to arbitrate warranty disputes; provide arbitration to homeowners who had purchased their homes in the year preceding the effective date of the order; and, subject to conditions set forth in the order, provide repairs and/or payments to qualified homeowners who had purchased their homes between March 10, 1978 and a date one year prior to the effective date of the order, and who still own these homes.

Appearances

For the Commission: *Miriam Daniels, Louise R. Jung, Karen Egbert, Anne Maher and Richard C. Donahue.*

For the respondents: *Mitchell S. Cutler and Michael E. Kris, Finley, Kumble, Wagner, Heine, Undedberg & Casey, Washington, D.C. and Robert A. Skitol, Steven K. Yablonski and Jane Seigler, Wald, Harkrader & Ross, 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 respondents Ward Corporation, R.E. Ward, Inc., Ward Development Company, Inc., Ward Component Systems, Inc., Richlynn Development, Inc., Richlynn Land Developers, Inc., corporations, and Richard E. Ward, individually and as an officer of said corporations, 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:

I. RESPONDENTS

PARAGRAPH 1. Respondent Ward Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 1300 Piccard Drive, Rockville, Maryland.

Respondents R.E. Ward Inc., Ward Development Company, Inc., and Ward Component Systems, Inc., are wholly-owned subsidiaries of respondent Ward Corporation, and are corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland, with their office and principal place of business located at 1300 Piccard Drive, Rockville, Maryland.

Respondents Richlynn Development, Inc. and Richlynn Land Developers, Inc., are wholly-owned subsidiaries of respondent Ward Corporation, and are corporations organized, existing and doing business under and by virtue of the laws of the State of Virginia, with their office and principal place of business located at 1300 Piccard Drive, Rockville, Maryland.

Respondent Richard E. Ward is an individual and is the principal officer and director of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondents.

II. NATURE OF TRADE AND BUSINESS

PAR. 2. Respondents are now, and for some time past have been, engaged in: the construction of housing; the manufacture of pre-fabricated components and component systems, lumber products and other building materials for use in housing; the development of land on a finished lot basis; the improvement, repair or modification of housing; the advertising, offering for sale and/or sale of the above-mentioned property, goods or services to the public; and other like or similar activities.

III. JURISDICTION

PAR. 3. In the course and conduct of their business, respondents cause, and for some time past have caused, their property, goods and services to be offered for sale and sold in Maryland, Virginia and other States to purchasers and prospective purchasers located in Maryland, Virginia and various other States of the United States and

the District of Columbia by means of advertisements placed in newspapers of interstate circulation.

Respondent Ward Corporation provides, and for some time past has provided, its subsidiary companies incorporated and doing business in Maryland and Virginia with administrative, financial and accounting services, and in-house data processing facilities.

Respondent R.E. Ward, Inc., subcontracts, and for some time past has subcontracted, its housing construction services to its affiliates in Maryland and Virginia.

Respondents Ward Development Company, Inc., and Richlynn Development, Inc., are now, and for some time past have been, engaged in the offering for sale and sale of housing to purchasers and prospective purchasers residing in various States of the United States and the District of Columbia.

Respondent Ward Component Systems, Inc., is now, and for some time past has been, engaged in the manufacture, sale, and distribution of building components and materials from its plants in Maryland, Virginia and Delaware to customers located in various States of the United States and the District of Columbia.

Respondent Richlynn Land Developers, Inc., is now, and for some time past has been, engaged in the development of land in various States in the United States.

In addition, respondents cause, and for some time past have caused, their advertising material, contracts, and various business papers to be transmitted by means of the United States mail from their places of business in Maryland and Virginia to purchasers and potential purchasers in various other States of the United States and the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said property, goods and services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

IV. ACTS AND PRACTICES: WARRANTIES

PAR. 4. In the further course and conduct of their aforesaid business, respondents are now and have been, directly or implicitly, granting or disseminating certain warranties to purchasers of their aforesaid homes.

1. Respondents are now and have been disseminating a written warranty to purchasers of their aforesaid homes, under which warranty respondents warrant that they will correct (a) any defects due to faulty construction and/or defective materials, (b) specific defects including roof leaks, basement leaks, inadequate heating or air conditioning systems, excess settlement of finish grade, and (c) any patent

defects noted at the time of final inspection, where such defects are reported to respondents before the end of one year from the date of possession or settlement, whichever occurs first.

2. Respondents are now and have been since approximately July 1, 1976, by force of Maryland State law, warranting for a period of one year to purchasers of their aforesaid homes located in Maryland that at the time the home is completed it is (a) free from faulty materials, (b) constructed according to sound engineering standards and in a workmanlike manner, and (c) fit for habitation, except that these warranties do not apply to any condition that an inspection of the premises would reveal to a reasonably diligent purchaser at the time the contract is signed.

3. Respondents are now and have been since approximately July 1, 1979, by force of Virginia State law, warranting for a period of one year to purchasers of their aforesaid homes located in Virginia that the home, at the time of transfer of record title or the purchaser's taking possession, whichever occurs first, is (a) sufficiently free from structural defects, so as to pass without objection in the trade, (b) constructed in a workmanlike manner, so as to pass without objection in the trade, and (c) fit for habitation.

PAR. 5. By and through the granting and dissemination of such warranties, respondents have represented, directly or implicitly, that:

1. Respondents will correct, in a workmanlike manner, all defects within the scope of the written warranty disseminated to purchasers, and will complete these tasks within a reasonable time after they receive notice of the defects.

2. Respondents will correct, in a workmanlike manner, all defects within the scope of the warranties implied under Maryland State law, and will complete these tasks within a reasonable time after they receive notice of the defects.

3. Respondents will correct, in a workmanlike manner, all defects within the scope of the warranties implied under Virginia State law, and will complete these tasks within a reasonable time after they receive notice of the defects.

PAR. 6. In truth and in fact, respondents have not fully performed their obligations under their written warranty and warranties implied under Maryland and Virginia State law.

1. In numerous instances, respondents have failed to correct, in a workmanlike manner, defects within the scope of their written warranty and/or warranties implied under Maryland or Virginia State law. Typical and illustrative of the uncorrected defects, but not all inclusive thereof, are:

- a. Excessive vibration, sloping and/or sagging of floors, caused in part by the faulty construction of floor support systems;
- b. Uneven and inadequate heating of rooms, caused in part by the use of undersized heat pumps, faulty installation of heating ducts and omission of insulation;
- c. Basement water leakage through walls, window wells and doors, caused in part by the faulty installation of components, poor site grading and inadequate waterproofing;
- d. Roof leaks, caused in part by the lack of building paper underneath the roofing shingles;
- e. Excessive air and water infiltration in window areas, caused in part by the faulty installation, poor fit and/or poor design of windows and window frames;
- f. Excessive cracking and settling of stoops, caused in part by the lack of a proper base under the stoops;
- g. Excessive cracking and settling of driveways, caused in part by the improper application of the asphalt material and/or inadequate preparation of the underlying surface;

2. In numerous instances, where respondents, in a workmanlike manner, have corrected defects within the scope of the written warranty and/or warranties implied under State law, purchasers have encountered delays frequently exceeding six months from the time respondents received notice of the defect to the time respondents corrected the defect.

Therefore, the statements, representations, acts and practices relating to respondents' written warranty, as alleged in Paragraphs Four (1.) and Five (1.) were and are deceptive.

PAR. 7. Furthermore, respondents' failure to perform their obligations fully pursuant to their written warranty and warranties implied under State law has resulted in substantial injury to consumers. Therefore, the acts and practices as alleged in Paragraphs Four, Five, and Six were and are unfair.

PAR. 8. Furthermore, respondents continued to grant or disseminate said warranties to purchasers of their aforesaid homes even though respondents knew or should have known of their failure to perform warranty obligations fully with respect to past purchasers' homes. Under these circumstances, reasonably prudent businesspersons would have known that the acts and practices as alleged in Paragraphs Four, Five and Six were dishonest or fraudulent. Furthermore, such acts and practices have resulted in substantial injury to respondents' purchasers for which a court may grant relief pursuant to Section 19(b) of the Federal Trade Commission Act, as amended.

