

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

NATIONAL TALENT ASSOCIATES, INC., ET. AL.

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

Docket 8960. Consent Order, Nov. 26, 1975—Modifying Order, Jan. 21, 1986

The Federal Trade Commission has modified a 1975 consent order with National Talent Associates, Inc., et al. (86 F.T.C. 1202), amending the provisions of the order that tell the company what disclosures it must make to consumers about its success in obtaining paid employment for clients. The consent order prohibited the respondents from misrepresenting their ability to obtain modeling positions for young children and required them to disclose specified information to prospective clients.

ORDER REOPENING THE PROCEEDING AND MODIFYING
CEASE AND DESIST ORDER

On September 20, 1985, National Talent Associates, Inc., a New Jersey corporation; National Talent Associates, Inc., an Illinois corporation; National Talent Associates, Inc., a California corporation; and Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations (Petitioners) filed a request to reopen and modify the consent order entered against them by the Commission on November 26, 1975, in Docket No. 8960 (86 F.T.C. 1202).*

The request to reopen and modify the consent order was placed on the public record on September 20, 1985, and a press release regarding the request was issued on October 2, 1985. The public comment period ended on November 1, 1985, and no comments were filed. The deadline to rule on Petitioners' request was January 20, 1986.

Petitioners sell five year contracts to parents of young children under which they arrange to have the children photographed annually for five years. They then submit the photographs to talent agencies for consideration for employment as models. The order prohibits various misrepresentations including those relating to the employment opportunities and potential earnings available to children placed under their contracts. It further imposes affirmative obligations on

* Other respondents under the order are not bound by Part I of the order, with which the petition is concerned, and are not Petitioners.

Petitioners, including a requirement that they give to each prospective purchaser an "*Important Information*" document disclosing the number of children signed to their contracts during the immediately preceding two calendar year period, and information reflecting the success rates of these children in the modeling business.

Petitioners requested that several paragraphs of Part I of the order be modified or replaced with new paragraphs and that three new paragraphs be added to the order. They assert that changed conditions of fact since the order was issued require that Paragraph 13 be modified. They state further that the public interest requires that the first and second "*It is further ordered*" paragraphs of the order be replaced with new paragraphs and that new third, fourth and fifth "*It is further ordered*" paragraphs be placed in the order.

Paragraph 13 of the Order

Under Paragraph 13 of the order, Petitioners are prohibited from representing that:

National Talent Associates, Inc., a New Jersey corporation, arranges for professional photographs to be taken of each person placed under its contract by an independent photographic studio.

Petitioners state that at the time that the order was issued, the individual respondents owned an interest in a photographic studio. This is no longer true, and Petitioners now arrange for NTA clients to have photographs taken by independent photographic studios. Based on this changed condition of fact, Petitioners ask that the words, "unless such is in fact true", be added to the end of the paragraph.

The Commission agrees with the Petitioners that Paragraph 13 should be modified to reflect the stated changed factual condition. Petitioners should not be prohibited from making a truthful representation. If they acquire an interest in a photographic studio to which they refer clients in the future, the modified paragraph would prohibit them from representing that the photographic studio is an independent photographic studio.

First "It is further ordered" Paragraph of the Order

Petitioners ask that the first "*It is further ordered*" paragraph of the order, with the exception of the last subparagraph therein, be replaced with a new first "*It is further ordered*" paragraph. The first "*It is further ordered*" paragraph reads as follows:

It is further ordered, That respondents shall disclose the following information, in writing, in a clear and conspicuous manner to each person who is a prospective purchas-

er of any of their products or services, prior to entering into any agreement for the furnishing of such products or services, including the photographing of, or assistance to, any such persons in seeking or obtaining employment opportunities as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

a. The number of persons who contracted with respondents for the purchase of photographs or services to be used in connection with the selection, placement or employment of persons in the commercial advertising, talent, modeling or entertainment industries, as models, actors, actresses or entertainers, within the two calendar years immediately preceding the year in which the prospective purchaser was contacted, the number and percentage of such persons who obtained paid employment through the auspices of respondents, as well as the number of paid jobs and agency contracts obtained by such persons.

b. The total number of persons placed under contract by respondents in each of the following categories of gross annual earnings, derived from paid employment in the commercial advertising, talent, modeling or entertainment industries, as models, actors, actresses or entertainers, during the two calendar years immediately preceding the year in which the prospective purchaser was contacted by respondents: Under \$100, \$100-\$250, \$250-\$500, \$500-\$1,000, \$1,000-\$2,000, \$2,000-\$4,000, \$4,000-\$6,000, \$6,000-\$8,000, \$8,000-\$10,000, \$10,000 and above.

c. Whether any financial agreement, arrangement or connection, exists between respondents and any photographic studio to which they may refer prospective purchasers of their photographs or services.

d. Whether any financial agreement, arrangement or connection, exists between respondents and any person, firm or agency to whom photographs, or any other information, concerning the prospective purchaser, of their products or services may be sent by respondents.

e. The source or sources from which the names, addresses, or any other information about prospective purchasers, or about any other members of their immediate family, was obtained by respondents.

Petitioners' proposed first "*It is further ordered*" paragraph of the order would effect several significant changes in the "*Important Information*" document. The document now relates to the success rates of children signed by NTA during the immediately preceding two calendar years. The modified paragraph would change the time period covered to the immediately preceding five calendar years. Petitioners argue that the information required to be disclosed does not accurately reflect NTA client opportunities during the term of their contracts with NTA. "Of significant importance", Petitioners state, "NTA's agreements with clients are for five years; whereas, the order provisions require disclosure for two years. Depending on the date on which a client is signed during the two-year period, it is often impossible for a client to be processed by NTA, signed by a talent agency, obtain a job assignment and receive payment for the assignment in sufficient time to be included in all subparagraph a. data disclosure categories." Thus, to make the data more relevant to prospective

purchasers, Petitioners propose to enlarge the two year period to five years.

The items of information to be disclosed on the "*Important Information*" document would be reduced from five to three. The order requires the disclosure of the number of children signed to NTA contracts, the number of these children who were accepted by talent agencies, the number and percentage who obtained paid employment, the number of paid job assignments that they obtained and their earnings. Data concerning the number who were accepted by talent agencies and the number of paid job assignments that they obtained would no longer be disclosed. According to the Petitioner, these items of information are confusing and not easily relatable to the total number of persons contracting with NTA. Furthermore, the Petitioners assert that this data is extremely burdensome to compile.

The disclosure of earnings prescribed by subparagraph b. of the first "*It is further ordered*" paragraph would be substantially altered by Petitioners' proposed modification. The proposed categories of gross annual earnings are as follows: under \$500, \$500-\$5,000, \$5,000-\$10,000 and above \$10,000. Additionally, cumulative earnings would be permitted rather than annual earnings during the five calendar year period. In support of this modification, Petitioners assert that the public interest requires the elimination of unnecessary detail, and the four categories of earnings are more concise and easier to understand. Additionally, Petitioners argue that the physical counting and compilation of this data has been extremely burdensome and costly to NTA. To continue the ten categories of earnings with five year computations would be even more burdensome.

Petitioners' proposed modifications would permit two footnotes to be placed on the "*Important Information*" document. A footnote to items one and two, the number of persons signed to NTA's contracts and the number and percentage of those persons who received payment for employment, would read:

Of the children signed during the past five years, only a few have had the opportunity to complete the full term of their five-year agreement.

A footnote to item three, the number of persons who earned income and their gross earnings, would read:

These figures do not include those children signed by NTA prior to (*Year*) who received earnings during the past five years.

Petitioners state that the footnotes are needed to "further clarify and explain the coverage of items, 1, 2 and 3 on the disclosure document."

Subparagraph c. of the first "*It is further ordered*" paragraph requires Petitioners to disclose whether "any financial agreement, arrangement or connection exists between Petitioners and any photographic studio to which they may refer prospective purchasers of their photographs or services." Subparagraph d. requires the disclosure of any such arrangement with firms or agencies to whom photographs, or any other information concerning prospective purchasers of their photographs or services are sent. Petitioners ask that subparagraphs c. and d. be combined into subparagraph (4) in the paragraph that they propose. These disclosures would be necessary only if such financial arrangements exist. Petitioners assert that the public interest requires this modification for clarification purposes.

The Commission has concluded that, taken together, the modifications proposed by Petitioners to the first "*It is further ordered*" paragraph of the order serve the public interest. The "*Important Information*" document does not accurately reflect the success rates of Petitioners' clients if it is limited to only two of the five years that they are under contract. Moreover, some less significant information would be eliminated. The essential information is the number of children signed to Petitioners' contracts, the number and percentage who obtained employment and their earnings. This information would be retained. Similarly, the reduction of categories of income from ten to four serves to make the document more concise and understandable. Unless a financial agreement, arrangement or connection exists between Petitioners and the photographic studios to whom they refer clients or the talent agencies to whom the photographs are submitted, there is no need to clutter the document with the disclosures required by subparagraphs c. and d. of the order. The footnotes, which would be permitted to appear on the document, would assist prospective purchasers in understanding the statistical data. Finally, the modified order paragraph is clearly drafted, and ambiguities have been eliminated.

Last Subparagraph of the First "It is further ordered" Paragraph and the Second "It is further ordered" Paragraph of the Order

Petitioners request further that the order be modified by deleting therefrom the last subparagraph of the first "*It is further ordered*" paragraph and the second "*It is further ordered*" paragraph and replacing them with the second "*It is further ordered*" paragraph set forth in their petition. The subparagraph and paragraph proposed to be deleted from the order are:

At the time when the foregoing disclosures are made, respondents shall furnish the prospective purchaser of any of their products or services with a retainable duplicate

copy of the disclosure document, and secure from such prospective purchaser a signed acknowledgment of the receipt thereof on the properly dated original copy. The document containing the disclosures shall be headed "*Important Information*", and shall not contain information or representations other than those set forth above.

It is further ordered, That respondents maintain, for a five year period following the execution thereof, the originals of the signed acknowledgments of receipt of the disclosures described in the preceding paragraphs and make them available for examination and copying, if necessary, by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

The modification requested by respondents would replace the words, "prospective purchaser", with the word, "purchaser". Additionally, respondents' representative would be required to sign the copy of the "*Important Information*" document that is retained for Commission staff inspection.

The Commission considers the proposed modifications, taken together, to be in the public interest. The first subparagraph of the proposed first "*It is further ordered*" paragraph retains the obligation to give the "*Important Information*" document to each prospective purchaser of Petitioners' services. However, enforcement problems are brought about by a requirement that a signed acknowledgment of receipt be retained from each prospective purchaser. Additionally, the requirement that respondents' representative must also sign the copy of the document that is retained for staff inspection should serve to make those representatives aware of the importance of the document and the need to obtain a signed acknowledgment of receipt from each purchaser and to retain it.

Proposed Third "It is further ordered" Paragraph of the Order

Petitioners ask that a new third "*It is further ordered*" paragraph be placed in the order. It would prohibit them from making any claim or other representation, in advertising or promotional material, or in any oral sales presentation, that contradicts any of the information required to be disclosed in the "*Important Information*" document. In the view of the Commission, the public interest requires this prohibition to prevent overstatements of the employment opportunities and financial gains that may be anticipated by purchasing Petitioners' services.

Proposed Fourth "It is further ordered" Paragraph of the Order

A new fourth "*It is further ordered*" paragraph, which Petitioners request be placed in the order, would permit Petitioners to have up to sixty days after the close of each calendar year to update the "*Important Information*" document for the immediately preceding five calendar year period. In compiling the information required in

the first item of information on the disclosure document, a tolerance of one quarter of one percent would be permitted and a tolerance of one percent would be permitted in compiling the information for the third item of information, if such variances resulted from a good faith effort to accurately compile the required information.

In support of their request that the order be modified by adding the above-described paragraph, Petitioners contend that the public interest requires the "collection, assimilation and dissemination of accurate data; however, contrary to the public interest, the order does not allow sufficient time to collect the required data nor provide for good faith human error in assembling the data for display on the "*Important Information*" document. The proposed order paragraph, Petitioners continue, "takes into account the necessary time needed to accurately complete the '*Important Information*' document and allows for good faith error, should the physical counting and compilation of statistical data (including determining five year cumulative earnings figures for each eligible client) result in insignificant errors."

We agree with Petitioners that adequate time should be provided in the order to update the information on the "*Important Information*" document from one calendar year to the next. The sixty days requested by Petitioners is reasonable. We agree also that small tolerances should be permitted for errors made in good faith in compiling the statistical data showing the number of children signed to their contracts and their earnings. No tolerance would be permitted for the information showing the number and percentage who were successful in being employed through Petitioners' auspices since this information involves fewer numbers and less difficult calculations.

Proposed Fifth "It is further ordered" Paragraph of the Order

Petitioners further request that a fifth "*It is further ordered*" paragraph be placed in the order. It would require Petitioners to "maintain, and, upon request, make available to the Federal Trade Commission records substantiating the statistical information contained in each '*Important Information*' document then in use." As the "*Important Information*" document relates to a period of five calendar years, the records substantiating the information would be maintained for five years. Petitioners assert that the proposed fifth "*It is further ordered*" paragraph is in the public interest as it provides "additional compliance safeguards by establishing data substantiation and record keeping requirements which will allow the Commission's staff to effectively monitor Respondents' compliance with the first "*It is further ordered*" provision.

The Commission has concluded that the public interest clearly requires that records substantiating the information on the "*Important*

Information" document be maintained for compliance monitoring purposes.

