

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

TRISTATE HOUSEHOLD GOODS TARIFF CONFERENCE, INC.

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

*Docket 9184. Complaint, Sept. 18, 1984—Order Dismissing Complaint, July 5, 1985*

The Federal Trade Commission has dismissed the complaint in this matter since the collective ratemaking activities of respondent are immunized by the state action doctrine. The Commission has found that "further prosecution of this matter does not appear to be in the public interest."

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 Tristate Household Goods Tariff Conference, Inc., a corporation, 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 as follows:

For the purposes of this complaint the use of the present tense includes the past tense and the following definitions apply:

*Carrier* means a common carrier of property by motor vehicle.

*Intrastate transportation* means the pickup or receipt, transportation and delivery of property for compensation wholly within any State of the United States by a carrier authorized by that State to engage therein.

*Tariff* means a publication and any supplements thereto stating the rates of a carrier for the intrastate transportation of property, excluding general rules and regulations.

*Member* means any carrier or other person that pays dues or belongs to Tristate Household Goods Tariff Conference, Inc. or to any successor corporation.

*Rate* means a charge, payment or fixed price according to a ratio, scale or standard for direct or indirect transportation service.

*Collective rate* means any rate or charge established under any contract, agreement, understanding, plan, program, combination or conspiracy between two or more competing carriers, or between any carrier and respondent.

PARAGRAPH 1. Respondent, Tristate Household Goods Tariff Conference, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 410 N. Governor Printz Boulevard, PA Route 291, Lester, Pennsylvania. Respondent publishes and issues tariffs containing rates for the intrastate transportation of property on behalf of its member carriers.

PAR. 2. Carriers engaging in intrastate transportation of property within Pennsylvania do so under certificates of public convenience and necessity granted by the Pennsylvania Public Utilities Commission. Such carriers are subject to rate regulation by the said Commission and are required to charge just and reasonable rates. Carriers in Pennsylvania are required to charge the rates filed once they have been accepted by the said Commission.

PAR. 3. The statute which provides for regulation of carriers engaged in the intrastate transportation of property within Pennsylvania does not compel, command, authorize or otherwise provide for the establishment, operation or continuation of collective rates among carriers or others on their behalf.

PAR. 4. Except to the extent that competition has been restrained as herein alleged, respondent's members are now in competition among themselves and with other carriers.

PAR. 5. Respondent's membership consists of approximately 450 carriers engaging in intrastate transportation of property within Pennsylvania. Respondent's members are entitled to and do, among other things, vote for and elect the officers and directors of respondent. The control, direction and management of respondent are vested in the Board of Directors, which employs a general manager who acts as chief administrative officer of the corporation with direct charge of and supervision over the affairs of the corporation.

PAR. 6. The acts and practices of respondent set forth in Paragraph Eight are in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, and respondent is subject to the jurisdiction of the Federal Trade Commission. Respondent's acts and practices:

from businesses and other private parties to respondent's members for rendering intrastate transportation services;

(B) Affect respondent's members' purchase and use of equipment and other goods and services which are shipped across state lines; and

(C) Are supported by the receipt of dues and fees which are sent across state lines.

PAR. 7. Shippers use the intrastate services of respondent's members to transport property from warehouses and distribution centers in Pennsylvania to customers in Pennsylvania, which property was originally shipped into Pennsylvania from other states. For such intrastate deliveries of property from warehouses and distribution centers, carriers charge shippers or shippers' customers the intrastate rates published by respondent. These intrastate shipping charges are factors which influence the prices of such property. The intrastate delivery services of these carriers are an essential and integral part of the interstate business transactions of such shippers. Thus, the activities of these carriers have a substantial and direct effect upon interstate commerce.

PAR. 8. Respondent, its members, officers, directors, and others are engaging in a combination, conspiracy, agreement, concerted action or unfair and unlawful acts, policies and practices, the purpose or effect of which is to unlawfully hinder, restrain, restrict, suppress or eliminate competition among carriers engaged in the intrastate transportation of property within Pennsylvania.

Pursuant to and in furtherance thereof, respondent, its members and others engage in the following acts, policies and practices, among others:

(A) Initiating, preparing, developing, disseminating, and taking other actions to establish and maintain collective rates for the intrastate transportation of property within Pennsylvania;

(B) Participating in the collective rates; and

(C) Filing collective rates with the Pennsylvania Public Utilities Commission.

PAR. 9. The acts and practices of respondent, its members and others as alleged in Paragraph Eight have the effect of:

(A) Fixing, stabilizing, raising, maintaining, or otherwise interfering or tampering with the rates charged by carriers for the intrastate transportation of property within Pennsylvania;

(B) Restricting, restraining, hindering, preventing or frustrating rate competition among carriers for the intrastate transportation of property within Pennsylvania;

(C) Depriving shippers patronizing carriers for intrastate transpor-

tation of property within Pennsylvania of the benefits of free and open competition in the provision of said services; and

(D) Depriving consumers in Pennsylvania of the benefits of free and open competition in the intrastate transportation of property.

PAR. 10. The acts, policies and practices of respondent, its members and others, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

#### ORDER DISMISSING COMPLAINT

The Commission has considered this matter on complaint counsel's unopposed motion that the complaint be withdrawn.