PAR. 9. In the further course of their business, respondents are now and have been, since October 1, 1970, including a clause in their

"Agreement of Sale" whereby purchasers agree to accept respondents' written warranty "in lieu of all other warranties whatsoever, whether express or implied."

PAR. 10. By and through the inclusion of the aforesaid clause in the "Agreement of Sale," respondents have represented, directly or implicitly, that purchasers have only those warranty rights provided by respondents and no other warranty rights, whether express or implied under State law.

PAR. 11. In truth and in fact, the aforesaid clause is clearly inapplicable, ineffective, invalid and/or unenforceable under Maryland and Virginia State law. Therefore, the inclusion of this clause has the tendency or capacity to deceive or mislead purchasers as to their warranty rights and was and is unfair or deceptive.

V. OTHER ACTS AND PRACTICES

PAR. 12. In the further course and conduct of their aforesaid business, respondents are now and have been providing purchasers with an opportunity to inspect their homes prior to settlement while accompanied by respondents' representative and to have all readily apparent defects or incomplete items listed on an "Orientation Inspection" sheet provided by respondents. In the further course and conduct of their business, respondents have represented, directly or implicitly, orally or in writing, that they will correct or complete, in a workmanlike manner, as many items listed as possible prior to settlement, and/or will correct or complete, in a workmanlike manner, all items listed within a reasonable time after the pre-settlement inspection.

PAR. 13. In truth and in fact, respondents have not fully performed their obligations with respect to items listed by purchasers during the pre-settlement inspection.

1. In numerous instances, respondents have failed to correct, in a workmanlike manner, defects listed. Typical and illustrative of the uncorrected defects, but not all inclusive thereof are the following: floor vibration; basement leaks; erosion of dirt under stoops; deterioration of driveways; damaged siding; poorly fitting storm windows; missing or loose roof shingles.

2. In numerous instances, respondents have failed to complete, in a workmanlike manner, all incomplete items listed. Typical and illustrative of the incomplete items, but not all inclusive thereof, are the following: missing insulation; lack of grass coverage of the lot; presence of rocks and construction debris in the soil; unfinished and inadequate lot grading.

3. In numerous instances, where respondents, in a workmanlike

manner, have corrected or completed items listed, purchasers have encountered long delays frequently exceeding six months from the time of the pre-settlement inspection to the time respondents corrected or completed the item.

Therefore, the statements, representations, acts and practices as alleged in Paragraph Twelve were and are deceptive.

PAR. 14. Furthermore, respondents' failure to perform their obligations fully with respect to items listed by purchasers during the pre-settlement inspection has resulted in substantial injury to consumers. Therefore, the acts and practices as alleged in Paragraphs Twelve and Thirteen were and are unfair.

PAR. 15. Furthermore, respondents continued to engage in the acts and practices alleged in Paragraph Twelve even though respondents knew or should have known of their failure to perform obligations fully with respect to items listed during the pre-settlement inspection by past purchasers of their aforesaid homes. Under these circumstances, reasonably prudent businesspersons would have known that the acts and practices as alleged in Paragraphs Twelve and Thirteen were dishonest or fraudulent. Furthermore, such acts and practices have resulted in substantial injury to respondents' purchasers for which a court may grant relief pursuant to Section 19(b) of the Federal Trade Commission Act, as amended.

PAR. 16. In the further course and conduct of their aforesaid business, and for the purpose of inducing the public to purchase respondents' homes, respondents are now and have been including pictorial representations and written statements in their advertising brochures, sales documents and advertising inserted in newspapers of interstate circulation.

Typical and illustrative of said pictorial representations are Exhibits A, B, C, and D, attached hereto.

Typical and illustrative of said written statements are the following:

STANDARD FEATURES: Attractive Landscaping

STANDARD FEATURES: Landscaping includes seeding and shrubs.

You'll find split level and 2 story homes on beautiful lots all over a full acre.

An inviting community of traditional homes on beautiful ½ acre lots.

The homes are surrounded by beautifully landscaped shade trees . . .

Furthermore, respondents have built model homes which are open to the public. These homes are located on level lots which are fully grass-covered and landscaped.

PAR. 17. By and through the use of model homes and the representa

tions and statements described in Paragraph Sixteen, and others of similar import and meaning not expressly set out therein, respondents have represented, directly or implicitly, that:

1. Respondents will grade, in a workmanlike manner, the lots sold to purchasers of their homes.
2. Respondents will remove rocks and construction debris from the lots.
3. Respondents will provide sufficient topsoil so that purchasers can reasonably maintain landscaping on the lots.
4. Respondents will adequately protect trees on the lots during the construction process.

PAR. 18. In truth and in fact, respondents have not finished lots as represented.

1. In numerous instances, respondents have failed to grade lots in a workmanlike manner.

- a. In numerous instances, respondents have failed to fill in ruts, depressions and holes created on the lots during the construction process.

- b. In numerous instances, respondents have failed to provide adequate drainage on the lot, resulting in the presence of standing water over long periods of time and large muddy areas on the lots.

- c. In numerous instances, respondents have left steep inclines on the lots.

2. In numerous instances, respondents have failed to remove substantial amounts of rocks and construction debris from the lots.

3. In numerous instances, respondents have failed to provide sufficient topsoil, resulting in the purchasers' inability to reasonably maintain the landscaping on the lots.

4. In numerous instances, respondents have failed to protect adequately trees on the lots during the construction process, resulting in the destruction of the trees.

Therefore, the representations, statements, acts and practices as alleged in Paragraphs Sixteen and Seventeen were and are deceptive.

PAR. 19. Furthermore, respondents' failure to finish lots as represented to purchasers has resulted in substantial injury to consumers. Therefore, the acts and practices as alleged in Paragraphs Sixteen, Seventeen and Eighteen were and are unfair.

PAR. 20. Furthermore, respondents continued to engage in the acts and practices alleged in Paragraphs Sixteen and Seventeen even though respondents knew or should have known of their failure to finish lots as represented to past purchasers of their aforesaid homes. Under these circumstances, reasonably prudent businesspersons

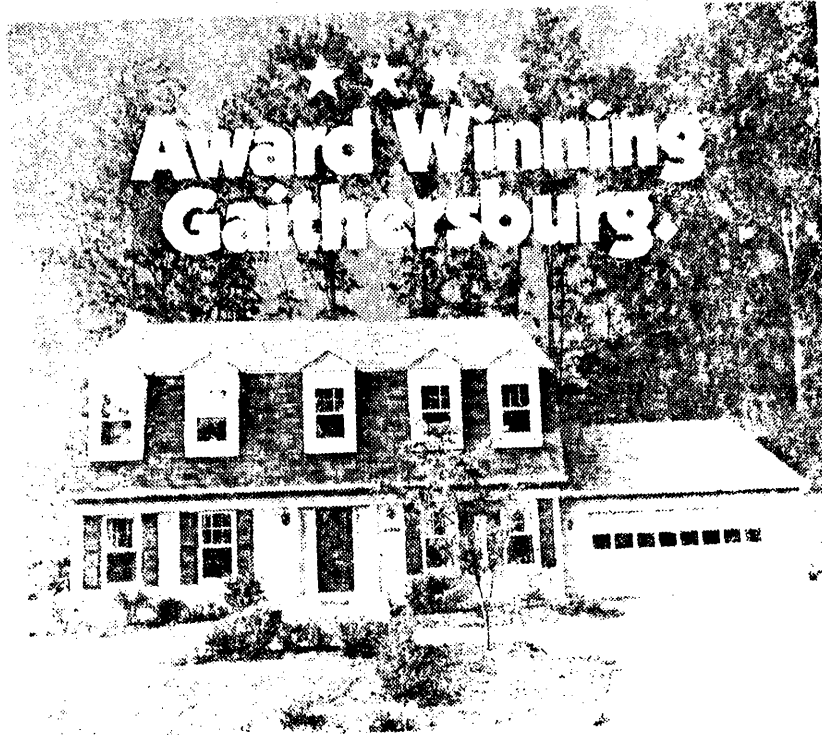
would have known that the acts and practices as alleged in Paragraphs Sixteen, Seventeen and Eighteen were dishonest or fraudulent. Furthermore, such acts and practices have resulted in substantial injury to respondents' purchasers for which a court may grant relief pursuant to Section 19(b) of the Federal Trade Commission Act, as amended.