Conclusions

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), requires that an order be modified or set aside upon a satisfactory showing that changed conditions of law or fact require that the order be altered, modified or set aside. The Commission's rules implementing this statute amplify on this by providing that an order should be altered, modified or set aside if "the public interest so requires." The Commission has concluded that Petitioners have adequately shown that changed conditions of law and public interest considerations require that the order be modified in the manner requested by Petitioners.

The "*Important Information*" document, if prepared in accordance with the terms of the modified order, will more accurately reflect the success rates of Petitioners' clients. By the elimination of unnecessary information, the document will be more understandable and meaningful to prospective purchasers of Petitioners' services. The burden and expense of compiling the statistical data for the document will also be substantially reduced. Moreover, the modifications strengthen the order by requiring substantiation for the information on the "*Important Information*" document and prohibiting representations that may contradict this information.

It is therefore ordered, That the proceeding is hereby reopened and the Decision and Order issued on November 26, 1975, is hereby modified to read as follows:

ORDER

I

It is ordered, That National Talent Associates, Inc., New Jersey, Illinois and California corporations, their successors and assigns, and Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations, and said respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and distribution of products or services in connection with the placement and employment of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith

cease and desist from representing, directly or indirectly, orally or in writing, that:

1. Respondents have received information that a person may possess the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

2. Referrals from past purchasers of their products or services are a significant source from which the names of potential purchasers have been obtained.

3. Respondents have obtained the names of potential purchasers from a source which cannot be divulged.

4. Respondents, when requested, will provide persons with the source from which the information referred to in their solicitation letters, solicitation phone calls, or in any other means of solicitation was obtained and the nature of such information, unless respondents provide such information when requested.

5. National Talent Associates, Inc. has the expertise essential for the judging and selection of the most qualified persons to be used as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

6. National Talent Associates' salesmen, agents or representatives have the expertise essential to select and judge the suitability of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

7. Persons who prior to an in-person interview have been solicited by National Talent Associates, Inc., have been selected on the basis that they may have the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

8. The majority of National Talent Associates' income is derived from its personal management contracts and its ability to place persons under contract with the leading advertising, modeling, talent or entertainment agencies.

9. Persons are selected and offered contracts by National Talent Associates, Inc., only on the basis that they may possess the personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

10. A person's chances for selection by Monica Stuart, the William Schuller Agency, Inc., or by any person or agency, will be aided, increased or enhanced, by entering into a contract with National Talent Associates, Inc.

11. Access to Monica Stuart or to the William Schuller Agency, Inc.,

is available only to persons who contract with National Talent Associates, Inc.

12. Monica Stuart or the William Schuller Agency, Inc., review photographs of only those persons who have contracted with National Talent Associates, Inc.

13. National Talent Associates, Inc., a New Jersey corporation, arranges for professional photographs to be taken of each person placed under its contract by an independent photographic studio, unless such is in fact true.

14. Persons who contract with National Talent Associates, Inc. will receive annually one black and white, 8 × 10 inch, photograph of children in the family not under contract, for a five year period, or for any period in excess of the period in which said photograph is received without any obligation to purchase additional photographs at an added cost.

15. Natural color photographs of persons who contract with National Talent Associates, Inc. are submitted annually, for a five year period, or for any period in excess of the period in which said photographs are submitted to Monica Stuart or to the William Schuller Agency, Inc. for her or their consideration and review, without disclosing that, unless the person comes back for rephotographing annually for a five year period, such person's photographs will not be resubmitted to Monica Stuart or to the William Schuller Agency, Inc.

16. National Talent Associates, Inc. photographs other persons in a family in addition to the person whose name appears on its contract, solely for the purpose of submitting said photographs to Monica Stuart of the William Schuller Agency, Inc. for her evaluation of their potential for the commercial advertising, modeling, talent or entertainment industries.

17. The remuneration received by Monica Stuart of the William Schuller Agency, Inc., in connection with her consideration and review of photographs submitted to her by National Talent Associates, Inc., is derived solely from a percentage of the earnings of persons selected by her and placed under contract by the William Schuller Agency, Inc.

18. Persons placed under contract by National Talent Associates, Inc. can reasonably anticipate significant or substantial earnings from paid employment in the commercial advertising, talent, modeling or entertainment industries as models, actors, actresses, or entertainers.

19. Persons who contract with National Talent Associates, Inc. may reasonably anticipate earning sums of money sufficient to provide for a college education or for any other such formal education.

20. A person's chances for selection as a model, actor, actress or

entertainer by the commercial advertising, modeling, talent or entertainment industries is, in any way, enhanced solely because he or she is Black, Oriental, has red hair, freckles or because of his or her size, age or any other specific racial or personal characteristics.

It is further ordered, That respondents shall disclose clearly and conspicuously to each prospective purchaser of their services, prior to entering into any agreement for the furnishing of such services, the following information in a written document entitled "*Important Information*":

(1) The total number of persons signed to contracts and accepted by respondents during the five (5) calendar years immediately preceding the year in which the prospective purchaser is contacted; provided, however, such total number may also be broken down by individual calendar year so long as the total number for the five (5) calendar years appears with such calendar year breakdown;

(2) The number and percentage of those persons in (1) above, who received payment for employment;

(3) The number of persons in (1) above who earned income and their cumulative gross earnings during the five (5) calendar years immediately preceding the year in which the purchaser is contacted, in each of the following categories: under \$500, \$500-\$5,000, \$5,000-\$10,000, and above \$10,000;

(4) Any financial agreement or affiliation between respondents and (a) any photographic studio to which they may refer purchasers of their services, and/or (b) any person, firm or agency to whom photographs, or any other information, concerning purchasers of their services may be sent by respondents;

(5) The source or sources from which the names, addresses, or any other information about prospective purchasers, or about any other members of their immediate family, was obtained by respondents;

and shall disclose in such "*Important Information*" document no other statistical data or information except (a) the name and addresses of National Talent Associates; (b) the following footnote relating to (1) and (2) above:

Of the children signed during the past five years, only a few have had the opportunity to complete the full term of their five-year agreement.

and (c) the following footnote relating to (3) above:

These figures do not include those children signed by NTA prior to (Year) who received earnings during the past five years.

It is further ordered, That respondents shall provide to each pur-

chaser of their services a retainable copy of the "Important Information" document, and secure from each such purchaser a signed and dated copy of such document containing an acknowledgment by the purchaser of having received such document, which shall also be signed by respondents' representative, and that respondents shall maintain each such signed and dated document for five years and, upon request, make them available to the Federal Trade Commission for inspection and copying.

It is further ordered, That respondents shall not, in advertising or promotional material, or in any oral sales presentation, make any claim or other representation that contradicts any of the information required to be disclosed in the "Important Information" document.

It is further ordered, That respondents shall have up to sixty (60) days after the close of each calendar year to compile and update the "Important Information" document for the immediately preceding five-calendar-year period; *provided, however,* no "Important Information" document shall be given to any prospective purchaser after sixty (60) days from the beginning of each calendar year that does not disclose the information required to be disclosed by (1) through (5) above for the immediately preceding five-calendar-year period. In compiling the information required in (1) and (3) above, it shall not be a violation of this order if the figures in (1) vary by one-quarter ($\frac{1}{4}$) of one percent (1%) and the figures for (3) vary by one percent (1%), if such variances resulted from a good faith effort to accurately compile the required information.

It is further ordered, That respondents maintain, and upon request, make available to the Federal Trade Commission records substantiating the statistical information contained in each "Important Information" document then in use.

It is further ordered, That, if any representations are made by the respondents, their salesmen, representatives or agents, either expressly or impliedly, orally or in writing, pertaining to any standards, qualifications or characteristics which a person must meet or possess before respondents will agree to place such a person under contract, photograph them or otherwise assist or render services to said person, respondents shall maintain complete and detailed records as to such persons who have failed to meet or possess such standards, qualifications or characteristics, including their names, addresses, date of rejection, and the reason or reasons for their rejection by respondents. Such records shall be made available for examination and copying if necessary, by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

It is further ordered, That the respondents named in Part I of this order shall submit to respondents Monica Stuart and the William

Schuller Agency, Inc., for their inspection and evaluation, copies of all written promotional or sales materials, including but not limited to sales solicitation letters, contract forms, brochures, flyers, and sales presentation scripts. Said respondents will submit said materials to Monica Stuart and the William Schuller Agency, Inc., on a continuing basis whenever there is a change, revision or modification of any of the materials.

It is further ordered, That respondents shall cease and desist from:

a. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

b. Failing to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "*Notice of Cancellation*", which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter the date of transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION

NOTICE AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE: OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT. (Amended November 1, 1973).

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (Name of seller), AT (address of seller's place of business) NOT LATER THAN MIDNIGHT OF _____.
 (Date)

I HEREBY CANCEL THIS TRANSACTION.

 (Date)

 (Buyer's signature)

c. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

d. Including in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this Rule including specifically his right to cancel the sale in accordance with the provisions of this Rule.

e. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

f. Misrepresenting in any manner the buyer's right to cancel.

g. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

h. Negotiating, transferring, selling or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

i. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

Provided, however, That nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon a showing of inconsistency, shall make such modifications as may be warranted in the premises.

II

It is ordered, That William Schuller Agency, Inc., a corporation, its successors and assigns, and Monica Stuart, individually and as an officer of said corporation, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and distribution of products or services in connection with the placement and employment of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing to consumers, directly or indirectly, orally or in writing, that:

1. A person's chances for selection by Monica Stuart, the William Schuller Agency, Inc. or by any person or agency, will be aided, in-

creased or enhanced by entering into a contract with National Talent Associates, Inc.

2. Access to Monica Stuart or to the William Schuller Agency, Inc. is available only to persons who contract with National Talent Associates, Inc.

3. Monica Stuart or the William Schuller Agency, Inc., review photographs of only those persons who have contracted with National Talent Associates, Inc.

4. National Talent Associates, Inc. photographs other persons in a family in addition to the person whose name appears on its contract, solely for the purpose of submitting said photographs to Monica Stuart of the William Schuller Agency, Inc. for her evaluation of their potential for the commercial advertising, modeling, talent or entertainment industries.

5. The remuneration received by Monica Stuart of the William Schuller Agency, Inc., in connection with her consideration and review of photographs submitted to her by National Talent Associates, Inc., is derived solely from a percentage of the earnings of persons selected by her and placed under contract by the William Schuller Agency, Inc.

6. Natural color photographs of persons who contract with National Talent Associates, Inc. are submitted annually, for a five year period, or for any period in excess of the period in which said photographs are submitted to Monica Stuart or to the William Schuller Agency, Inc. for her or their consideration and review without disclosing that, unless the person comes back for rephotographing annually for a five year period, such person's photographs will not be resubmitted to Monica Stuart or to the William Schuller Agency, Inc.

It is further ordered, That respondents Monica Stuart and William Schuller Agency, Inc. shall maintain complete and detailed records as to the number of persons whose photographs were submitted to them by any of the respondents set forth under Part I of the order herein, and the number of such persons who have failed to meet or possess the standards, qualifications or characteristics which a person must meet or possess before respondents herein will agree to place such a person under contract, or otherwise assist or render services to said person, including their names, place of residence, and month and year of rejection. Such records shall be made available for examination and copying if necessary by an authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

It is further ordered, That respondents Monica Stuart and William Schuller Agency, Inc. shall inspect and evaluate the written promotional and sales material submitted to them by respondents named in

Part I of this order. Within 30 days of their receipt of said materials, respondents Monica Stuart and William Schuller Agency, Inc. shall notify said other respondents, in writing as to any comments, complaints they might have, or any corrections they might require, concerning any representations relating to them contained in the materials submitted. Monica Stuart and William Schuller Agency, Inc. shall simultaneously submit to the New York Regional Office a copy of such notification to the respondents named in Part I of this Order.

It is further ordered, That respondents Monica Stuart and William Schuller Agency, Inc. shall notify the Federal Trade Commission, in writing, of any consumer complaints received by them concerning any of the respondents named in Part I of this order. Such notification shall be made to the New York Regional Office within 30 days after receipt of the consumer complaint. This provision shall apply only to those complaints about representations by or practices of the respondents named in Part I which relate to respondents Monica Stuart and William Schuller Agency, Inc.

III

For the purposes of the following provisions of this order, unless otherwise specified, the term *respondents* shall include each of the respondents named heretofore in this order.

It is further ordered, That respondents William Schuller Agency, Inc. and Monica Stuart shall forthwith deliver a copy of this order or a memorandum incorporating its provisions to all present and future employees engaged in the sale of said respondents' products or services and shall secure from each such person a signed statement acknowledging receipt of a copy of this order or the memorandum.

It is further ordered, That corporate respondents National Talent Associates, Inc. and individual respondents Sanford Storm and Jerome P. Ashfield shall forthwith deliver a copy of this order or a memorandum incorporating its provisions to all present and future salesmen or other employees engaged in the sale of said respondents' products or services and shall secure from each such salesman or employee a signed statement acknowledging receipt of a copy of this order or the memorandum.

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

It is further ordered, That each individual respondent shall promptly notify the Commission of any discontinuance of his or her present business or employment and of his or her affiliation with any new

business or employment. Such notice shall include such respondent's current business address and a statement as to the nature of the business or employment in which he or she is engaged as well as a description of his or her duties and responsibilities.

It is further ordered, That corporate respondents 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 changes in the corporations which may affect compliance obligations arising out of this order.

It is further ordered, That the respondents shall within sixty days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
WYOMING STATE BOARD OF REGISTRATION IN PODIATRY
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3176. Complaint, Jan. 24, 1986—Decision, Jan. 24, 1986.

This consent order requires the Wyoming State Board of Registration in Podiatry ("Board"), among other things, to cease restricting or discouraging podiatrists from truthfully advertising their goods and services by: (1) adopting rules or policies prohibiting such advertising; (2) suspending or revoking podiatrists' licenses as a result of such advertising; or (3) declaring such advertising illegal or unethical. Under the terms of the order, the Board is allowed to prohibit and enforce restrictions that ban false or misleading ads or to seek legislation related to the practice of podiatry.

Appearances

For the Commission: *Jack Young and Cynthia Wicker.*

For the respondent: *Gay Woodhouse, Cheyenne, Wyo.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, *as amended*, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that the Wyoming State Board of Registration in Podiatry ("Board") has violated Section 5 of the Federal Trade Commission Act, and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

Respondent

1. Respondent Wyoming State Board of Registraton in Podiatry is organized, exists and transacts business under the laws of the State of Wyoming. The Board's principal office and place of business is located at the office of Curtis Deming, D.P.M., its Secretary-Treasurer, at 50 East Loucks, Suite 202, Sheridan, Wyoming. The Board is subject to the Commission's jurisdiction pursuant to Section 5 of the Federal Trade Commission Act.

2. Membership on the Board is limited to podiatrists. The Board is composed of three podiatrists who are appointed by the governor to staggered three year terms. Wyo. Stat. § 33-9-102.

3. The Board has exclusive authority to license podiatrists in Wyoming. It is unlawful to practice podiatry in Wyoming without first obtaining a license from the Board. Wyo. Stat. §§ 33-9-103, 104, 105.

4. The Board is authorized to adopt rules and regulations governing the examination and licensing of podiatrists in the state. Wyo. Stat. § 33-9-105. The Board is further authorized to revoke or refuse to renew the license of any podiatrist who is found guilty of the following offenses: obtaining a license by fraudulent representation, use of untruthful or improbable statements in advertisements, incompetency, alcoholism or habitual use of controlled substances, and engaging in unprofessional conduct. Wyo. Stat. § 33-9-110. The Board is not authorized to discipline podiatrists for other violations or to adopt rules establishing additional grounds for disciplinary action.

5. By law all Board members must have practiced podiatry in Wyoming for the two years preceding their appointment to the Board, and members must continue to practice podiatry while on the board. Board members spend a relatively small percentage of their time on Board matters, and compensation is limited to reimbursement for per diem, mileage and expenses for attending meetings, and other necessary incidental expenses. Wyo. Stat. § 33-9-112.

6. Except to the extent that competition has been restrained as alleged herein, podiatrists in Wyoming compete with one another and Board members who are podiatrists compete with other podiatrists they regulate.

7. In the conduct of their business, podiatrists in Wyoming advertise in media having interstate circulation, receive and treat patients from other states, receive substantial sums of money that flow across state lines from the federal government and from private insurers for rendering podiatric services, prescribe or administer medicines that are shipped in interstate commerce, and use supplies and equipment that are shipped across state lines. The acts and practices described below are in interstate commerce, or affect these and other interstate activities, and are in or affect commerce within the meaning of Section 5 (a)(1) of the Federal Trade Commission Act. 15 U.S.C. 45(a)(1).

State Policy Concerning Podiatric Advertising

8. The State of Wyoming does not restrict competition among podiatrists except by authorizing the Board to establish standards for licensing podiatrists, and by disciplining them for the offenses described above.

9. There are no Wyoming Statutes indicating that the state intended to restrict or supplant competition among licensed podiatrists or to restrict truthful advertising by podiatrists. The only authority to prohibit the use of "untruthful or improbable statements" in adver-

tisements. Wyo. State. § 33-9-110(a)(iii). The State of Wyoming has thereby expressly denied the Board any authority to regulate truthful advertising.

10. The State of Wyoming gives the Board no discretion to adopt rules other than those necessary to conduct examinations and issue licenses.

Board Conduct

11. Despite the fact that state law does not authorize the Board to restrict truthful advertising, the Board has restrained competition among podiatrists in Wyoming by combining or conspiring with its members or others, or by acting as a combination of its members or others, to restrict unreasonably the dissemination by podiatrists of truthful, nondeceptive information. In furtherance of this combination or conspiracy, the Board has engaged in the following acts or practices without statutory authorization:

A. Adopted Principles of Professional Conduct for Podiatrists, which state that "[t]he use of advertising in any form to solicit patients is inconsistent with [the podiatrist's] obligation."

B. Adopted a Code of Ethics that sets forth content restrictions on advertising by podiatrists in Wyoming. The Code permits advertising of little information beyond name, address, telephone number, office hours and limited descriptions of practice. These sections restrict advertising to office signs, telephone listings, newspapers, and direct mail announcements. They limit use of these media, stating for example, that newspapers and direct mailings may be used only to announce the opening of new offices or changes of address or telephone number. They also impose additional limitations on the use of media, including complete bans on radio and television advertising.

C. Intimidated and coerced or attempted to intimidate and coerce individual podiatrists into abandoning their efforts to advertise the availability of podiatric services, and coupons for free services. In so doing, the Board has not based its actions on a determination that the advertising was false or deceptive.

D. Directed competing podiatrists in one town to conspire for the purpose of establishing an agreement on the extent of advertising they would permit in their market.

12. By these and other means the Board has continued its anticompetitive course of conduct, despite the fact that the Board has known since at least 1982 that the restrictions contained in the Principles of Professional Conduct and Code of Ethics violated the law.

Consumer and Competitive Injury

13. The acts and practices described above have restrained and continue to restrain competition unreasonably and injure consumers in the following ways, among others:

A. Consumers and potential consumers of podiatric goods and services are deprived of the benefits of vigorous competition;

B. Consumers and potential consumers are deprived of truthful, useful information about podiatric goods and services;

C. Podiatrists are prevented from disseminating truthful information about their goods and services; and

D. Podiatrists are unreasonably restrained from competing in the market for podiatric goods and services, and restrained in their ability to make podiatric services fully and readily available to consumers needing such services.

14. The acts and practices described above constitute unfair methods of competition and unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act. The acts and practices are continuing and will continue absent the entry of an order for appropriate relief.

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 the draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its counsel and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 also containing 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, the Commission hereby issues its com-

plaint, makes the following jurisdictional findings and enters the following order:

1. The respondent is organized, exists and transacts business under the laws of the State of Wyoming, with its principal office and place of business located at the office of Curtis Deming, D.P.M., its Secretary-Treasurer, at 50 East Loucks, Suite 202, Sheridan, Wyoming.

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 purposes of this order, the following definitions shall apply:

A. *Board* shall mean the Wyoming State Board of Registration in Podiatry, its members, officers, agents, employees, successors and assigns.

B. *Disciplinary action* shall mean:

1. The refusal to grant, or the restriction, revocation or suspension of, a license to practice podiatry in Wyoming; the refusal to admit a person to examination for a license to practice podiatry; the issuance of a formal or informal warning, reprimand, censure, or cease and desist order against any person or organization; or the imposition of a fine, probation, or other penalty or condition; or

2. The initiation of an administrative, criminal, or civil court proceeding against any person or organization.

I.

It is ordered, That the Board, directly or indirectly, through any device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Prohibiting, restricting, impeding, or discouraging any person from advertising or publishing the prices, terms, conditions of sale, or other information concerning any podiatric service or product offered for sale or made available by any person or organization that may lawfully offer the service or product. Such actions include, but are not limited to:

1. adopting or maintaining any rule, regulation, policy, or course of conduct that has the purpose or effect of prohibiting, restricting, or

discouraging any person from advertising information about podiatric goods and services;

2. taking or threatening to take any disciplinary action against any person or organization for advertising information about podiatric goods and services;

3. declaring it to be an illegal, unethical, unprofessional, or otherwise improper practice for any person or organization to advertise information about podiatric goods and services; and

B. Inducing, urging, encouraging or assisting any podiatrist or any podiatric association, group of podiatrists, hospital, insurance carrier or any other non-governmental organization to take any of the actions prohibited by this part.

Provided that, nothing contained in this part shall prohibit the Board from formulating, adopting, disseminating and enforcing reasonable rules or taking disciplinary or other action to prohibit the use in advertising of statements that the Board reasonably believes are "untruthful or improbable" within the meaning of Wyo. Stat. § 33-9-110(a)(iii);

Provided further, That, this order shall not be construed to prevent the Board from petitioning for or seeking legislation concerning the practice of podiatry.

II.

It is further ordered, That the Board shall:

A. Distribute by first-class mail a copy of the announcement attached hereto as Appendix A and a copy of this order:

1. Within thirty (30) days after the date this order becomes final, to each person licensed to practice podiatry in Wyoming on the date this order becomes final and to each person who has on such date a pending application for a license; and

2. Within thirty (30) days after a person applies for a license to practice podiatry in Wyoming, for a period of five (5) years after the date this order becomes final, to each such person;

B. For a period of five (5) years after this order becomes final, maintain and upon request make available to the Federal Trade Commission for inspection and copying, copies of all records relating to advertising, including but not limited to, written communications, and any summaries of oral communications to or from the Board regarding the offering, publishing or advertising of information about podiatric services;

C. Notify the Federal Trade Commission at least thirty (30) days in advance if possible, or otherwise as soon as possible, of any change in

the Board's authority to regulate the practice of podiatry in Wyoming that may affect compliance obligations arising out of this order, such as the complete or partial assumption of that authority, the complete or partial assumption of that authority by another governmental entity, or the dissolution of the Board;

D. Within ninety (90) days after this order becomes final remove from its Principles of Professional Conduct, Code of Ethics and any other policy statement or guideline, any provision, interpretation or statement that is inconsistent with Part I of this order;

E. Within one hundred twenty (120) days after this order becomes final, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which the Board has complied with this order.

APPENDIX A

[Date]

ANNOUNCEMENT

As you may be aware, the Wyoming State Board of Registration in Podiatry has entered into a consent agreement with the Federal Trade Commission that became final on [date]. The order issued pursuant to the consent agreement provides that the Board may not prohibit podiatrists from advertising their services in a truthful or probable manner. The Board may not (1) adopt or maintain rules, regulations, or policies that prohibit truthful, probable advertising with respect to the sale of podiatric goods, or services, (2) take disciplinary action (such as the suspension or revocation of a certificate of license) or threaten disciplinary action against any person or organization so advertising or (3) declare it to be illegal or unethical for persons to so advertise. The Board is also prohibited from encouraging any podiatrist or any professional group or association to take actions that the order prohibits the Board from taking. The order does not affect the Board's authority to prohibit and discipline licensees for advertising that is untruthful or improbable.

For more specific information, you should refer to the FTC order itself. A copy of the order is enclosed. Further information may be obtained from the FTC by calling Jack L. Young at (202) 523-3596.

[Title]

Wyoming State Board of Registration in Podiatry

Complaint

107 F.T.C.

IN THE MATTER OF

ROY B. KELLY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3177. Complaint, Feb. 4, 1986—Decision, Feb. 4, 1986*

This consent order requires a former corporate officer of a Washington, D.C.-based employment counseling service, among other things, to cease misrepresenting: (1) the basis on which clients are accepted; (2) the number of clients who have obtained interviews, job offers, or jobs through respondent's services; and (3) the chances that the clients' fees would be refunded because the employer would likely pay the respondent a finder's fee. Additionally, respondent is required to have a reasonable basis for any placement claims he makes, and whenever such placement claims are made, to maintain records of his placements and make a composite of these records available to clients on request. Further, respondent is prohibited from accepting a fee until a client has obtained employment through respondent's services.

Appearances

For the Commission: *Walter C. Gross* and *E. Charles Lane*.

For the respondent: *Thomas R. Dyson*, Washington, D.C.

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 Roy B. Kelly, individually and as a former officer of John William Costello Associates, Inc. (JWCA), hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Roy B. Kelly was an officer of John William Costello Associates, Inc. The corporation's principal office and place of business was located at 1612 K Street, N.W., Washington, D.C.. John William Costello Associates, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the District of Columbia. He directed, formulated and controlled the acts and practices of John William Costello Associates, Inc., including the acts and practices hereinafter set forth.

The aforementioned respondent Roy B. Kelly cooperated and acted

together along with others in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondent, until at least August 1982, engaged in the advertising, offering for sale, and sale of services to persons seeking employment. These services included, *inter alia*, providing advice, assistance and counseling to clients, preparing resumes for clients, preparing cover letters to prospective employers, identifying companies as prospective employers, and mailing resumes and cover letters to prospective employers. The cost of JWCA's services ranged from \$2,500 to \$25,000 and higher.

PAR. 3. Respondent advertised JWCA's services in newspapers of interstate circulation, in Washington, D.C. and in various states. Respondent solicited prospective clients for JWCA's services at regional sales offices located in various states and offered and sold its services at its principal office and place of business in Washington, D.C. Respondent maintained a substantial course of business, including the acts and practices as hereinafter set forth, which were in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of respondent's business, for the purpose of inducing prospective clients to purchase JWCA's services, respondent through various statements in newspaper advertisements and promotional materials and orally by JWCA's officers and sales representatives, represented, directly or by implication, that:

(1) Clients typically received several interviews with and job offers from prospective employers through the services of JWCA.

(2) The large majority of JWCA's previous clients obtained employment through the services of JWCA.

(3) Most of JWCA's clients received a refund, in whole or in part, of fees paid to JWCA.

(4) JWCA carefully screened prospective applicants and only accepted as clients those persons that JWCA could successfully place.

PAR. 5. In truth and in fact:

(1) Clients seldom received any interviews or job offers through JWCA's services.

(2) The large majority of JWCA's previous clients did not obtain employment through the services of JWCA. In fact, only a small number of JWCA's clients obtained employment through the services of JWCA.

(3) The fees paid by most of JWCA's clients were not refunded. In fact, only a small number of clients received refunds from JWCA.