PAR. 21. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms, and individuals engaged in the sale and construction of residential housing.

PAR. 22. The use by respondents of the aforesaid unfair, false, misleading, or deceptive statements, representations, acts, and practices has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, or into the purchase of substantial numbers of respondents' houses by reason of said erroneous and mistaken belief.

PAR. 23. 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 or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. Although respondents, in some of their sales contracts, provide for binding arbitration of disputes "arising under and pursuant to this Contract, or in any way related to the house and lot to be conveyed," purchasers could not have reasonably avoided injury resulting from respondents' alleged unfair acts or practices. The availability of arbitration was not referred to in conjunction with respondents' pre-settlement or warranty procedures and was not raised by respondents at the time any dispute arose between respondents and purchasers or at the time any lawsuit was filed by a purchaser against respondents. Furthermore, many other sales contracts used by respondents did not provide for arbitration of disputes. For these and other reasons, the presence of the arbitration provision in some of respondents' sales contracts does not excuse respondents from liability for the unfair acts or practices alleged herein. The acts and practices of respondents, as herein alleged, are continuing, and will continue, in the absence of the relief herein requested.

EXHIBIT A



**In Gaithersburg, Ward is
the only name you need to know.**

Sure there are plenty of builders in Gaithersburg, but there's only one Ward, with 15 years' experience in satisfying Montgomery County homeowners. If you're concerned today about prices and financing, consider that Oakmont Manor offers big, traditional homes with all the features you want from only \$124,990. And only Ward has special MONEYWISE financing, which enables you to pay less and afford more home than

you thought possible. Oakmont Manor is in the best section of Gaithersburg, close to shopping, entertainment and quick commuting. 1-270. And once you see the homes, you won't want to see anything else.

Ward at Oakmont Manor. The

glory of Gaithersburg is just a few minutes' drive north to Lake L. O. North to Lake L. O. Shady Grove Rd. Exit on Rt. 202. Just West of the Shopping Center.

Ask about our super below-market

MONEY WISE

VA/FHA, 30-year fixed rate conventional, and adjustable rate plans.

Right on Central Ave. to Oakmont Manor on the right. Open 12:00 everyday except Thursdays. Phone (301) 918-2567.

Ward at Oakmont Manor

Brokers Welcome—3% Finder's Fee



Complaint

105 F.T.C.

EXHIBIT B

1

CLOSE-IN SILVER SPRING, MD.

Elegant traditional homes fr. \$119,990 with up to 5 bedrooms. Established Silver Spring neighborhood. Beltway Exit 23 North on Colesville Rd. to Randolph Rd., left ¼ mile to Snowden's Mill on right. Phone 384-0476.

Snowden's Mill

2

IN THE WOODS OF SPRINGFIELD FROM \$119,700

Colonial designs with up to 4 bedrooms, loads of extras. Near Springfield Country Club. Beltway Exit 4 South onto I-95 to Springfield interchange. Old Bear Ridge Rd. to Rolling Rd., left to Kenwood Oaks—right. Phone 451-8398.

KENWOOD OAKS

3

BUY NOW FOR IMMEDIATE DELIVERY

Act fast for great financing on luxury homes with basements & garages included. Pick ups from \$69,990. Beltway to Md. Rte. 197 West (left) on Rte. 197 to Montpelier Dr., left one mile to North Point Lane. Right and follow signs to sales office. Phone 852-7025.

MONTPELIER MANOR

4

BEST DEAL IN ANNANDALE

Priced from just \$122,490 in a new neighborhood near Fairfax Hospital. 20 minutes from downtown. From the Beltway, Exit Rte. 50 West ½ mile to Gallows Rd., left to Woodburn Rd., right to Tobin Rd. to Sales Office. Phone 573-0823.

Prosperity Woods

5

MONTGOMERY COUNTY VALUE

Just 5 luxury colonial homes left fr. \$115,990. ½ acre lots. Take I-270 North to Damascus Exit (Rte. 118). East to Rte. 355. left to Rte. 27. Right on Rte. 27 (Cedar Plunge Rd.) and continue to Mt. Airy Dr. left to Roanoke Dr. left to Sales Office. Phone 265-6055.

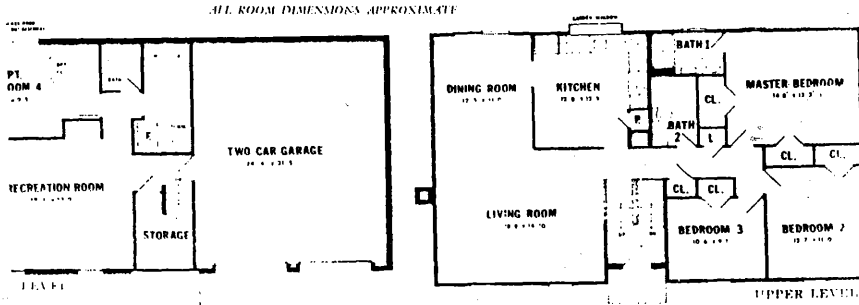
Middleboro Estates

WARD CORPORATION

ward

BROKERS - INVITEA

EXHIBIT C



Note: Legal restrictions limit 4th bedroom usage to homes with walk-out basements only.

The Sycamore
SPLIT FOYER

An exciting flair for good living begins in the dramatic, two-story split-foyer entry. Upstairs, a large formal living room, separate dining room, an eat-in kitchen boasting the very latest appliances and, over the sink, a sunny garden window with shelving for your plants. The sleeping wing includes a master suite with its own bath, 2 additional bedrooms and a complete hall bath. On the lower level, a tremendous recreation room with an included fireplace, space for a 4th bedroom and optional bath, ample household storage, and a two-car garage. Air conditioning and carpeting are included. Energy-conservation package includes heat pump and thermal insulation for year-round fuel savings.



S-2



S-1

Complaint

EXHIBIT D



Partridge Court
The Hunter 3 Bedroom End-of-Row Townhouse

For maximum privacy, select a superb end-of-the-row townhouse! Private side entrance, extra-large room sizes throughout. The Hunter features a step-down family room with optional fireplace, a full basement to use as you require, and much more besides.

Builder/Developer:
 RECHLYNN DEVELOPMENT, INC.



DECISION AND ORDER

The Commission having theretofore 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 attorney, 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(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 filed thereafter by interested persons pursuant to section 3.25 of its Rules, now in conformance 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. Respondents Ward Corporation, Ward Development Company, Inc., and Ward Component Systems, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland, with their principal place of business located at 1300 Piccard Drive, in the City of Rockville, State of Maryland.

2. Respondents Richlynn Development, Inc., and Richlynn Land Developers, Inc., are corporations organized, existing and doing business under and by virtue of the State of Virginia, with their principal place of business located at 1300 Piccard Drive, in the City of Rockville, State of Maryland.

3. Respondent Richard E. Ward is an officer of each said corporate respondent, and his principal place of business is located at 1300 Piccard Drive, in the City of Rockville, State of Maryland.

4. 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.

It is ordered, That respondents Ward Corporation, Ward Development Company, Inc., Ward Component Systems, Inc., Richlynn Development, Inc., and Richlynn Land Developers, Inc., corporations, and respondent Richard E. Ward, individually and as an officer of the corporations, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the construction, advertising, offering for sale, or sale of any new single-family unit which is a detached structure, an attached or semi-attached townhouse unit or a twin unit (hereinafter referred to as "residential home") in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents will correct, repair or otherwise remedy any defect due to faulty materials, workmanship or design unless respondents do, in fact, correct, repair or otherwise remedy such defect within a reasonable period of time after receipt of a homeowner's valid request to do so.

2. Representing, directly or by implication, that the materials, workmanship or design is defect-free or meets or will meet a specified level of performance, unless the representation is, in fact, true or, in the event of any defect or a failure to meet the specified level of performance, respondents do, in fact, correct, repair or otherwise remedy such defect within a reasonable period of time after receipt of a homeowner's valid request to do so.