(4) JWCA did not limit their clients to those persons they could

successfully place. Instead, JWCA accepted almost any client that could pay its fees.

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

PAR. 6. In the further course and conduct of respondent's business, respondent represented, directly or by implication, to prospective clients that JWCA had placed in jobs a large percentage, such as, *inter alia*, 80%, 85% or 90%, of its clients.

PAR. 7. In truth and in fact, JWCA did not place in jobs a large percentage, such as, *inter alia*, 80%, 85% or 90% of its clients. Therefore, the representation set forth in Paragraph Six was false and misleading.

PAR. 8. Through the use of the representation referred to in Paragraph Six, and other representations not specifically set forth herein, respondent represented, directly or by implication, that he possessed and relied upon a reasonable basis for the representation set forth in Paragraph Six at the time of the initial representation and each subsequent representation.

PAR. 9. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making the representation set forth in Paragraph Six. Therefore, the representation set forth in Paragraph Eight was false and deceptive.

PAR. 10. In the course and conduct of its business, and at all times mentioned herein, respondent has been in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of services of the same general kind and nature as services sold by respondent.

PAR. 11. The use by respondent of the aforesaid false and misleading representations, had the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said representations were true and complete, and into purchase of respondent's services by reason of said erroneous and mistaken belief.

PAR. 12. The acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of JWCA'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.

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, would charge respondent with violation of the Federal Trade Commission Act.

The respondent, his attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the 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, 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 Roy B. Kelly, individually and as a former officer of John William Costello Associates, Inc., a corporation organized, existing and formerly doing business under and by virtue of the laws of the District of Columbia, with its office and place of business previously at 1612 K Street, N. W., in the City of Washington, District of Columbia. The present address of Roy B. Kelly is 4701 Woodward Avenue, #331, Chevy Chase, Maryland.

Respondent Roy B. Kelly was an officer of said corporation. He formulated, directed, and controlled the policies, acts and practices of said corporation, and its principal office and place of business was previously located at the above stated address.

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

I.

It is ordered, That respondent Roy B. Kelly, individually and as a former officer of John William Costello Associates, Inc., directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or sale of any employ-

ment counseling services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication,

1. the basis upon which clients are accepted;
2. the number of interviews or job offers which clients typically receive as a result of respondent's services;
3. the number or percentage of clients who obtained interviews or job offers as a result of respondent's services;
4. the number or percentage of clients who obtained jobs as a result of respondent's services; and
5. the likelihood that clients' fees will be refunded.

B. Making any representation, directly or by implication, concerning the benefits received by former clients, or the benefits a client is likely to receive, including but not limited to, job interviews, job offers, jobs, or the return of clients' fees, unless at the time of making such representation respondent possesses and relies upon evidence constituting a reasonable basis for such representation.

C. 1. Failing whenever respondent makes any job placement representation, including representations concerning matters covered by subparagraphs 1-5 of Paragraph A., to:

(a) maintain accurate records for every client who has contracted for such employment services, noting who has been placed in a new job as a result of respondent's services; (b) compile a composite of such records, including at a minimum, the placement history for the eight calendar quarters immediately preceding the quarter in which the claim is made and a calculation on a quarterly and annual basis of the actual percentage of placements as a ratio of all clients who were placed to all clients who contracted for services but who did not cancel within any applicable cooling-off period; and (c) advise each prospective client orally and in writing, that a composite of placement records is available on request.

2. Failing to include in every contract for such job placement services and in any advertisement or promotional material that contains any express or implied job placement claim, a clear and conspicuous statement that a composite of placement records for the previous two (2) years is available for inspection and copying upon request.

D. Accepting any fee from a client or obligating a client to pay any fee before that client has obtained employment through the efforts of respondent; provided, however, that this prohibition shall not apply if respondent:

1. provides only counseling or resume writing services;

2. does not make any representations, express or implied, concerning (a) respondent's job placement rates with former clients; or (b) respondent's ability to locate prospective employers or his ability to obtain interviews for clients or place clients in jobs; and

3. discloses to the client orally and clearly and conspicuously in a written contract, that (a) respondent's services only include employment counseling and/or resume writing; and (b) respondent has not contracted to obtain interviews for the client or to place him or her in a job.

E. Failing to maintain for three years from the date that the representations are last made or disseminated all materials relied upon by respondent in making any representation covered by this order and upon request make them available to the FTC for inspection and copying such materials.

II.

It is further ordered, That respondent distribute a copy of this order to all present or future personnel, agents or representatives having sales, advertising or policy responsibilities with respect to the subject matter of this order and that respondent secure from each such person a signed statement acknowledging receipt of said order.

III.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this order, respondent shall promptly notify the Commission of each affiliation of a new business or employment. Each such notice shall include respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph will not affect any other obligation arising under this order.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

JOHN WILLIAM COSTELLO ASSOCIATES, INC., ET AL

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

Docket C-3178. Complaint, Feb. 4, 1986—Decision, Feb. 4, 1986

This consent order requires two Washington, D.C.-based employment counseling services and four corporate officers, among other things, to cease misrepresenting: (1) the basis on which clients are accepted; (2) the number of clients who have obtained interviews, job offers, or jobs through respondents' services; and (3) the chances that the clients' fees would be refunded because the employer would likely pay the respondents a finder's fee. Additionally, respondents are required to have a reasonable basis for any placement claims they make, and whenever such placement claims are made, to maintain records of their placements and make a composite of these records available to clients on request. Further, respondents are prohibited from accepting a fee until a client has obtained employment through respondents' services.

Appearances

For the Commission: *Walter C. Gross and E. Charles Lane.*

For the respondent: *Douglas L. Lashley, Beckett, Cromwell & Meyers, Bethesda, Md.*

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 John William Costello Associates, Inc., a corporation, National Executive Search, Inc., a corporation, John William Costello, Sr., individually and as an officer of said corporations, John William Costello, Jr., individually and as an officer of said corporations, James H. Sellors, individually and as an officer of said corporations, and William S. Spector, 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:

PARAGRAPH 1. Respondents John William Costello Associates, Inc. (JWCA) and National Executive Search, Inc. (NESI) are corporations organized, existing and formerly doing business under and by virtue

of the laws of the District of Columbia. All of the above corporate respondents had their principal offices and places of business at 1612 K Street, N.W., Washington, D.C..

Respondents John William Costello, Sr., John William Costello, Jr., James H. Sellors, and William S. Spector are or were officers of both of the corporate respondents named herein. They directed, formulated and controlled the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth.

John William Costello, Sr.'s address is 5601 River Road, Bethesda, Maryland.

John William Costello, Jr.'s address is 7866 Archbold Terrace, Cabin John, Maryland.

James H. Sellors' address is 12900 Old Frederick Road, Sykesville, Maryland.

William S. Spector's address is 41 Orchard Way South, Rockville, Maryland.

The aforementioned respondents cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents, until at least August 1, 1983, engaged in the advertising, offering for sale, and sale of services to persons seeking employment. These services included, *inter alia*, providing advice, assistance and counseling to clients, preparing resumes for clients, preparing cover letters to prospective employers, identifying companies as prospective employers, and mailing resumes and cover letters to prospective employers. The cost of respondents' services ranged from \$2,500 to \$25,000 and higher.

PAR. 3. Respondents advertised their services in newspapers of interstate circulation, in Washington, D.C., and in various states. Respondents solicited prospective clients for their services at regional sales offices located in various states and offered and sold their services at their principal office and place of business in Washington, D.C. Respondents maintained a substantial course of business, including the acts and practices as hereinafter set forth, which were in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, for the purpose of inducing prospective clients to purchase their services, respondents, through various statements in newspaper advertisements and promotional materials and orally by their officers and sales representatives, represented, directly or by implication, that:

(1) Respondents' clients typically received several interviews with and job offers from prospective employers through the services of respondents.

(2) The large majority of respondents' previous clients obtained employment through the services of respondents.

(3) Most of respondents' clients received a refund, in whole or in part, of fees paid to respondents.

(4) Respondents carefully screened prospective applicants and only accepted as clients those persons that they could successfully place.

PAR. 5. In truth and in fact:

(1) Respondents' clients seldom received any interviews or job offers through respondents' services.

(2) The large majority of respondents' previous clients did not obtain employment through the services of respondents. In fact, only a small number of respondents' clients obtained employment through the services of respondents.

(3) The fees paid by most of respondents' clients were not refunded. In fact, only a small number of clients received refunds from respondents.

(4) Respondents did not limit their clients to those persons they could successfully place. Instead, respondents accepted almost any client that could pay respondents' fees.

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

PAR. 6. In the further course and conduct of their business, respondents have represented, directly or by implication, to prospective clients that they had placed in jobs a large percentage, such as, *inter alia*, 80%, 85% or 90%, of their clients.

PAR. 7. In truth and in fact, respondents have not placed in jobs a large percentage, such as, *inter alia*, 80%, 85% or 90% of their clients. Therefore, the representation set forth in Paragraph Six was false and misleading.

PAR. 8. Through the use of the representation referred to in Paragraph Six, and other representations not specifically set forth herein, respondents have represented, directly or by implication, that they possessed and relied upon a reasonable basis for the representation set forth in Paragraph Six at the time of the initial representation and each subsequent representation.

PAR. 9. In truth and in fact, respondents did not possess and rely upon a reasonable basis for making the representation set forth in Paragraph Six. Therefore, the representation set forth in Paragraph Eight was false and deceptive.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition in or affecting commerce with corporations, firms and individuals

engaged in the sale of services of the same general kind and nature as services sold by respondents.

PAR. 11. The use by respondents of the aforesaid false and misleading representations, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said representations were, and are, true and complete, and into purchase of respondents' services by reason of said erroneous and mistaken belief.

PAR. 12. The 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 and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

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, would charge respondents with violation of the Federal Trade Commission Act.

The respondents, Douglas L. Lashley, Attorney for James H. Sellors, 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 John William Costello Associates, Inc. (JWCA) and National Executive Search, Inc. (NESI) are corporations organized, existing and formerly doing business under and by virtue of the laws

of the District of Columbia, with their offices and places of business previously at 1612 K Street, N. W., in the City of Washington, District of Columbia.

Respondents John William Costello, Sr., John William Costello, Jr., James H. Sellors, and William S. Spector are or were officers of said corporations. They formulated, directed, and controlled the policies, acts and practices of said corporations, and their principal offices and places of business were previously located at the above stated address.

John William Costello, Sr.'s address is 5601 River Road, Bethesda, Maryland.

John William Costello, Jr.'s address is 7866 Archbold Terrace, Cabin John, Maryland.

James H. Sellors' address is 12900 Old Frederick Road, Sykesville, Maryland.

William S. Spector's address is 41 Orchard Way South, Rockville, Maryland.

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

ORDER

I.

It is ordered, That respondents John William Costello Associates, Inc., a corporation, and National Executive Search, Inc., a corporation, their successors and assigns, and their officers, and respondents John William Costello, Sr., John William Costello, Jr., James H. Sellors, and William S. Spector, individually and as officers of said corporations, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or sale of any employment counseling service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication,

1. the basis upon which clients are accepted;
2. the number of interviews or job offers which clients typically receive as a result of respondents' services;
3. the number or percentage of clients who obtained interviews or job offers as a result of respondents' services;
4. the number or percentage of clients who obtained jobs as a result of respondents' services; and

5. the likelihood that clients' fees will be refunded.

B. Making any representation, directly or by implication, concerning the benefits received by former clients, or the benefits a client is likely to receive, including but not limited to, job interviews, job offers, jobs, or the return of clients' fees, unless at the time of making such representation respondents possess and rely upon evidence constituting a reasonable basis for such representation.

C. 1. Failing whenever respondents make any job placement representation, including representations concerning matters covered by subparagraphs 1-5 of Paragraph A., to:

(a) maintain accurate records for every client who has contracted for such employment services, noting who has been placed in a new job as a result of respondents' services; (b) compile a composite of such records, including at a minimum, the placement history for the eight calendar quarters immediately preceding the quarter in which the claim is made and a calculation on a quarterly and annual basis of the actual percentage of placements as a ratio of all clients who were placed to all clients who contracted for services but who did not cancel within any applicable cooling-off period; and (c) advise each prospective client orally and in writing, that a composite of placement records is available on request.

2. Failing to include in every contract for such job placement services and in any advertisement or promotional material that contains any express or implied job placement claim, a clear and conspicuous statement that a composite of placement records for the previous two (2) years is available for inspection and copying upon request.

D. Accepting any fee from a client or obligating a client to pay any fee before that client has obtained employment through the efforts of respondents; provided, however, that this prohibition shall not apply if respondents:

1. provide only counseling or resume writing services;
2. do not make any representations, express or implied, concerning (a) respondents' job placement rates with former clients; or (b) respondents' ability to locate prospective employers or their ability to obtain interviews for clients or place clients in jobs; and
3. disclose to the client orally and clearly and conspicuously in a written contract, that (a) respondents' services only include employment counseling and/or resume writing; and (b) respondents have not contracted to obtain interviews for the client or to place him or her in a job.

E. Failing to maintain for three years from the date that the representations are last made or disseminated all materials relied upon by respondents in making any representation covered by this order and

upon request make them available to the FTC for inspection and copying such materials.

II.

It is further ordered, That respondents distribute a copy of this order to all operating divisions of said corporations and to present or future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order and that respondents secure from each such person a signed statement acknowledging receipt of said order.

III.

It is further ordered, That respondents 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 the order.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliations with new businesses or employment. In addition, for a period of five (5) years from the date of service of this order, each respondent shall promptly notify the Commission of each affiliation of a new business or employment. Each such notice shall include each respondents' new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondents' duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph will not affect any other obligation arising under this order.

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

IN THE MATTER OF

NATIONAL ENERGY ASSOCIATES, INC., ET AL.

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

Docket C-3179. Complaint, Feb. 5, 1986—Decision, Feb. 5, 1986

This consent order requires a Norcross, Ga. manufacturer and marketer of home energy controlling devices, and its corporate officer, among other things, to cease making claims of energy savings associated with the product "Cyclematic", or any other energy-control device, without competent and reliable substantiation. Additionally, respondents are prohibited from representing that consumers are eligible for a federal income tax credit with the purchase of their products, unless that is true.

Appearances

For the Commission: *Michael Dershowitz and Sandra N. Hammer.*

For the respondents: *J. Patrick O'Brien, Boyce, Thompson & O'Brien,* Norcross, Ga.

COMPLAINT

The Federal Trade Commission, having reason to believe that National Energy Associates, Inc., a corporation, and James B. Brooks, individually and as an officer of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) National Energy Associates, Inc. is a Georgia corporation with its principal office or place of business at 6435 Warren Drive, Norcross, Georgia.

(b) James B. Brooks is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporation.

(c) Respondents cooperate and act together in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents manufacture, advertise, offer for sale, sell and distribute energy control devices for residential or small commercial use.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce.

PAR. 4. In advertisements, respondents have made various statements about the energy savings capability of their energy control devices sold under the brand name "Cyclematic." Typical and illustrative of these statements, but not all-inclusive thereof, are the following, some of which appear in the advertisements attached hereto as Exhibits A and B:

15% to 20% Guaranteed savings . . .

Cyclematic has been proven to save up to 30% on annual heating and/or cooling costs.

Typically, a Cyclematic will pay for itself in one to two years or less with the money saved.

Qualifies for 15% Federal Energy Tax Credit.

PAR. 5. Through the use of the above statements, and other statements in advertisements not specifically set forth herein, respondents have made the following material representations, directly or by implication:

(1) Use of the Cyclematic energy control device will save consumers at least 15% and possibly, as much as 30% on their annual small commercial or home heating and cooling bills.

(2) It will take two years or less for consumers to save enough money on their small commercial or home heating and cooling bills by using the Cyclematic energy control device to recoup the retail cost of the Cyclematic energy control device.

(3) Competent and reliable tests or studies prove that consumers will save at least 15% and possibly, as much as 30% on their annual small commercial or home heating and cooling bills by using the Cyclematic energy control device.

(4) Cyclematic is a qualified energy conservation product according to the U.S. Tax Code, thereby permitting purchasers of the product to obtain a tax credit and reduce their federal income tax liability.

PAR. 6. In truth and in fact:

(1) Consumers will not save 15%, or close to 15%, on their annual small commercial or home heating and cooling bills as a result of using the Cyclematic energy control device.

(2) Few, if any, consumers will save enough money on their small commercial or home heating and cooling bills by using the Cyclematic energy control device to recoup the retail cost of the Cyclematic device within two years, or close to two years.

(3) Energy savings of 15% to 30% on consumers' annual small

commercial or home heating and cooling bills due to the use of the Cyclematic energy control device have not been proven by competent and reliable tests or studies.

(4) Cyclematic is not a qualified energy conservation product according to the U.S. Tax Code. Therefore, purchasers of Cyclematic cannot obtain a tax credit or reduce their federal income tax liability by purchasing the product.

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

PAR. 7. Through the use of the statements set forth in Paragraph Four, and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time of making the representations set forth in Paragraph Five, they possessed and relied upon a reasonable basis for those representations.

PAR. 8. In truth and in fact, at the time of the initial dissemination of the representations and each subsequent dissemination, respondents did not possess and rely upon a reasonable basis for making those representations because, *inter alia*, respondents' test protocols and calculations were not designed or conducted in a manner to produce competent, reliable and statistically meaningful results. Therefore, respondents' representations, as set forth in Paragraph Seven, were, and are, false and misleading.

PAR. 9. The acts or practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce and false advertisements in violation of Section 5 of the Federal Trade Commission Act.

Complaint

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EXHIBIT A

WITH NEA'S CYCLEMATIC™ YOU HAVE:

- Ease of operation and reliability (can last up to 25 years!)
- No comfort loss (improves air circulation)
- A 15% Federal Tax Credit (plus applicable state energy credit)
- Few adjustments needed — exclusive environmental sensor which monitors system for you!
- A 15% to 20% Guaranteed savings or your money back!
- Insured savings based on consumption. (Monthly savings rapidly pays for it.)
- Computer-like "intelligence" which adjusts system to maintain comfort level.
- A hand in helping America conserve her energy resources.

TOO HIGH UTILITY BILLS!

The Energy Crisis in America Today

America has developed a life style that requires enormous amounts of energy. Now, as America enters an era of scarce and costly energy supplies, we must adjust our lifestyles to reduce energy consumption.

Doing Your Part in Saving America's Energy Will Save You Money!

Today Americans face the most serious domestic challenge they are likely to face in their lifetimes—the energy challenge. This challenge is that the domestic demand for energy keeps rising faster than the domestic supply. * This challenge should become your personal crusade to help Americans reduce energy demand at home and work.

Much of America's energy is used inefficiently. By saving energy we can protect jobs, the environment and the basic American standard of living, not only for ourselves, but also for our children and grandchildren. All of us will pay a heavy price if we do not save energy!

You're the one who decides how much energy you'll save, by how much you conserve. DOCS depend on how serious you are.

OUR ENERGY SOLUTION

The NEA Way to Save Your Dollar's and America's Energy

As an important part of the energy solution for America, National Energy Associates, Inc. is proud to present the Cyclematic™. The Cyclematic™ is a micro-electronic thermostat energy monitor for central heating and air conditioning systems.

The engineering staff at TimeMark Corp. has many years of experience in the application and manufacture of energy control systems for commercial buildings. NEA and TimeMark Corp. have developed a most cost effective thermostat energy monitor. This system is especially designed for homes and small businesses. It applies the same degree of high technology which provides large commercial businesses millions of dollars in energy cost savings annually.

This is The System That Saves You Money

The Cyclematic™'s principal of operation is duty cycling. This improves the efficiency of your heating and cooling system, plus increases the efficiency of your thermostat. The Cyclematic™ reduces your costs by reducing the operating time of your air conditioning compressor and heating system. Even though the run times are reduced, uniform comfort is maintained throughout your home or business.

IT'S YOUR MONEY

It Pays for Itself in Savings!

With a Cyclematic™ Energy Control System, you can start saving on your energy costs today! Sooner or later you'll spend the money for a Cyclematic™, either in increased energy costs or on a Cyclematic™. The initial investment you're willing to make, means more money you'll save in the long run.

* U.S. Energy Saves — U.S. Department of Energy
page 1 DCEGPA 0037 9/78

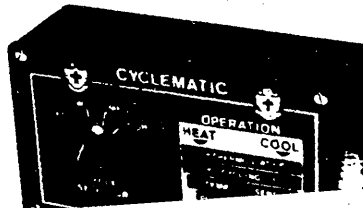


EXHIBIT B

THE SYSTEM YOU CAN'T BEAT.

NO PROGRAMMING NEEDED

The Cyclomatic™ requires no programming. Once installed on your system the factory programs automatically start saving energy. The cycle selector switch is the only adjustment that is ever needed. The three settings High-Med-Low insure that the Cyclomatic™ is the right energy management system for both residential and commercial applications. Once set to the equipment, Cyclomatic™ through its temperature sensing capabilities adjust the heating and cooling system to maintain a comfort level while continuing to reduce energy consumption.

ENVIRONMENTAL TEMPERATURE SENSOR

Cyclomatic™ incorporates an environmental temperature sensor to maintain the best comfort level at the same time insuring the system is operating at peak efficiency. The thermistor sensor monitors the air space temperature and will automatically adjust the system operation for maximum comfort and savings.

OPERATIONAL PERFORMANCE INDICATORS

Cyclomatic™ incorporates 6 O.P.I. LEDs that allows the owner to visually monitor the system's operational performance, and indicates when a change in the cycle selector switch may be required. An illuminated comfort sensor that never shuts off indicates that the cycle selector switch needs to be adjusted to the next lower setting, to achieve the greatest savings while insuring comfort. The other indicators indicate the operation of the system and the Cyclomatic™.

PROVEN MONEY SAVINGS

Cyclomatic™ has been proven to save up to 30% on annual heating and/or cooling costs. With such savings Cyclomatic™ can yield an immediate return on investment. What's more, it qualifies for a 15% Federal Energy Tax credit!

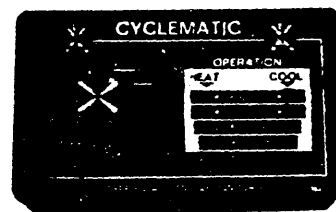
UNBEATABLE FEATURES

- Micro-electronic control
- Ease of installation
- Ease of operation
- Solid state reliability
- Automatic Heat, Cool changeover
- Eliminates stratification through increased air circulation
- Proven money savings
- Low voltage operation
- Commercial and Residential applications
- Increased comfort

BENEFITS

- Insured energy savings by Triple A Insurance Company
- Qualifies for 15% Federal Energy Tax Credit
- A 5 year limited warranty
- Monthly savings rapidly returns investment

The choice that faces you now - continue paying the power company or save with the Cyclomatic™ today.



Cyclomatic™

**national
ENERGY.**

3150 Gateway Drive
Norcross, G.A. 30071

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. Respondent National Energy Associates, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 6435 Warren Drive, Norcross, Georgia.

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

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

ORDER

Definitions

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

Energy-related claim means any general or specific, oral or written representation that, directly or by implication, describes or refers to energy savings, energy cost savings, efficiency or conservation, "payback," or "payback" potential.

A *competent and reliable test* means any scientific, engineering, laboratory, or other analytical report, study or survey prepared by one or more persons with skill and expert knowledge in the field to which the material pertains and based on testing, evaluation and analytical procedures that ensure accurate, reliable and statistically meaningful results.

Small commercial heating and cooling systems are similar to residential, central forced air type systems.

Energy control device (sometimes referred to as *duty-cycler* or *cyclic controller*) means any electronic device which is not a setback thermostat, but which:

(a) functions to interrupt a thermostatically-controlled cycle of any single, residential or small commercial, forced air central heating or air conditioning unit; or which

(b) may be incorporated in any other product, such as a setback thermostat, to function in the manner described in (a) above.

PART I

It is ordered, That respondents National Energy Associates, Inc., a corporation, its successors and assigns, and its officers, and James B. Brooks, individually and as an officer of said corporation, and respondents' 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 any energy control device or any other product or service 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, in any manner that:

(1) Consumers will save 15%, or close to 15%, on their annual small commercial or home heating and cooling bills as a result of using Cyclematic, or any other such energy control device, as defined herein.

(2) More than a few consumers may be able to save enough money on their small commercial or home heating and cooling bills by using Cyclematic to recoup the approximately \$500 retail cost of Cyclematic within two years, or close to two years.

(3) More than a few consumers may be able to save enough money on their small commercial or home heating and cooling bills by using

any energy control device, as defined herein, costing approximately \$500 to recoup such cost within two years, or close to two years.

(4) Competent and reliable tests or studies prove that energy savings of 15%, or close to 15% savings, on consumers' annual small commercial or home heating and cooling bills are achievable due to the use of Cyclematic, or any other such energy control device, as defined herein.

(5) Consumers can obtain a federal tax credit or reduce their federal income tax liability, by purchasing Cyclematic or any other such energy control device, as defined herein, unless such is the case.

B. Making any energy-related claim for any energy control device, or any other product or service, unless at the time that the claim is made, respondents possess and rely upon a competent and reliable test or other objective material which substantiates the claim.

C. Misrepresenting, directly or by implication, in any manner, the purpose, content, or conclusion of any test, study, or survey upon which respondents rely as substantiation for any energy-related claim, or making any representation which is inconsistent with the results or conclusions of any such test, study or survey.

PART II

It is further ordered, That respondents National Energy Associates, Inc., a corporation, its successors and assigns, and its officers, and James B. Brooks, individually and as an officer of said corporation, and respondents' 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 any energy control device or any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, for at least three years from the date of the last dissemination of energy-related claims, maintain and upon request make available to Federal Trade Commission staff for inspection and copying, copies of:

1. All materials relied upon to substantiate any energy-related claim; and
2. all test reports, studies, surveys or demonstrations in their possession that contradict, qualify, or call into question any energy-related claim.

PART III

It is further ordered, That respondents shall distribute a copy of this order to each of their operating divisions and to each of their officers, agents, representatives or employees engaged in the preparation or

placement of advertisements or other sales materials, and to each of their distributors or dealers engaged in the wholesale or retail sale of any energy control device manufactured, offered for sale, sold, or distributed by or for respondents.

PART IV

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

PART V

It is further ordered, That each individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and that, for a period of three years from the date of service of this order, each individual respondent named herein shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the manufacture, advertising, promotion, offering for sale, sale, or distribution of energy control devices and of his affiliation with any new business or employment in which his own duties and responsibilities involve the manufacture, advertising, promotion, offering for sale, sale, or distribution of energy control devices, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

PART VI

It is further ordered, that respondents shall, within sixty (60) days after this order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order.

Complaint

107 F.T.C.

IN THE MATTER OF
MIDCON CORP., ET AL

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

Docket 9198. Complaint, Sept. 19, 1985—Decision, Feb. 6, 1986.