3. Failing to honor fully every valid warranty claim within a reasonable period of time after receipt of a homeowner's request therefor; *provided, however,* that nothing herein shall be construed as precluding respondents from denying or contesting a warranty claim believed in reasonable good faith to be without merit or, in such cases, from invoking any other rights provided by law.

4. Failing, whenever respondents represent, directly or by implication, that the lot offered to a purchaser will have certain physical characteristics including, but not limited to, size, contours, drainage, soil preparation, and seeding, to provide the purchaser with a lot conforming substantially to such representation.

5. Failing, prior to the time a sales contract for a new residential home is signed, to disclose clearly and conspicuously in writing to the

prospective purchaser all disclaimers or limitations of respondents' responsibilities with regard to the physical condition of the lot.

II.

It is further ordered, That respondents, in connection with the sale of any new residential home settled after the home is completed, do forthwith cease and desist from representing, directly or by implication, that respondents will correct or complete items listed on an "Orientation Inspection Sheet" or any similar document reflecting the results of the purchaser's pre-settlement inspection of the home, unless respondents:

(a) prior to settlement, inspect the home with the purchaser and any accompanying person(s), including (if desired) an inspector chosen by the purchaser, and list every readily apparent problem or incomplete item on an Orientation Inspection Sheet or similarly designated document;

(b) correct or complete all such listed problems or items within one hundred and twenty (120) days of the inspection, subject to *force majeure*, labor disruptions, or any other events reasonably beyond respondents' control, in which case respondents shall correct or complete such problems or items within a reasonable period of time; and

(c) disclose to the purchaser clearly and conspicuously on a copy of the Orientation Inspection Sheet or similarly designated document provided to the purchaser that, subject to events reasonably beyond respondents' control, all listed problems or items will be corrected or completed within one hundred and twenty (120) days.

III.

It is further ordered, That, in connection with any offering for sale of any new residential home for which a written warranty is offered, respondents shall:

1. Clearly and conspicuously display in each sales office and in each model home:

(a) The text of the warranty.

(b) A notice, in plain and readily understood language, that copies of the warranty may be obtained free of charge upon request.

2. Provide a copy of the warranty to each prospective purchaser who requests one.

3. Furnish to each purchaser a copy of the warranty prior to or at the time of execution of the sales contract for a new home.

4. Disclose clearly and conspicuously within the warranty any limitations on, disclaimers of, or exclusions from coverage under the written warranty or any implied warranty arising under state law; *provided, however*, that respondents shall not make any representation, written or oral, concerning any such limitation, disclaimer or exclusion where such limitation, disclaimer or exclusion is prohibited by state or federal law.

IV.

It is further ordered, That, in connection with each sale of a new residential home for which a written warranty is offered, respondents shall establish and abide by an informal dispute resolution procedure as described in Appendix A. Respondents shall furnish to each purchaser of such a home a copy of Appendix A or a comparable written explanation of said informal dispute resolution procedure prior to, or at the time of, execution of the sales contract for the new home; *provided, however*, that nothing herein shall prohibit respondents from utilizing a form of sales contract which clearly and conspicuously discloses that the homeowner agrees to invoke the aforementioned dispute resolution procedure prior to invoking any other remedy provided by law.

V.

It is further ordered, That, if respondents deny any written request for warranty work under respondents' written warranty, respondents shall, within thirty (30) days after receipt of the request, provide the homeowner with a written statement of reasons for the denial, together with notice of the homeowner's right to submit any such warranty dispute to the informal dispute resolution procedure provided for in Paragraph IV of this Order.

VI.

It is further ordered, That, in connection with any offering for sale of a new residential home for which no written warranty is offered, respondents shall, prior to the time of execution of the sales contract, disclose clearly and conspicuously in writing to the prospective purchaser the fact that no written warranty is offered and any limitations on, disclaimers of, and exclusions from any implied warranty arising under state law; *provided, however*, that respondents shall not make any representation, written or oral, concerning any such limita-

tion, disclaimer or exclusion where such limitation, disclaimer or exclusion is prohibited by state or federal law.

VII.

It is further ordered, That, for each homeowner who took title to a home from respondents from March 10, 1978, to one year prior to the date of service of this Order and who as of the date of service of this Order is still the owner of that home, respondents shall establish and abide by the redress procedure and dispute resolution mechanism described in Appendix B for any claim made by the homeowner under any written warranty or under any express or implied warranty arising from state law and for any claim made by the homeowner relating to the pre-settlement inspection of the home, *provided that:*

1. In the case of a warranty claim, the homeowner made a claim to respondents during the first year after settlement, and there is credible written evidence in respondents' or the homeowner's possession to establish that such a claim was then made;

2. In the case of a claim relating to the pre-settlement inspection, the homeowner or respondents had at the time listed the problem or item on the Orientation Inspection Sheet;

3. The claim relating to a specific problem or item has a value of \$500 or more, measured by the greater of the homeowner's actual out-of-pocket expenses reasonably incurred or the reasonable estimated cost of repair by a contractor. (All problems or items resulting from the same cause and involving the same component(s) or defect(s) shall be deemed to be a single problem or item for purposes of determining value. For example, a number of leaking windows in a home caused by improper installation of the windows shall be deemed to be a single problem or item.);

4. Respondents refused or otherwise failed adequately to satisfy the homeowner's claim; and

5. In the case of a home in which the homeowner has modified the affected part in a manner that substantially increases the cost of repairing or correcting the alleged problem or item but the homeowner nonetheless establishes that the alleged problem or item existed prior to the modification, respondents shall not be required to bear the increase in cost of repair or correction resulting from the modification.

VIII.

It is further ordered, That, for each homeowner who took title to a home from respondents within one year prior to the date of service of this Order and who as of the date of service of this Order is still the owner of the home, respondents shall establish and abide by an informal dispute resolution procedure substantially similar to that described in Appendix A for any claim made by the homeowner under any written warranty or under any express or implied warranty arising from state law and for any claim made by the homeowner relating to the presettlement inspection of the home and that within sixty (60) days after this Order becomes final, respondents shall provide each such homeowner with the notice letter attached hereto as Appendix C, along with a copy of Appendix A, or a comparable written explanation of said informal dispute resolution procedure.

IX.

It is further ordered, That in connection with any sale of a new residential home respondents shall maintain for three years after the date of transfer of title or of delivery of the home to the purchaser, whichever is earlier, and upon reasonable notice make available to the Commission for inspection and copying all non-privileged correspondence, memoranda and other documents regarding complaints or requests for repairs made to respondents by the purchasers, including all documents relating to repairs made by respondents to the home and all documents relating to disputes handled under the informal dispute resolution procedures required by this Order.

X.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to 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 corporations which may affect compliance obligations arising out of this Order.

XI.

It is further ordered, That respondents shall, within thirty (30) days of the date of service of this Order, distribute a copy of this Order to (a) each of respondents' operating subsidiaries and divisions, and (b) each officer and salaried employee of respondents and of said subsidi-

aries and divisions engaged in the construction, advertising, offering for sale, or sale of any new residential home(s).

XII.

It is further ordered, That within six (6) months after the date of service of this Order and within six (6) months after the completion of all of respondents' obligations pursuant to paragraph VII of this Order, respondents shall file with the Commission a report, in writing, setting forth in detail the manner in which they have complied with this Order.

XIII.

It is further ordered, That all provisions of this Order except Sub-paragraphs 1, 2, 3 and 4 of Paragraph I shall be vacated ten (10) years after the date of service of this Order.

XIV.

It is further ordered, That no provision of this Order shall apply to any person, partnership, corporation or other entity not named herein unless respondents, individually or collectively, either have (a) a majority equity position in, (b) actual working control over, or (c) management responsibility for such person, partnership, corporation or other entity.