This consent order requires, among other things, a Lombard, Ill. natural gas pipeline owner and operator to divest its interest in the Louisiana portion of the Acadian Gas Pipeline System, which serves markets in Louisiana and Texas. The Acadian system is currently owned jointly by MidCon Corp. and Texas Oil and Gas Co. MidCon is also required to obtain Commission approval before acquiring certain gas pipeline operations in the New Orleans/Baton Rouge market. This consent order resolves part of a two-count administrative complaint issued by the FTC that challenges MidCon Corp.'s proposed merger with United Energy Resources, Inc.

Appearances

For the Commission: *Marc G. Schildkraut* and *David C. Dickey*.

For the respondents: *Paul E. Goldstein*, in-house counsel, Lombard, Ill. for respondent MidCon Corp. and *Theodore F. Weiss, Jr.*, *Baker & Botts*, Houston, Tex. and *Kenneth L. Wiseman* and *Jay L. Gallia*, Houston, Tex., for respondent United Energy Resources, Inc.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent MidCon Corp., a corporation subject to the jurisdiction of the Federal Trade Commission, intends to acquire, or has acquired the stock or assets of respondent United Energy Resources, Inc., in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITIONS

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

a. *MidCon* means MidCon Corp., subsidiaries, divisions, groups, affiliate entities, and each of their directors, officers, employees,

agents and representatives; and each partnership, joint venture, joint stock company or concession in which MidCon is a participant.

b. *United* means United Energy Resources, Inc., its subsidiaries, divisions, groups, affiliate entities, and each of their directors, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which United is a participant.

c. *The acquisition* means the transaction described, in whole or in part, in Paragraph 14 of this complaint.

d. *Transportation* means transportation of natural gas for one's own account as well as for others.

II. RESPONDENTS

A. *MidCon*

2. Respondent MidCon is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at 701 East 22nd Street, Lombard, Illinois.

3. Respondent MidCon owns businesses that operate at several levels in the natural gas transportation industry.

4. Respondent MidCon had 1984 sales of \$4.2 billion in the fiscal year ending September 30, 1984 and assets of \$3.5 billion as of September 30, 1984.

5. As of September 30, 1984, respondent MidCon owned and operated natural gas pipeline systems in the United States consisting of over 15,000 miles of pipeline. Midcon also owned and operated various other natural gas gathering and transmission facilities. Most of MidCon's system is interstate pipeline.

6. Respondent MidCon wholly or partially owns (or owns interests in companies that wholly or partially own) the following natural gas pipelines in the United States: Acadian Gas Pipeline System; Bayou Interstate Pipeline System; Calcasieu Gas Gathering System; Canyon Creek Compression Company; High Island Offshore System; Louisiana Industrial Gas Supply System; MidCon Texas Pipeline Corporation; Midven Pipeline Company; Mississippi River Transmission Corporation; MV Pipeline Company; Natural Gas Pipeline Company of America; Neches Pipeline System; Overthrust Pipeline Company; Pelican Interstate Gas System; Pelican Transmission System; Pontchartrain Natural Gas System; Spindletop Gas Distribution System; Stingray Pipeline Company; Trailblazer Pipeline Company; and U-T Offshore System.

7. At all times relevant herein, respondent MidCon has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose

business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

B. *United*

8. Respondent United is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at 600 Travis Street, Houston, Texas.

9. Respondent United engages in the transmission and sale of natural gas, and in the exploration for and production of oil and gas.

10. Respondent United had 1984 sales of \$4.0 billion and assets of \$2.5 billion as of December 31, 1984.

11. As of December 31, 1984, respondent United owned and operated a natural gas pipeline system in the United States consisting of approximately 14,000 miles of pipeline.

12. Respondent United wholly or partially owns (or owns interests in companies that wholly or partially own) the following pipelines: United Gas Pipeline Company; United Texas Transmission Company; High Island Offshore System; Sea Robin Pipeline Company; U-T Offshore System; Mobile Bay Pipeline Company (Proposed); Northern Border Pipeline Company; Alaskan Northwest Natural Gas Transportation Company (Proposed); Trans-Anadarko Pipeline System (Proposed); Palo Duro Pipeline Company; Ione Gas Processing Company; Lake Murray Joint Venture; and Brookens Field Gathering System.

13. At all times relevant herein, respondent United has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

14. On or about August 13, 1985, MidCon commenced a cash tender offer for up to 18,100,000 shares of the outstanding shares of United common stock at a price of \$41 per share with the intent of effecting a merger of MidCon Holding Corp., a Delaware corporation wholly-owned by MidCon, into United, pursuant to which United would become a wholly-owned subsidiary of MidCon, all as contemplated in that certain Agreement and Plan of Reorganization entered into among MidCon, its subsidiary, and United on August 11, 1985. United's Board of Directors has approved the tender offer and recommended its acceptance by United shareholders. If the acquisition is consummated as presently contemplated, the total value of the trans-

action will be about \$1.1 billion. If consummated, it would result in the third largest natural gas transportation company in the United States.

IV. EFFECTS

Count One

15. The Commission repeats and realleges the allegations of Paragraphs 1 through 14, inclusive, of this complaint, as if fully set forth herein.

16. One relevant line of commerce is the transportation of natural gas from producing fields and basins.

17. One relevant section of the country is the portion of the Gulf of Mexico off the coast of the states of Louisiana and Texas that contains the areas known as the High Island East Addition South Extension Area, the West Cameron South Addition Area and the East Cameron South Addition Area, and any submarket thereof.

18. Another relevant section of the country is the portion of the Gulf of Mexico off the coast of the State of Louisiana that contains the areas known as the West Cameron Area and the West Cameron West Addition Area, and any submarket thereof.

19. Another relevant section of the country is the portion of the Gulf of Mexico off the coast of the state of Louisiana that contains the areas known as the Vermilion Area, the Vermilion South Addition Area and the East Cameron Area, and any submarket thereof.

20. Another relevant section of the country is the portion of the Gulf of Mexico off the coasts of the states of Louisiana and Texas that contains the areas known as the High Island East Addition South Extension Area, the West Cameron South Addition Area, the East Cameron South Addition Area, the Garden Banks Area and the East Breaks Area, and any submarket thereof.

21. Consumption of natural gas in each of these sections of the country is substantially below production, with the result that most production in each of these sections of the country is transported by pipelines to consuming areas along the Gulf Coast and elsewhere in the United States.

22. The business of transporting by pipeline natural gas out of each of these respective sections of the country is concentrated.

23. It is difficult to enter into the business of transporting natural gas by pipeline in each of these respective sections of the country.

24. Respondents MidCon and United are each owners of 20 percent interests in the High Island Offshore System, which owns and operates a pipeline that runs from the High Island South Addition Area

and the High Island East Addition South Extension Area to the West Cameron Area.

25. Respondents MidCon and United are each owners of one-third interests in U-T Offshore System, which owns and operates a pipeline located in the Gulf of Mexico that runs from the West Cameron Area to the onshore area of Cameron Parish, Louisiana.

26. Respondent MidCon is owner of a 50 percent interest in the Stingray Pipeline Company, which owns and operates a pipeline located in the Gulf of Mexico that runs from the areas known as the High Island East Addition South Extension Area, West Cameron South Addition Area and East Cameron South Addition Area to the onshore area of Cameron Parish, Louisiana.

27. Respondent United is an owner of a 50 percent interest of the Sea Robin Pipeline Company, which owns and operates a pipeline located in the Gulf of Mexico that runs from the areas known as the East Cameron South Addition Area to the onshore area of Vermilion Parish, Louisiana.

28. Respondents MidCon and United, through their ownership interests in the High Island Offshore System, the U-T Offshore System, the Stingray Pipeline Company and the Sea Robin Pipeline Company, and in other ways, are direct and substantial competitors in the business of transporting natural gas out of producing fields and basins in each of the relevant sections of the country set out in complaint Paragraphs 17 through 20.

29. The effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in the transportation of natural gas out of producing fields and basins in the relevant sections of the country set out in complaint Paragraphs 17 through 20, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways among others:

- a. the acquisition will eliminate actual and potential competition between respondents MidCon and United;
- b. The acquisition will eliminate actual and potential competition among competitors generally; and
- c. the acquisition will increase concentration in the transportation of natural gas out of producing fields and basins in the relevant sections of the country set out in complaint Paragraphs 17 through 20, therefore increasing the likelihood of collusion.

Count Two

30. The Commission repeats and realleges the allegations of Para-

graphs 1 through 14, inclusive, of this complaint, as if fully set forth herein.

31. One relevant line of commerce in which to evaluate the effects of the acquisition is the transportation by pipeline and sale of natural gas in consuming areas.

32. One relevant section of the country is the part of the state of Louisiana that lies between Baton Rouge and New Orleans ("the Baton Rouge-New Orleans Corridor").

33. The business of transporting by pipeline and selling natural gas into and in the Baton Rouge-New Orleans Corridor is concentrated.

34. It is difficult to enter into the business of transporting by pipeline and selling natural gas in the Baton Rouge-New Orleans Corridor.

35. Respondent United is the second largest competitor in the business of transporting by pipeline and selling natural gas in the Baton Rouge-New Orleans Corridor.

36. Respondent MidCon is a competitor of United through MidCon's 50 percent ownership in Acadian Gas Pipeline System, Louisiana Industrial Gas Supply System, Pontchartrain Natural Gas System, Bayou Interstate Pipeline System, and Calcasieu Gas Gathering System ("the Acadian partnerships"), the most important of these partnerships being the Acadian Gas Pipeline System.

37. All material business decisions of the Acadian Gas Pipeline System and other Acadian partnerships require approval of respondent MidCon.

38. Respondent MidCon has access to all the proprietary data and business secrets of Acadian Gas Pipeline System and other Acadian partnerships.

39. Respondents MidCon and United are direct and substantial competitors in the business of transporting by pipeline and selling natural gas in the Baton Rouge-New Orleans Corridor.

40. The effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in the transportation and sale of natural gas in the Baton Rouge-New Orleans Corridor in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways among others:

- a. the acquisition will eliminate actual competition between respondents MidCon and United;
- b. the acquisition will eliminate actual competition among competitors generally; and
- c. the acquisition will increase concentration in the transportation

and sale of natural gas in the Baton Rouge-New Orleans Corridor, therefore increasing the likelihood of collusion.

V. VIOLATION CHARGED

41. The proposed acquisition of the stock and assets of United by MidCon, as set forth in Paragraph 14 herein, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The FTC having initiated an investigation of the proposed acquisition of shares of United Energy Resources, Inc. ("United") by MidCon Corp. ("MidCon"), and MidCon and United ("respondents") having been furnished with a copy of the complaint that the Commission has issued but withdrawn from adjudication as to Count Two of such complaint, which charges respondents with violations of the Clayton Act and Federal Trade Commission Act; and

Respondents, their attorneys, and counsel for the Commission having executed an agreement containing a consent order as to Count Two of the complaint, and admission by respondents of all the jurisdictional facts set forth in the aforesaid 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 the complaint, and waivers and other provisions as required by the Commission's 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(f) of its rules and the recommendation of its staff, and having concluded that the consent agreement should be accepted;

Now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission makes the following jurisdictional findings and enters the following order:

1. MidCon is a corporation organized under the laws of Delaware with its executive office at 701 East 22nd Street, Lombard, Illinois.

United is a corporation organized under the laws of Delaware with its executive offices at 600 Travis Street, Houston, Texas.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is hereby ordered, that as used in this order the following definitions shall apply:

(a) *Acquisition* means MidCon's acquisition of shares of the Common Stock of United and the subsequent merger of an affiliate of MidCon into United pursuant to an Agreement and Plan of Reorganization.

(b) *Schedule A Properties* means the assets and businesses listed in Schedule A of this order.

(c) *MidCon* means MidCon Corp., its subsidiaries, divisions, groups and affiliates controlled by MidCon and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(d) *United* means United Energy Resources, Inc. as it was constituted prior to the acquisition, including its parents, subsidiaries, divisions, groups and affiliates controlled by United, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(e) The *New Orleans - Baton Rouge Corridor* means the area within 20 miles of any point along the Mississippi from the most upstream point where the river borders on Baton Rouge, Louisiana to the most downstream point where the river borders on New Orleans, Louisiana.

(f) *Baton Rouge - New Orleans Corridor Pipeline* means a pipeline company other than MidCon that transported for sale by that company in the twelve months preceding the date of any proposed acquisition by MidCon a daily average of at least 90 million cubic feet of natural gas to the Baton Rouge - New Orleans Corridor for consumption therein. For the purposes of this definition, the deliveries of any entity acquired by a company during the preceding twelve months shall be deemed to be deliveries of the company for the entire preceding twelve-month period.

II.

It is further ordered, That:

(A) Within 12 months of the date this order becomes final, MidCon shall divest, absolutely and in good faith, the Schedule A Properties:

(B) Divestiture of the Schedule A Properties shall be made only to an acquirer or acquirers and only in a manner that receives the prior approval of the Federal Trade Commission. The purpose of the divestiture of the Schedule A Properties is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the same business in which the Properties are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in Count Two of the Commission's complaint.

III.

It is further ordered, That:

(A) If MidCon has not divested the Schedule A Properties within the 12-month period, MidCon shall consent to the appointment of a trustee in any action that the Federal Trade Commission may bring pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission. In the event the court declines to appoint a trustee, MidCon shall consent to the appointment of a trustee by the Commission pursuant to this order. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by MidCon to comply with Paragraphs II(B) through VII of this order.

(B) If a trustee is appointed by a court or the Commission pursuant to Paragraph III(A) of this order, MidCon shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to MidCon's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the power and authority to divest any Schedule A Properties that have not been divested by MidCon within the time period for divestiture in Paragraph II(A). The trustee shall have 18 months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the trustee was appointed by a court, subject also to the prior approval of the court. If, however, at the end of the 18-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission or by the court, if the trustee was appointed by a court.