APPENDIX A

The informal dispute resolution procedure required by Paragraph IV of this Order shall be available to homeowners for an initiation fee of no more than \$75.00 during the first three years after the effective date of this Order provision, no more than \$100.00 during the fourth through sixth years after the effective date of this Order provision, and no more than \$125.00 during the remaining years that this Order provision remains in effect. *Provided, however,* That in no event shall the initiation fee constitute more than half of the total cost of the procedure. Respondents shall be ordered to return or reimburse any such fee as part of the decision at the end of the procedure if the homeowner's claim is determined to be meritorious.

Upon invocation of this procedure by a homeowner, respondents shall appoint an arbitrator who is independent and knowledgeable in home construction and who has been either selected by an independent third-party organization experienced in dispute resolution or approved, in writing, by the homeowner. In ruling on claims submitted to him/her for resolution, the arbitrator shall (a) be bound by the provisions of respondents' written warranty and any express or implied warranties arising from state law and (b) use the Home Owners Warranty Program Quality Standards which are applicable to the first year of ownership of the home and any applicable provisions of the building code in the jurisdiction in which the home is located to interpret all applicable

warranty provisions. He/she may also consider any applicable Orientation Inspection Sheet or similar document relating to an applicable pre-settlement inspection.

The arbitrator shall render a written decision on all claims submitted for resolution within sixty (60) days of respondents' receipt of the initiation fee, and shall promptly provide a copy of his/her decision to the homeowner and respondents. (If the homeowner is required under the sales contract to pursue this procedure prior to invoking any other legal remedy, he/she will be deemed to have fulfilled that requirement if a decision is not rendered within the required sixty-day period.) Such decisions shall be limited to determinations of the existence of defects or other problems within the scope of respondents' obligations, the nature of and time within which respondents should make required repairs or corrections, and, if the submitted claim is determined to be meritorious, return or reimbursement of the homeowner's initiation fee. The arbitrator's decision on each submitted claim shall be binding on respondents but not on the homeowner.

APPENDIX B

The procedure for redress under Paragraph VII of the Order shall include the following:

A. Within sixty (60) days after the Order becomes final, respondents shall provide each homeowner covered by paragraph VII with the attached documents and a detailed description of the dispute resolution mechanism and its possible uses.

B. Within sixty (60) days after the mailing date of respondents' notice to the homeowner of his/her right to file claims for redress, the homeowner shall mail his/her claim to respondents or forfeit any right to repairs or reimbursement under this Order.

C. Within sixty (60) days after receipt of any claim for redress, respondents shall respond in writing to the homeowner by either:

1) Offering, within a stated time, to correct or repair the problem or item or to pay the homeowner an amount of money in settlement of the claim, and at the same time informing the homeowner of his/her right to accept or reject the offer, along with notice that:

a) If a homeowner accepts the offer, he/she has the right to submit any dispute over respondents' performance under the offer to the dispute resolution mechanism; and

b) If a homeowner rejects the offer, he/she has the right to submit the disputed claim to the dispute resolution mechanism.

2) Denying the claim and at the same time giving the homeowner a detailed explanation of the reasons for the denial, along with notice that the homeowner has the right to submit the denied claim to the dispute resolution mechanism.

D. If a homeowner accepts the offered remedy, respondents shall perform the remedy within the time promised.

E. The dispute resolution mechanism shall:

1) Be available to homeowners for an initiation fee of no more than \$75.00. *Provided, however,* That in no event shall the initiation fee constitute more than half of the total cost of the procedure.

2) Use an arbitrator who is independent and knowledgeable in home construction and who has been either selected by an independent third-party organization experienced in dispute resolution or approved, in writing, by the homeowner. In decisions relating to warranty claims, he/she shall be bound by the provisions of the written warranty and warranties implied under state law. The arbitrator shall use the Home Owners Warranty Program Quality Standards which are applicable to the first year

of ownership of the home and any applicable provisions of the building code in the jurisdiction in which the home is located to interpret the warranty provisions.

3) Render a decision in writing within sixty (60) days of respondents' receipt of the initiation fee. The arbitrator shall provide a copy of that decision to the homeowner and respondents within one week of rendering it. The arbitrator's decision shall be binding on respondents but not on the homeowner, who, at the time he/she receives a copy of the arbitrator's decision, shall be provided by the arbitrator or respondents with notice of his/her right to accept or reject the offer, along with notice that:

a) If the homeowner accepts the decision, he/she has the right to submit any dispute over compliance with the decision to the dispute resolution mechanism; and

b) If the homeowner rejects the decision, he/she has the right to pursue any other legal remedies available to him/her.

F. The arbitrator shall include in his/her decision an award of reimbursement of the initiation fee unless the arbitrator determines that the homeowner's claim was not substantially justified.

ATTACHMENT 1 TO APPENDIX B

Dear Ward/Richlynn Homeowner:

This letter is to notify you that you may be entitled to certain repairs made to your home free of charge. You may also be entitled to be reimbursed for money you already spent repairing your home.

Ward Development Company, Inc. ("Ward") and Richlynn Development, Inc. ("Richlynn") recently agreed with the Federal Trade Commission to make certain home repairs without charge or to reimburse homeowners for repairs previously paid for by homeowners. If you purchased (that is, took title to) a home from Ward or Richlynn from March 10, 1978, to [one year prior to date of service of the Order] and still own that home today, you may be entitled to have no-cost repairs made under the written warranty we gave you. A copy of this warranty is attached to this letter as Appendix A. You may also be entitled to have no-cost repairs made to items that were listed during the pre-settlement inspection you made around the time you took title to your home. In addition, you may be entitled to reimbursement for money you spent repairing your home due to Ward or Richlynn's failure to do the repairs covered by the warranty or the pre-settlement inspection list.

Warranty Problems

You are eligible for a repair or reimbursement under the warranty if all of the following are true:

1. During your first year of ownership, you experienced a problem that was covered by the warranty;

2. You, Ward or Richlynn have some credible written evidence that you notified Ward or Richlynn of the problem during your first year of ownership. (If you do not have a letter or any other written record that you made a complaint to Ward or Richlynn, we will check our customer files to see if we have any record of your complaint. Our files may contain a work order, for example. We will consider your claim for a warranty problem *only* if there is some credible written evidence that you notified us of the problem during your first year of ownership.)

3. Ward or Richlynn refused to repair the problem or inadequately repaired the problem; and

4. The claim has a value of \$500 or more, measured by the highest of the following:

- The reasonable estimated cost of repair by a contractor; or
- The homeowner's actual out-of-pocket expenses reasonably spent to repair the problem.

Pre-Settlement Inspection Items

You are eligible for a repair or reimbursement pursuant to the pre-settlement inspection list if all of the following are true:

1. The item was listed on the Orientation Inspection Sheet;
2. Ward or Richlynn refused to repair the item or inadequately repaired the item; and
3. The claim has a value of \$500 or more, measured by the highest of the following:
 - The reasonable estimated cost of repair by a contractor; or
 - The homeowner's actual out-of-pocket expenses reasonably spent to repair the problem.

*Limitation on Repair or Reimbursement Under the Warranty
or Pre-Settlement Inspection List*

Please note, however, that if you have modified the part of your home affected by the claimed problem or item in a manner that substantially increases the cost of repair or correction, you must establish that the problem or item existed prior to the modification. And, even then, we will not bear the increase in cost of repair or correction resulting from the modification. For example, if you finished your basement and thus covered up the problem, we cannot be responsible for the cost of refinishing your basement after our repair work.

What You Must Do

If you think you are eligible for repairs or reimbursement under the warranty or the pre-settlement inspection or both, please fill out the enclosed "Claim Form" and mail it to:

Att: (name of Ward/Richlynn representative)
Ward/Richlynn
1300 Piccard Drive
Rockville, Maryland 20850

You *must* mail this claim form by 60 days from the mailing date of this letter. If you miss the deadline, you will lose your right to repairs or reimbursement under the terms of our agreement with the Federal Trade Commission. Remember to keep a copy of your claim form and a record of the date you mail it, just in case your claim gets lost in the mail.

Ward/Richlynn will notify you within sixty (60) days of receipt of your claim form about whether we will honor your claim. If you are not satisfied with what we offer you as a repair or reimbursement, you will have the right to take the dispute to an impartial arbitrator. If Ward/Richlynn disputes any part of your claim, we will tell you why we are disputing the claim. You will also have the right to take this dispute to an impartial arbitrator. A description of the arbitration procedures is attached to this letter as Appendix B.

If you have any questions about this repair and reimbursement program, call 1-800-

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of Ward/Richlynn representative] at [phone number] between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

If you have any comments or concerns about how well Ward/Richlynn is responding to your claim, you might wish to send them to the Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, D.C. 20580. Do not send your claim form to that address; if you do so you might lose your right to repairs or reimbursement due to delays in Ward/Richlynn's receipt of the claim form.

Very truly yours,

Ward Development Company, Inc.
Richlynn Development, Inc.

Enclosures

ATTACHMENT 2 TO APPENDIX B

CLAIM FORM

This claim form must be mailed by 60 days from the mailing date of the letter of notification. If you miss this deadline, you will lose your right to repairs or reimbursement under the terms of the agreement between Ward/Richlynn and the Federal Trade Commission.

I.

Name(s) of Homeowner(s) _____

Telephone (Home) _____

(Work) _____

Mailing Address _____

(Street)

(City) (State) (Zip Code)

Today's date _____

II.

- I(we) purchased a home from:
- () Ward Development Company, Inc.
 - () Richlynn Development, Inc.
 - () An affiliate of Ward Development or Richlynn Development

(Enter name of company)

III.

The date of settlement/closing on my(our) Ward/Richlynn home was (Enter date you took title).

IV.

MARK ONE

- () Yes, I(we) am(are) the current owner of this Ward/Richlynn home.
 () No, I(we) do not currently own this Ward/Richlynn home.

NOTE:

To be eligible for repairs or reimbursement by Ward/Richlynn, you must be *both* the purchaser of a new home from Ward/Richlynn from March 10, 1978, to [one year prior to date of service of the Order] *and* the current owner of this Ward/Richlynn home.

V.

The address of my(our) Ward/Richlynn home is

(Street)		
(City)	(State)	(Zip Code)
(Name of Subdivision)		

VI.

INSTRUCTIONS FOR WARRANTY CLAIMS

- Use additional sheets of paper if necessary.
- List each problem separately.
- Describe in detail the nature of the problem.
- Attach a copy (*not* originals) of any written evidence you have that you notified Ward or Richlynn of the problem during your first year of ownership.
- If you are requesting reimbursement for money you spent for repairs, attach the following: a description of the repairs which were made, a copy (*not* originals) of the cancelled check or receipt showing that you paid for repairs, and a copy (*not* originals) of any other document(s) you have that shows what repairs were made and what you paid for them.

NOTE:

If you do not have any written record that you made a complaint to us about a warranty problem, we will check our customer files to see if we have any written records (such as work orders) that you made a complaint to us. We will consider your claim for repair or reimbursement for a warranty problem *only* if there is some credible written evidence that you notified us about the problem in your first year of ownership. If no one has any written evidence that you made a complaint about the warranty problem, we can deny your claim for that problem.

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Warranty Claims

I(we) request Ward/Richlynn to make the following repair(s) or reimburse me(us) under the warranty:

VII.

INSTRUCTIONS FOR PRE-SETTLEMENT CLAIMS

- Use additional sheets of paper if necessary.
- List each problem separately.
- Describe in detail the nature of the problem.
- Attach a copy (*not* originals) of the pre-settlement inspection list, if you have it.
- If you are requesting reimbursement for money you spent for repairs, attach the following: a description of the repairs that were made, a copy (*not* originals) of the cancelled check or receipt showing that you paid for repairs, and a copy (*not* originals) of any other document(s) you have that shows what repairs were made and what you paid for them.

Pre-Settlement Inspection Claims

I(we) request Ward/Richlynn to make the following repair(s) or reimburse me(us) pursuant to the pre-settlement inspection list:

APPENDIX C

Dear Ward/Richlynn Homeowner:

This letter is to notify you that you may have the right to use arbitration to settle disputes with Ward/Richlynn.

Ward Development Company, Inc. ("Ward") and Richlynn Development, Inc. ("Richlynn") recently agreed with the Federal Trade Commission to set up an arbitration procedure which would be available at a reasonable cost to homeowners. If you purchased (that is, took title to) a new home from Ward or Richlynn from [*364 days prior to date of service of Order to one day prior to date of service of Order*] and still own that home today, you have the right to submit certain disputes to arbitration. Disputes that can go to arbitration include:

- Any disagreements you have with Ward/Richlynn about its performance under the one year written warranty given to you when you purchased the home. (For example, you may disagree with Ward/Richlynn's refusal to repair a problem that you believe is covered by the warranty. Or you may believe that Ward/Richlynn's attempts to repair a problem were inadequate. You can take these kinds of disputes to arbitration.)
- Any disagreements you have with Ward/Richlynn about its handling of problems and items listed during your pre-settlement inspection. (For example, you may believe that Ward/Richlynn has not corrected all of the items listed on the Orientation Inspection Sheet. Or you may dispute the adequacy of Ward/Richlynn's repairs. You can submit these disagreements to arbitration.)

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You may use this arbitration procedure at any time, even after the one year warranty period is over. The expiration of the one year warranty period does *not* affect your right to arbitrate disputes that arise during the warranty period. A copy of the arbitration procedures is attached to this letter. Please read these procedures carefully.

If you have any questions about this arbitration procedure, call [name of Ward/Richlynn representative] at [phone number] between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

Very truly yours,

Ward Development Company, Inc.
Richlynn Development, Inc.

Enclosure

Modifying Order

IN THE MATTER OF

CALIFORNIA MEDICAL ASSOCIATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATIONS OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2967. Consent Order, April 17, 1979—Modifying Order, April 19, 1985

In response to a petition filed by the California Medical Association ("CMA"), this Order reopens the proceeding and modifies the consent order entered in Docket C-2967, 93 F.T.C. 519, by deleting Paragraph II(C), which prohibits the association from advising in favor of or against any relative value scale developed by third parties, and inserting a provision that permits CMA more freedom to discuss issues relating to reimbursement with governmental entities and third-party payers. Such modification is consistent with the Commission's decision in Docket 9219, *Michigan State Medical Society*, 101 F.T.C. 191, and its modified order in Docket C-2855, *American College of Obstetricians and Gynecologists*, 104 F.T.C. 524 (1985). The Commission, however, denied the other modifications requested by CMA, holding that CMA had failed to show that changed circumstances or the public interest warranted further modification of the order.

ORDER REOPENING AND MODIFYING FINAL ORDER

By petition filed October 1, 1984, the California Medical Association ("CMA") asked the Commission to reopen and modify the Commission order in Docket No. C-2967 ("Order") entered with CMA's consent on April 17, 1979 [93 F.T.C. 519]. CMA requested that the Commission modify the Order by a) deleting Paragraph II(C) of the Order, which prohibits CMA from advising in favor of or against any relative value scale developed by third parties (except that CMA is permitted to provide historical data), and b) inserting a provision identical to a provision contained in the Commission's Order in *Michigan State Medical Society*, Docket No. 9129, 101 F.T.C. 191 (1983) ("*Michigan State*") that would allow CMA more freedom to discuss issues relating to reimbursement with third-party payers and governmental entities. CMA also requested that the Commission modify the order so that it would no longer prohibit CMA from developing and disseminating a relative value scale. CMA's petition was placed on the public record for comment, and none of the comments received specifically related to the modification of Paragraph II(C).

Upon consideration of CMA's petition and other relevant information, the Commission finds that the public interest would be served by deleting Paragraph II(C) of the Order and by inserting the relevant provision contained in the order in *Michigan State*. Modification is consistent with both the Commission's decision in *Michigan State*

and its modification of the Order in *American College of Obstetricians and Gynecologists*, Docket No. C-2855, August 28, 1984 [104 F.T.C. 524].

The Commission has denied the other modifications requested by CMA because CMA failed to show that changed circumstances or the public interest requires such modifications of the order. Therefore, the Order continues to prohibit CMA from developing or circulating its own relative value guide for use by its members.