3. The trustee shall have full and complete access to the personnel, books, records, and facilities of any business that the trustee has the duty to divest, and MidCon shall develop such financial or other information relevant to the assets to be divested as such a trustee may reasonably request. MidCon shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

4. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the order's absolute and unconditional obligation to divest and the purposes of the divestiture as stated in Paragraph II(B). If bona fide offers are received by the trustee from more than one prospective purchaser, the Commission shall determine whether to approve each such purchaser, and the trustee shall divest to the purchaser elected by MidCon from among the purchasers approved by the Commission.

5. The trustee shall serve at the cost and expense of MidCon on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall account for all monies and properties derived from the sale and all expenses incurred. After approval by the court or the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to MidCon and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the trust property.

6. Promptly upon appointment of the trustee and subject to the approval of the Commission, MidCon shall, subject to the Commission's prior approval and consistent with provisions of this order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to cause divestiture.

7. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed for the balance of the 18-month period specified in Paragraph III(B)(2) or any extension thereof.

8. The trustee shall report in writing to MidCon and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

(C) MidCon shall maintain the viability and marketability of the Schedule A Properties and shall not cause or permit the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear. MidCon shall use its best efforts to ensure that the Schedule A Properties continue to be ongoing, viable enterprises engaged in the same business in which the Schedule A Properties are presently employed.

IV.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until MidCon has fully complied with the provisions of Paragraphs II and III of this order, MidCon shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with those provisions. MidCon shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of properties specified in Paragraph II of this order, including the identity of all parties contacted. MidCon also shall include in its compliance reports, copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

V.

It is further ordered, That for a period commencing on the date this order becomes final and continuing for ten (10) years from and after the date of this order becomes final, MidCon shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used by (and still suitable for use by), any interest in, or the whole or any substantial part of the stock or share capital of any Baton Rouge - New Orleans Corridor Pipeline; *provided, however,* that these prohibitions shall not relate to the construction of new facilities or participation in joint ventures in which MidCon or United is a participant on the date of service of this order.

One year from the date this order becomes final and annually thereafter MidCon shall file with the Commission a verified written report of its compliance with this paragraph.

VI.

It is further ordered, That for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to MidCon and United made to its principal office, MidCon and United shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the

control of MidCon and United relating to any matters contained in this order; and

B. Upon five days notice to MidCon or United and without restraint or interference from them, to interview officers or employees of MidCon or United who may have counsel present, regarding such matters.

VII.

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

SCHEDULE A

1. One hundred percent (100%) of the stock owned by MidCon Corp. in MCN Acadian Gas Pipeline Corp., which in turn holds a partnership interest in Acadian Gas Pipeline System, a Texas general partnership.

2. One hundred percent (100%) of the stock owned by MidCon Corp. in MCN Louisiana Industrial Gas Supply Corp., which in turn holds a partnership interest in Louisiana Industrial Gas Supply System, a Texas general partnership.

3. One hundred percent (100%) of the stock owned by MidCon Corp. in MCN Pontchartrain Natural Gas Corp., which in turn holds a partnership interest in Pontchartrain Natural Gas System, a Texas general partnership.

4. One hundred percent (100%) of the stock owned by MidCon Corp. in MCN Bayou Interstate Pipeline Corp. which in turn holds a partnership interest in Bayou Interstate Pipeline System, a Texas general partnership.

5. One hundred percent (100%) of the stock owned by MidCon Corp. in MCN Calcasieu Gas Gathering Corp., which in turn holds a partnership interest in Calcasieu Gas Gathering System, a Texas general partnership.

IN THE MATTER OF
THE BENDIX CORPORATION

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION AND CLAYTON ACTS

Docket C-3042. Consent Order, Sept. 23, 1980—Set Aside Order, Feb. 6, 1986

The Federal Trade Commission has modified a 1980 consent order with The Bendix Corporation (96 F.T.C. 352) by setting aside portions of the order that required prior approval by the FTC before the respondent could acquire any interest in companies that manufacture or sell certain machine-tool products. The Commission ruled that the provision was no longer necessary since Bendix, and its parent company, Allied Corp., no longer manufacture or sell any kind of machine-tool product referred to in the order.

ORDER REOPENING AND SETTING ASIDE PORTIONS OF ORDER
ISSUED SEPTEMBER 23, 1980

On October 16, 1985, Allied Corporation ("Allied") filed a 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 September 23, 1980 ("the order") [96 F.T.C. 352] and terminate Paragraphs VIII and X thereof. Allied became subject to the order when it acquired The Bendix Corporation ("Bendix") on January 31, 1983.

Paragraph VIII, the only substantive provision of the order which still has prospective application, prohibits Bendix, for a ten year period, from acquiring without prior Commission approval, any company engaged in the manufacture or sale in the United States of rotating toolholders, external cylindrical grinding machines, or numerically controlled machine tools. Paragraph VIII exempts from this requirements any company engaged in the manufacture of numerically controlled machine tools whose assets devoted to such manufacture or whose sales thereof during the year preceding such acquisition were not in excess of \$10 million. Paragraph X of the order requires respondent to report its compliance with Paragraph VII annually for a ten-year period.

After reviewing Allied's Request, the Commission has concluded that changed conditions of fact and the public interest warrant reopening the proceeding and setting aside Paragraphs VIII and X of the order. Allied has divested or sold off all of the product lines that gave rise to the order and the concerns that led to the order are no

longer applicable to Allied's current operations. The commission believes that under the circumstances presented here the costs, both the Allied and to the Commission, associated with continuing the moratorium provisions, are sufficient to outweigh the need for the order and the general presumption in favor of the repose and finality of Commission orders.

Accordingly, *it is ordered*, that this matter be, and it hereby is reopened and that Paragraphs VIII and X of the Commission's order issued on September 23, 1980, shall terminate as of the effective date of this order.

Commissioner Bailey was recused.

IN THE MATTER OF
NORTH AMERICAN PHILIPS CORPORATION

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

Docket C-3180 Complaint, Feb. 10, 1986—Decision, Feb. 10, 1986

This consent order requires a New York City marketer of Norelco Clean Air Machines, among other things, to cease misrepresenting the ability of air cleaners to eliminate or help eliminate indoor pollutants or the irritation they cause, the results of smoke chamber demonstrations or other tests, surveys or demonstrations of air cleaning appliances. Additionally, respondent is required to have competent and reliable substantiation for all future claims about its products' efficacy.

Appearances

For the Commission: *Brinley H. Williams, Judith P. Wilkenfeld, Donald G. D'Amato and Elizabeth T. Guarino.*

For the respondents: *Richard E. Dori and William B. Gerwig, in-house counsel, New York City.*

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 North American Philips Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent 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 100 E. 42nd Street, New York, New York.

PAR. 2. Respondent is now, and at all times relevant to this complaint has been, engaged in the manufacture and sale of portable, electric household air cleaning appliances, the Norelco Clean Air Machine, Models 0999, 1900, 1905, 1910, 1920, 1930 and 1940 (hereinafter referred to in the complaint as "air cleaning appliances"), and other products to the public.

PAR. 3. Respondent operates in various States of the United States

and in the District of Columbia. Respondent's manufacture, sale and distribution of air cleaning appliances mentioned herein constitutes maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent at all times mentioned herein has been and now is in competition with individuals, firms and corporations engaged in the sale of household air cleaning appliances and other products.

PAR. 5. In the course and conduct of its business, and for the purpose of promoting the sale and distribution of air cleaning appliances, respondent has disseminated and caused the dissemination of advertising for air cleaning appliances in national magazines, newspapers, and catalogs distributed by the mail and across state lines. Respondent has also placed air cleaning appliance advertisements with television stations having sufficient power to broadcast across state lines and into the District of Columbia. In addition, respondent has distributed by mail or other means, product brochures and other sales literature directly to consumers and to dealers for display or distribution to consumers prior to or at the time of sale.

PAR. 6. Typical of such advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are the advertisements and promotional materials attached hereto as Exhibits A-E.

PAR. 7. Through the use of the statements and representations contained in the advertisements and promotional materials referred to in Paragraph Six, and others not specifically set forth herein, respondent has represented, and now represents, directly or by implication, that:

a. The air cleaning appliances remove substantially all or clean substantially all tobacco smoke, dust, and pollen from the air people breathe under household living conditions.

b. The air cleaning appliances effectively help remove or effectively help clean tobacco smoke, dust and pollen from the air people breathe under household living conditions.

c. One air cleaning appliance "recirculates" all the air in a 14 foot x 18 foot room every 30-45 minutes.

d. Its smoke chamber demonstrations, depicted in the advertisements attached hereto as Exhibits A through C, among other advertisements, constitute proof or accurately or visually demonstrate that the air cleaning appliances will:

(1) remove substantially all or clean substantially all tobacco smoke, dust, pollen and other pollutants and impurities from the air people breathe under household living conditions;

(2) effectively help remove or effectively help clean tobacco smoke, dust, pollen and other pollutants and impurities from the air people breathe under household living conditions;

(3) eliminate substantially all or effectively help eliminate the irritation tobacco smoke, dust, and pollen can cause under household living conditions;

(4) provide a healthy home environment for consumers when used under household living conditions.

PAR. 8. In truth and in fact, the direct or implied representations set forth in Paragraph Seven are false, for reasons including but not limited to the following:

a. Respondent's tests and independent tests, when extrapolated by generally accepted procedures to household living conditions, show that the air cleaning appliances do not remove substantially all or clean substantially all tobacco smoke, dust and pollen from the air people breathe under household living conditions.

b. Respondent's tests and independent tests, when extrapolated by generally accepted procedures to household living conditions, show that the air cleaning appliances do not effectively help remove or effectively help clean tobacco smoke, dust and pollen from the air people breathe under household living conditions.

c. Respondent's tests and independent tests show that the air cleaning appliances cannot recirculate all the air in a 14 foot \times 18 foot room every 30-45 minutes.

d. Respondent's tests and independent tests, when extrapolated by generally accepted procedures to household living conditions, show that respondent's smoke chamber demonstrations do not constitute proof or accurately or visually demonstrate that the air cleaning appliances will:

(1) remove substantially all or clean substantially all tobacco smoke, dust, pollen and other pollutants and impurities from the air people breathe under household living conditions;

(2) effectively help remove or effectively help clean tobacco smoke, dust, pollen and other pollutants and impurities from the air people breathe under household living conditions;

(3) eliminate substantially all or effectively help eliminate the irritation tobacco smoke, dust, and pollen can cause under household living conditions;

(4) provide a healthy home environment for consumers when used under household living conditions.

Therefore, the direct or implied representations set forth in Paragraph Seven were, and are, false and misleading.

PAR. 9. Through the use of the statements and representations contained in the advertisements and promotional materials referred to in Paragraph Six, and others not specifically set forth herein, respondent has represented, and now represents, directly or by implication, that:

a. The air cleaning appliances remove substantially all, clean substantially all, effectively help remove or effectively help clean "other pollutants and impurities" from the air people breathe under household living conditions.

b. The air cleaning appliances eliminate substantially all or effectively help eliminate the irritation tobacco smoke, dust and pollen can cause under household living conditions.

c. The air cleaning appliances will provide a healthy home environment for consumers when used under household living conditions.

PAR. 10. Through the use of the statements and representations contained in the advertisements and promotional materials referred to in Paragraph Six, and other advertisements and promotional materials not specifically set forth herein, respondent has represented, and now represents, directly or by implication, that it possessed and relied upon a reasonable basis for the representations set forth in Paragraphs Seven and Nine at the initial dissemination of the representations and each subsequent dissemination.

PAR. 11. In truth and in fact, at such times referred to in Paragraph Ten, respondent did not possess and rely upon a reasonable basis for making the representations set forth in Paragraphs Seven and Nine because, *inter alia*, respondent either did not conduct appropriate tests or did not properly utilize generally accepted procedures to extrapolate test results to household living conditions. Therefore, respondent's representations set forth in Paragraphs Seven and Nine are false and misleading.

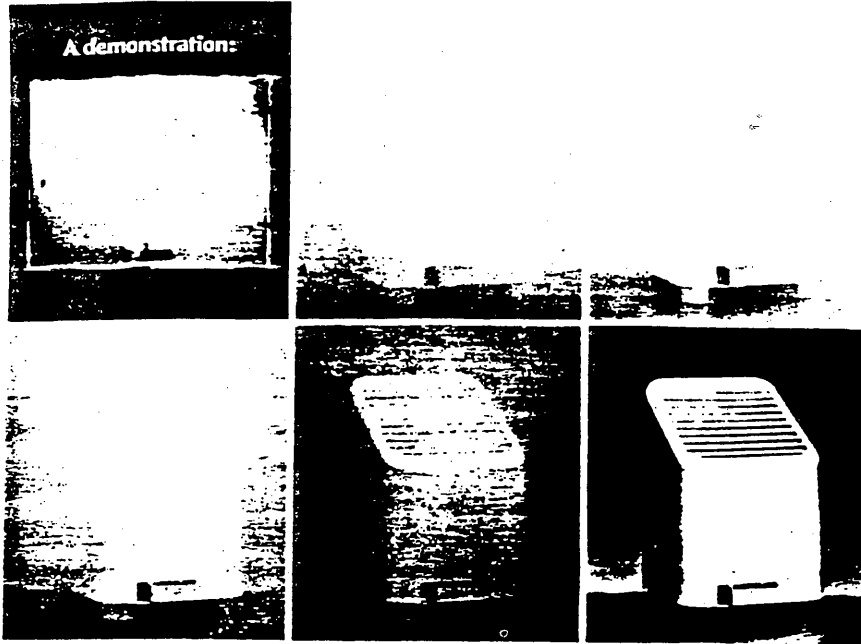
PAR. 12. The use by respondent of the aforesaid false and misleading representations, and the placement in the hands of others of the means and instrumentalities by and through which others may use the aforesaid false and misleading representations, have had the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said representations are true and complete and to induce such persons to purchase air cleaning appliances sold by respondent by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondent, as 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 and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended.