Relative value studies may have anticompetitive consequences in several ways. First, they establish price relationships that may become stable without regard to quality or efficiency differences. Second, they may result in new and separate billing categories that are fragmented from others, thereby resulting in higher prices simply because charges are made for more numerous services. Third, if medical associations were permitted to publish RVS's it could lead to concerted or interdependent adherence to an RVS by physicians. Fourth, RVS's may facilitate an actual agreement by physicians to fix prices by providing a "starting point" from which collusion may occur. Given these possibilities of competitive harm and the absence of a convincing showing of the need for CMA to develop an RVS, we believe the public interest lies in the continuation of the prohibition against CMA.

In addition, although the Order no longer will prohibit CMA from discussing relative value scales with governmental entities and third-party payers, serious antitrust concerns would arise were CMA to negotiate or attempt to negotiate an agreement with any such party or engage in any type of coercive activity to effect such an agreement.

Accordingly,

It is ordered, That this matter be, and it hereby is, reopened and that the Order in Docket No. C-2967 be modified 1) to delete Paragraph II(C) and to redesignate Paragraphs II(D) and II(E) of the Order as Paragraphs II(C) and II(D) respectively; 2) to renumber Paragraphs III, IV and V of the Order as Paragraphs IV, V and VI respectively; and 3) to insert the following:

III.

It is further ordered, That this order shall not be construed to prevent CMA from:

A. Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government, executive agency, or legislative body concerning legislation, rules or procedures, or to participate in any federal or state adminis-

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B. Providing information or views, on its own behalf or on behalf of its members, to third-party payers concerning any issue, including reimbursement.

Complaint

105 F.T.C.

IN THE MATTER OF
DESCENT CONTROL, INC.

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

Docket C-3152. Complaint, April 29, 1985—Decision, April 29, 1985

This consent order requires a Fort Smith, Ark. marketer and distributor of the "Sky Genie" and other descent systems that are used for descent, rescue, or escape from high places, among other things, to cease misrepresenting that any descent system provides an automatically-controlled descent or contains long-lasting line. The order requires the company to have a reasonable basis consisting of specified data before making claims concerning the safety and performance characteristics of descent systems; or representations that the products meet or exceed any standard or are used as sold by any government agency or non-government organization. The firm is also required to disclose in catalogs, technical bulletins and operating instructions that the line should be replaced after two uses for rapid descent at speeds exceeding 15 feet per second; and that the line must be replaced immediately if exposed to certain chemicals or used to arrest a free fall of two feet or more. Technical bulletins and operating instructions must warn users that a line that has been used as a utility line should not be used as a safety line; that the safety and speed of descent is dependent upon manual control by the user; and that descent systems should not be used by individuals who are unfamiliar with their use. Additionally, the firm is required to affix a warning label to all descent systems; mail specified safety information to past purchasers; and place advertisements containing the safety information in specified trade publications.

Appearances

For the Commission: *Jeffrey M. Karp.*

For the respondent: *Joseph Weiss, Weiss and Golden, Philadelphia, Pa.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Descent Control, Inc., 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 as follows:

PARAGRAPH 1 Respondent Descent Control, 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 3920 Ayers Road, P.O. Box 6405, Fort Smith, Arkansas.

PAR. 2. Respondent is now and for sometime in the past has been engaged in the manufacturing, advertising, marketing, distributing, and selling to the public of "Sky Genie Descent Systems", which are devices for work in, and descent, escape and rescue from, high places. Such devices consist of a nylon line, aluminum shaft, cylindrical shaft cover, and a variety of harnesses, belts, seats and scaffolds.

PAR. 3. In the course and conduct of its business, respondent causes, and in the past has caused, Sky Genie Descent Systems to be offered and sold from its place of business to purchasers located in various States of the United States and the District of Columbia. Respondent maintains and, at all times mentioned herein, has maintained a substantial course of trade in said products in or affecting commerce, as "commerce" is defined by the Federal Trade Commission Act, as amended.

PAR. 4. In the further course and conduct of its aforesaid business, respondent has at all times mentioned herein made numerous statements, orally and in writing, in various advertisements, promotional and packaging materials prepared and/or disseminated by respondent for use in selling respondent's products. Illustrative and typical, but not inclusive of the statements employed as aforesaid, are the following:

1. Descent control device for perfectly controlled descent from high places . . .
2. EASY TO USE systems are preset for the desired rate of descent by the number of line turns made around the shaft . . . Pre-adjustable to a wide range of weight loads and desired speed of descent . . .
3. SKY GENIE LINE . . . special woven, rot and mildew resistant nylon, stronger—many years longer lasting with shock absorbing elasticity built-in . . .
4. All SKY GENIE equipment meets or exceeds O.S.H.A. standards for lifelines, boatswain chairs, escape and rescue use.
5. O.S.H.A. standards met or exceeded where applicable.
6. SKY GENIE DESCENT SYSTEMS ARE IN USE BY . . . Army . . .

PAR. 5. Through the use of the aforesaid statements, respondent has represented and continues to represent, directly or by implication, that:

1. presetting the device by the number of turns of the rope around the shaft provides an automatically controlled descent which does not depend on user control;
2. the nylon line of the Sky Genie descent systems is safe and

durable for long periods of time under repeated use for work, descent, rescue or escape;

3. all Sky Genie descent systems equipment meet or exceed all applicable OSHA standards, and, in particular, OSHA standards for lifelines, boatswain chairs, and escape and rescue; and

4. Sky Genie descent systems are used, in the form such systems are offered for sale, by the U.S. Army.

PAR. 6. In truth and in fact:

1. presetting the device by the number of turns around the shaft does not provide an automatically controlled descent; rather, speed of descent is dependent upon user control;

2. the nylon line of the Sky Genie descent systems is not safe or durable for long periods of time when used for rapid descents or to arrest a free fall. The nylon line of the Sky Genie descent systems is subject to failure or breakage after two uses for descents at speeds in excess of 15 feet per second, or after one use to arrest a free fall of 2 feet or more;

3. Sky Genie descent systems do not meet or exceed all applicable OSHA standards;

4. all lines distributed and sold by respondent do not meet or exceed OSHA standards for lifelines; only the 1/2" line meets OSHA standards for lifelines;

5. the Sky Genie boatswain chair descent system does not meet OSHA standards;

6. no OSHA standards exist for lines used in escape and rescue;

7. The U.S. Army does not use the Sky Genie descent systems in the form such systems are offered for sale by respondent. The U.S. Army uses the Sky Genie descent systems only after modifying them because the Sky Genie descent systems, in the form such systems are offered for sale, do not meet Army standards for escape and rescue devices.

Therefore, the representations set forth in Paragraph Five were, and are, false and misleading.

PAR. 7. Paragraphs Four, Five and Six are hereby incorporated by reference. In the course and conduct of its business, respondent has represented and continues to represent that the Sky Genie descent systems, when used according to instructions, are safe and effective for work in, and descent, rescue and escape from, high places.

PAR. 8. In truth and in fact, the Sky Genie descent systems, when used according to instructions, are not safe and effective for work in, and descent, rescue and escape from, high places because the instruc-

cerning the safe use and proper maintenance of the Sky Genie descent systems:

1. user control, and not any presetting of the device, determines the speed of descent;
2. the nylon line should be replaced after two uses for rapid descent at speeds in excess of 15 feet per second;
3. the nylon line must be replaced immediately if used once to arrest a free fall of 2 feet or more; and
4. the nylon line must be replaced immediately if exposed to certain chemicals commonly found in and around construction and maintenance sites.

PAR. 9. Respondent's representation, set forth in Paragraph Seven, by reason of its failure to disclose the facts described in Paragraph Eight, is misleading in a material respect in that the disclosure of these facts to purchasers would be likely to affect their purchasing and/or product use decisions. Therefore, the failure to disclose these material facts renders the representation referred to in Paragraph Seven false and misleading.

PAR. 10. The acts and practices of respondent, herein alleged, were and are all to the prejudice and injury of the public and constituted and now constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing.

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 respondents with violation of the Federal Trade Commission Act; and

The respondent, its 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 aforesaid draft of 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, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and hav-

ing 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 Descent Control, 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 3920 Ayers Road, P.O. Box 6405, Fort Smith, Arkansas.

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

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

1. *Descent Control* means Descent Control, Inc., its subsidiaries, successors and assigns, and any other entity continuing the business of Descent Control, Inc., that has actual knowledge of this Order.

2. *descent systems* means all hardware, rope and other components which are marketed and sold for the purpose of work in, or descent, rescue or escape from, high places.

3. *person* means any individual, partnership, corporation, firm, trust, estate, cooperative, association, or other entity.

4. *distributor* means any person who, pursuant to a sales agreement with Descent Control, purchases or receives on consignment descent systems for resale to the public.

5. *owner* means any person who purchased a Sky Genie descent system directly from Descent Control or from a distributor.

I.

It is ordered, That respondent Descent Control, Inc., a corporation, its successors and assigns, and its 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 Sky Genie descent systems, or any other descent systems, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from disseminating or causing the dissemination of any advertise-

ment, promotional material, operating instruction, technical manual, label, packaging, or catalog, which represents directly or by implication:

- a. that any such descent systems provide an automatically controlled descent, unless such is the case;
- b. that any nylon line within any such descent systems is long-lasting, unless such is the case;
- c. that any such descent systems meet or exceed a standard of any government agency or non-government organization unless:
 - (i) there is disclosed clearly and prominently, in close conjunction therewith, a description of which standard is met or exceeded and whether all or only part of the descent systems meet or exceed such standard; and
 - (ii) at the time the representation is made Descent Control possesses and relies upon a reasonable basis for the representation.
- d. that any such descent systems are used, in the form such systems are offered for sale, by any government agency or non-government organization, unless, at the time the representation is made, Descent Control possesses and relies upon a reasonable basis for the representation consisting of a verified written statement from the agency or organization which is claimed to use the descent systems attesting to such use; and
- e. any safety or other performance characteristic of any such descent systems, unless, at the time the representation is made, Descent Control possesses and relies upon a reasonable basis for the representation consisting of competent and reliable objective evidence substantiating the representation.

II.

It is further ordered, That respondent Descent Control, Inc., a corporation, its successors and assigns, and its 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 the Sky Genie descent systems, or any other descent systems, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose clearly and prominently in each catalog for such systems the following:

1. that the line should be replaced after two uses for rapid descent at speeds in excess of 15 feet per second;

2. that the line must be replaced immediately if once used to arrest a free fall of 2 feet or more; and

3. that the line must be replaced immediately if exposed to any chemicals listed in the operating instructions.

III.

It is further ordered, That respondent Descent Control, Inc., a corporation, its successors and assigns, and its 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 the Sky Genie descent systems, or any other descent systems, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose clearly and prominently in each technical bulletin and operating instruction for such descent systems adequate instructions for safe and proper use, including, but not limited to, the following:

1. that the line which is a component of the descent systems should be replaced after two uses for rapid descent at speeds in excess of 15 feet per second;

2. that the line must be immediately replaced if once used to arrest a free fall of 2 feet or more;

3. that the line must be replaced immediately if exposed to any of the following chemicals [herein Descent Control should identify all chemicals which it knows or has reason to know would adversely affect the line in its descent systems];

4. that the line should not be used as a safety line if it has ever been used as a utility line;

5. that the descent systems are not appropriate or safe for use as personal emergency or self-rescue devices by individuals who are not familiar with the proper use and application of the devices; and

6. that the safety and speed of descent of users of the descent systems is dependent upon manual control by the user.

IV.

It is further ordered, That respondent Descent Control, Inc., a corporation, its successors and assigns, and its 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 the Sky Genie descent systems, or any other descent systems, in or affecting commerce, as "commerce" is

defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to affix to each such descent system and to the packaging thereof a permanent white-adhesive label disclosing clearly and prominently in red letters:

WARNING: This line is subject to breakage under certain conditions. See operating manual for details.

V.

It is further ordered, That Descent Control shall within thirty (30) days after the date of service of this order:

1. provide each of its distributors with the labels described in Part IV and with technical bulletins and operating instructions which contain the disclosures required by Part III in sufficient number to cover each distributor's existing inventory of descent systems; and
2. instruct and use its best efforts to ensure that each distributor affixes such labels to each descent system and its packaging and includes such technical bulletins and operating instructions with each descent system in the distributor's inventory.

VI.

It is further ordered, That Descent Control shall send to each owner identified by its records and to each owner identified by its distributors' records, by first class mail, within sixty (60) days after the service of this order, a copy of the letter attached hereto as Appendix A in an envelope clearly stamped on the front with the words "Contains Important Product Safety Information."

VII.

It is further ordered, That Descent Control shall, within thirty days after the date of service of this Order, place or cause to be placed, in the manner described below, the announcement attached hereto as Appendix B, beginning as soon as space is available, in three consecutive issues of *Occupational Hazards*, and *Industrial Safety and Hygiene News*, and *National Safety News*.

The printed announcement shall be no smaller than one quarter page in size, and shall not include any additional text or graphics.

VIII.

It is further ordered, That Descent Control shall distribute a copy of this Order to each present and future officer, employee, agent and representative having sales, advertising, or policy making responsibilities for any descent systems and secure from each such person a signed statement acknowledging receipt of said Order.

IX.

It is further ordered, That Descent Control shall maintain for at least three years and upon request make available to the Federal Trade Commission for inspection and copying the originals of signed statements required by Part VIII of this Order and all test results, data, and other documents or information relied upon for any representation for any descent systems and any information in the possession of Descent Control which contradicts, qualifies or calls into serious question that representation.

X.

It is further ordered, That respondent 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 the Order.

XI.

It is further ordered, That respondent shall, within ninety (90) 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.

APPENDIX A

Dear Customer:

Our records show that you have purchased a Sky Genie descent system. Recently, it has come to our attention that users of this product may not be aware of necessary precautions to ensure safe use. Therefore, as a result of an agreement with the Federal Trade Commission, we are contacting all of our Sky Genie customers to alert them about the following precautions.

1. THE LINE MAY BREAK if used more than 2 times for rapid descents at speed-

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in excess of 15 feet per second (for example, rappelling or using it as a climbing rope). Replace the line after 2 rapid descents.

2. DO NOT use the rope as a safety line if it has ever been used as a utility line.

3. Replace the line IMMEDIATELY after it has been used to arrest a free fall of 2 feet or more.

4. Replace the line IMMEDIATELY if it has been exposed to any of the following chemicals:

Hydrochloric acid	Acetic acid
Nitric acid	Oxalic acid
Muriatic acid	Phenol
Sulfuric acid	Nitrobenzene

5. The number of turns of the line around the shaft of the Sky Genie will NOT automatically ensure a controlled rate of descent. The user must be prepared to manually control the descent in order to prevent an uncontrolled fall.

6. The durability and life of the line will vary significantly depending on how and where it is used. In order to ensure safe use in an emergency, inspect the line carefully before each use. Look for broken, cut or pulled strands, worn fibers, or any hardening or discoloring of portions of the line. If any of these warning signs are present, the line may break.

If you have any questions on the use and care of the Sky Genie descent system, please write Descent Control, P.O. Box 6405, Fort Smith, Arkansas 72906, or call (800) 643-2539.

Sincerely yours,

President

APPENDIX B

IMPORTANT SAFETY INFORMATION

[insert
company
logo]

For owners of
**SKY GENIE
DESCENT SYSTEMS**

Your SKY GENIE line may break or you may suffer an uncontrolled fall if you don't use it properly—follow these important steps for safe use:

1. **REPLACE THE LINE** when it's been used to arrest a free fall of 2 feet or more.
2. **REPLACE THE LINE** when it's been exposed to any of the following chemicals: Hydrochloric, Nitric, Muriatic, Sulfuric, Acetic or Oxalic acids, Phenol or Nitrobenzene.
3. **REPLACE THE LINE** after two rapid descents at speeds in excess of 15 feet per second.
4. **BE PREPARED** to manually control the speed of descent. The number of turns of the line around the shaft will **not** automatically ensure a controlled descent.

* For further information, write: Descent Control, P.O. Box 6405, Fort Smith, Arkansas 72906, or call (800) 643-2539.