Complaint

107 F.T.C.

EXHIBIT A



Introducing the Clean Air Machine. Fresh from Norelco.

There's probably something inside your home that you never even think of cleaning.

The air.

But with all the discomforting impurities and pollutants floating around in it, it's one thing you should clean quite often.

That's why Norelco is demonstrating how effectively its new Clean Air Machine™ works, in this smoke-filled container we prepared for our test.

As you can see, the Clean Air Machine™ actually cleans your air. By removing odors, dirt and other

contaminants that are naturally found inside every room of your home. No matter how clean.

With its quiet, efficient motor, the Clean Air Machine™

draws in offending tobacco smoke, pet and cooking odors, dust, even pollen. Traps them in a specially formulated filter. And sends out clean, fresh, citrus-scented air.

Thus, eliminating the irritation and suffering that smoke-filled rooms can cause.

The compact Clean Air Machine™ is economical to use, too. Costing only pennies a week for continuous, 24-hour use. And each replaceable filter is designed to last approximately 3 months, with average use.

So provide a healthy home environment for your family and friends. With the new Norelco Clean Air Machine.™ After all, if it can clean the air in our demonstration, think how it'll clean the air in your home.



Easy-to-prepare
Clean Air Machine™ filter

Norelco Clean Air Machine. Because your air gets dirty, too.

©1980 North American Philips Corporation, Consumer Products Division, High Ridge Park, Stamford, CT 06904

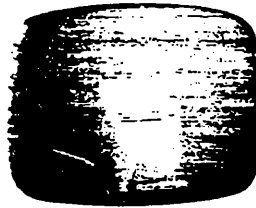
EXHIBIT B

NORELCO — CLEAN AIR MACHINE

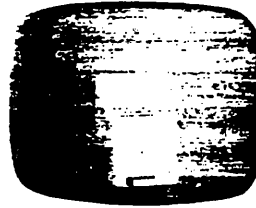
"FRESH FROM NORELCO"



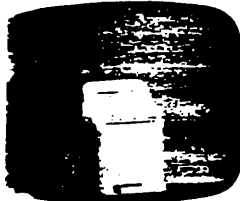
There's probably something in your air that never gets cleaned.



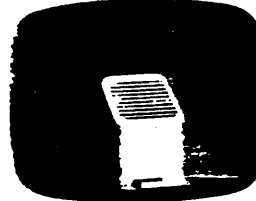
The air.



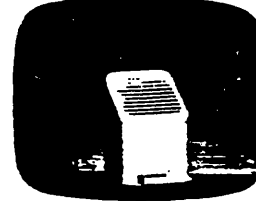
That's why Norelco is demonstrating its new Clean Air Machine in this smoke-filled container.



The Clean Air Machine actually removes odors, irritants and pollutants.



Its quiet motor draws in tobacco smoke, pet and cooking odors, even dust.



It traps them in a replaceable filter, and sends out fresh, clean, citrus-scented air.



Clean Air Machine. Fresh from Norelco.



Put one to the test in your home.



STORE NAME

Complaint

107 F.T.C.

EXHIBIT C

Radio TV Reports

41 East 42nd Street New York, N.Y. 10017
(212) 599-5500

PRODUCT
PROGRAM

THE NOREICO CLEAN AIR MACHINES 83-01940
TODAY 1/20/83 30 SEC.
WNBC-TV (NEW YORK) 7.41AM
REVISION OF COMMERCIAL 82-19368



(MUSIC) ANNCR: Watch
The Noreico Clean Air
Machine help fight dirty
air with clean air.



2. Inside this smoke filled
container.



3. The Clean Air Machine
with its new electrostatic
multi-layer filter



4. works like a magnet,
to help trap pollutants



such as tobacco smoke,
pet and cooking odors,
even dust and pollen.



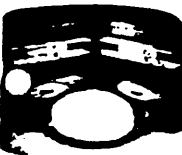
6. The result, cleaner, fresher
air.



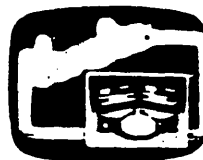
7. So help fight your dirty
air with clean air.



8. The Noreico Clean Air
Machines. Fresh from
Noreico.



For maximum
effectiveness.



10. change your filter often.
And be sure it's a universal
filter from Noreico.
(MUSIC OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

Radio TV Reports Inc. endeavors to assure the accuracy of material supplied by it. It can't be responsible for mistakes or omissions.

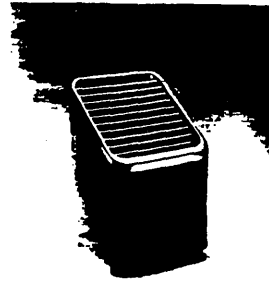
EXHIBIT D

The Norelco Clean Air Machine...

Helps remove offensive tobacco smoke, cooking odors, pet odors, dust, even pollen from the air.



Norelco Clean Air Machine II HB1920
The deluxe dual speed air cleanser that filters the air even more efficiently and more effectively. Engineered and constructed with 3. or 40 power the Clean Air Machine II is big enough to clear larger rooms but compact enough to fit on a desk or table. Simulated wood grain fits perfectly into any decor in the home or office. Energy efficient quiet motor and 3 position side switch.



Norelco Clean Air Machine HB1905
Designed and constructed with Norelco quality. An economical to use electrical appliance that effectively helps remove tobacco smoke, odors, pollen, even dust from the air. Compact design and simulated wood grain make it the perfect air cleanser for every room in the home or office. Convenient on off switch.



At home: It doesn't cover odors, it helps remove them.



At the office: Helps eliminate the irritation smoke filled rooms can cause.



Norelco Clean Air Machine HB1900
The air cleanser that clears the air. A compact energy efficient air filtration system that costs only pennies a day to recirculate fresher clean air. A proven success story that generates high turnover and repeat customer purchase. The Clean Air Machine has a convenient on off switch.



In a car: Plugs into a cigarette lighter to help remove smoke, odors, and dust from the air.

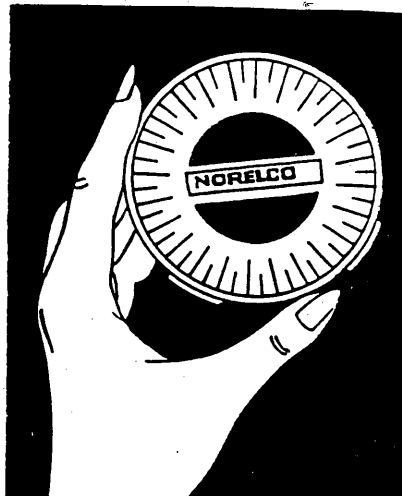
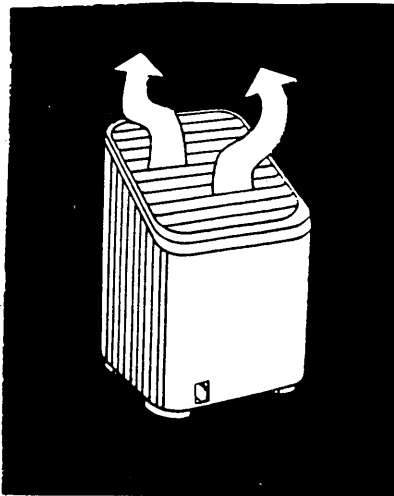


Norelco Clean Air Machine: Works to help filter tobacco smoke, dust, pollen, even pet odors from the air.

EXHIBIT E

Draws in polluted air...Cleaner air flows out.

Easy to replace filters work up to 3 months. Designed to fit Rush Hampton Ecologizer*. Special see-through design helps you judge when the filter needs to be changed. Convenient dating label on every filter serves as a reminder.

**Quality Features**

- Removes tobacco smoke, odors, dust, pollen and odor causing bacteria and fungi from the air.
- High powered, energy efficient; quiet motor, only 16 watts.
- Filters air through absorbent, citrus scented particles.
- Recirculates the air of a 14'x18' room approximately every 30-45 minutes
- Convenient ON/OFF switch.

Specifications: Model HB1900

Dimensions: 5" x 7 1/2" x 5": approx.
 Voltage: 120V AC 60Hz
 Power: 16 Watts
 Weight: 2 lbs.
 Cord Length: 6 Ft.
 Switch: ON/OFF slide

Norelco[®]

North American Philips Corporation
 Consumer Products Divisions
 High Ridge Park
 Stamford, Ct. 06904



This symbol on the product's nameplate means it is listed by Underwriters Laboratories, Inc.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with 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, 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 North American Philips Corporation 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 100 East 42nd Street, New York, New York.

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

ORDER

PART I

It is ordered, That respondent North American Philips Corporation, 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 Norelco Clean Air Machine Models 0999, 1900, 1905, 1910, 1920, 1930, or 1940, or other air clean-

ers with similar performance specifications, 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, contrary to fact, by the use of the words "cleans," "clears," "removes," "eliminates," or any other words or phrases that the reasonable consumer would interpret as meaning "substantially all," that such appliances, under household living conditions, clean the air of substantially all or remove substantially all tobacco smoke, dust, or pollen from the air that people breathe.

B. Representing, directly or by implication, contrary to fact, by the use of the words "helps clean," "helps clear," "helps remove," "helps eliminate," or any other words or phrases that the reasonable consumer would interpret as meaning effective removal, that any such appliance, under household living conditions, effectively helps clean the air of, or effectively helps remove a substantial portion of tobacco smoke, dust, or pollen from the air that people breathe.

C. Representing, directly or by implication, contrary to fact, that any such appliance, under household living conditions, eliminates the irritation tobacco smoke, dust or pollen can cause.

D. Representing, directly or by implication, contrary to fact, that any smoke chamber demonstration constitutes proof or accurately or visually demonstrates an air cleaning appliance's capability to remove a substantial portion of tobacco smoke, dust or pollen from the air that people breathe under household living conditions.

PART II

It is further ordered, That respondent, 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 Norelco Clean Air Machine Models 0999, 1900, 1905, 1910, 1920, 1930, or 1940, or other air cleaners with similar performance specifications, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean or remove indoor air contaminants, including but not limited to tobacco smoke, dust, and pollen.

B. Misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean or remove any quantity of indoor air contaminants, including but not limited to tobacco smoke, dust, and pollen.

C. Misrepresenting in any manner, directly or by implication, the conditions of use under which any such appliance or equipment will clean or remove indoor air contaminants.

D. Misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean air or remove indoor air contaminants from enclosures or rooms of any specified size or within any specified period of time.

PART III

It is further ordered, That respondent, 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 Norelco Clean Air Machine Models 0999, 1900, 1905, 1910, 1920, 1930, or 1940, or any other consumer appliance which affects the quality of air, which for purposes of this Part shall mean any air cleaner, air freshener, air conditioner, dehumidifier and smokeless ashtray, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from advertising by or through the use of any test, survey, experiment, demonstration, study or report, or the results thereof, or any other information or evidence that appears or purports to confirm or prove any characteristic or the truth of any representation regarding any such consumer appliance which affects the quality of air, when such advertising does not accurately demonstrate, prove, support or confirm such characteristic or representation.

PART IV

It is further ordered, That respondent, 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 Norelco Clean Air Machine Models 0999, 1900, 1905, 1910, 1920, 1930, or 1940, or any other air cleaning appliance or equipment, 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, any performance characteristic of any such appliance or equipment unless at the time of making the representation, respondent possesses and relies upon a reasonable basis for such representation. A reasonable basis shall consist of competent and reliable evidence which substantiates such representation. To the extent the evidence of a reasonable basis consists of scientific or professional tests, experiments, analyses, re-

search, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" for purposes of the above paragraph only if those tests, experiments, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

B. Representing, directly or by implication, that any air cleaning appliance or equipment will perform under any set of conditions, including household living conditions, unless at the time of making the representation respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation(s) either by being related to those conditions or by having been extrapolated to those conditions by generally accepted procedures.

For purposes of this Part of the order, the term *performance characteristic* includes, but is not limited to:

- a. the power, strength or capacity of the appliance or equipment whether expressed in terms of volume of air circulated or in terms of room sizes or otherwise;
- b. the cleaning, filtration, or removal ability of the appliance or equipment whether expressed in terms of a specific contaminant, in terms of the filtering media or mechanism, or in terms of the appliance or equipment itself;
- c. the speed of operation; or
- d. the comparative power, strength, filtration or cleaning capacity, removal ability, or speed of operation.

PART V

It is further ordered, That respondent, 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 any air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall maintain written records:

1. Of all materials relied upon in making any claim or representation covered by this order;
2. Of all test reports, studies, surveys or demonstrations in its possession that contradict, qualify, or call into question the basis upon which respondent relied at the time of the initial dissemination and each continuing or successive dissemination of any claim or representation covered by this order.

Such records shall be retained by respondent for a period of three years from the date respondent's advertisements, sales materials, promotional materials or post purchase materials making such claim or representation were last disseminated. Such records shall be made available to the Commission staff for inspection upon reasonable notice.

PART VI

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation and placement of such advertisements or other such sales materials.

PART VII

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

PART VIII

It is further ordered, That respondent, within sixty (60) days after this order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order.