In this case respondent has argued that its collective ratemaking activities are immunized by the state action doctrine. Complaint counsel now represents that all the elements of a state action defense as articulated by the Supreme Court in *Southern Motor Carriers Rate Conference v. United States*, 105 S.Ct. 1721 (1985), are available to the respondent. Accordingly, further prosecution of this matter does not appear to be in the public interest. The complaint is therefore dismissed.

## Complaint

IN THE MATTER OF  
ASSOCIATED MILLS, INC.

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

*Docket 9169. Complaint, Oct. 24, 1983—Decision, July 23, 1985*

This consent order requires the Chicago, Ill. manufacturer and seller of the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699, among other things, to cease representing, contrary to fact, that this portable household air cleaning appliance removes most tobacco smoke and substantially all ragweed pollen and dust from the air people breathe under household conditions and that the appliance effectively filters all the air in a 14 foot × 18 foot room in less than an hour. The order also bars the firm from misrepresenting the ability of any such appliance or equipment to clean or remove any quantity of indoor air contaminants, or the conditions of use under which the appliance would remove the contaminants. Further, the company is required to possess competent and reliable evidence to support any claim relating to the performance characteristics of such appliance; and maintain written records of all materials that substantiate, contradict, or qualify performance claims.

*Appearances*

For the Commission: *Judith Wilkenfeld, Elizabeth Toni Guarino and Reid Horowitz.*

For the respondents: *Robert L. Wald and Mark Schattner, Wald, Harkrader & Ross, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Associated Mills, Inc., hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges 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 Illinois, with its office and principal place of business located at 111 N. Canal Street, Chicago, Illinois.

PAR. 2. Respondent is now, and at all times relevant to this com-

plaint has been, engaged in the manufacture and sale of a portable, electric household air cleaning appliance, the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699 (hereinafter referred to in the complaint as "air cleaning appliance"), 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 household air cleaning appliances, respondent has disseminated and caused the dissemination of advertising for household 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 or to dealers for display or distribution to consumers prior to or at the time of sale.

PAR. 6. Typical statements and representations in said advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements and promotional materials attached hereto as Exhibits A, B, C, D, E, F and G.

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

- a. The air cleaning appliance eliminates tobacco smoke from the air people breathe under household living conditions.
- b. The air cleaning appliance cleans the air of or removes most tobacco smoke from the air people breathe under household living conditions.
- c. The air cleaning appliance "takes out 99% of ragweed pollen"

d. The air cleaning appliance removes 80% of the dust from the air people breathe under household living conditions.

e. One air cleaning appliance effectively filters all the air in a 14 foot  $\times$  18 foot room in approximately 25 minutes.

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. The air cleaning appliance does not eliminate, does not clean the air of and does not remove most tobacco smoke from the air people breathe under household living conditions. Independent tests, when extrapolated by generally accepted procedures to advertised room conditions, show that the air cleaning appliance optimally can remove no more than 12% of tobacco smoke from the indoor air people breathe.

b. Respondent's tests and independent tests, when extrapolated by generally accepted procedures to advertised room conditions, show that the air cleaning appliance cannot remove 99% of ragweed pollen or 80% of dust from the indoor air people breathe.

c. Independent tests show that the air cleaning appliance cannot effectively filter all the air in a 14 foot  $\times$  18 foot room in approximately 25 minutes or in less than an hour.

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

PAR. 9. Through the use of the advertisements and promotional materials referred to in Paragraph Six and other advertisements and promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that it possessed and relied upon a reasonable basis for the representations set forth in Paragraph Seven at the initial dissemination of the representations and each subsequent dissemination. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making such representations because, *inter alia*, respondent either did not conduct appropriate tests or did not properly extrapolate test results by generally accepted procedures to advertised room conditions. Therefore, respondent's representations are false and misleading.

PAR. 10. 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 statements and 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. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now constitute unfair 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

EXHIBIT A



ASSOCIATED MILLS INC.

COMPANY: Associated Mills, Inc.  
PRODUCT: Pollenex Pure Air "99"  
COMMERCIAL TITLE: "George Burns 699 Pollenex"  
COMMERCIAL NO.: YAPP0056  
LENGTH: 2:35



WHEN I SMOKE CIGARS AT HOME MY FRIENDS NEVER OBJECT.



BECAUSE I'VE GOT A POLLENEX PURE AIR "99".



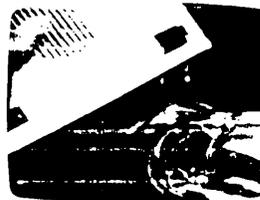
SMOKE GRABBER 6 STAGE FILTER WITH ACTIVATED CHARCOAL.



IT REMOVES SMOKE, POLLEN AND DUST... EVERYTHING BUT YOUR RELATIVES!



SMOKE GOES IN HERE...



CLEAN AIR COMES OUT HERE.



AND IT'S EXTRA LARGE FILTER TAKES OUT 99% OF RAGWEED POLLEN.



THESE ARE MY FRIENDS. THEY'RE CRAZY ABOUT MY PURE AIR "99" FROM POLLENEX.



(LOCAL DEALER TAG)

Complaint

106 F.T.C.

## EXHIBIT B

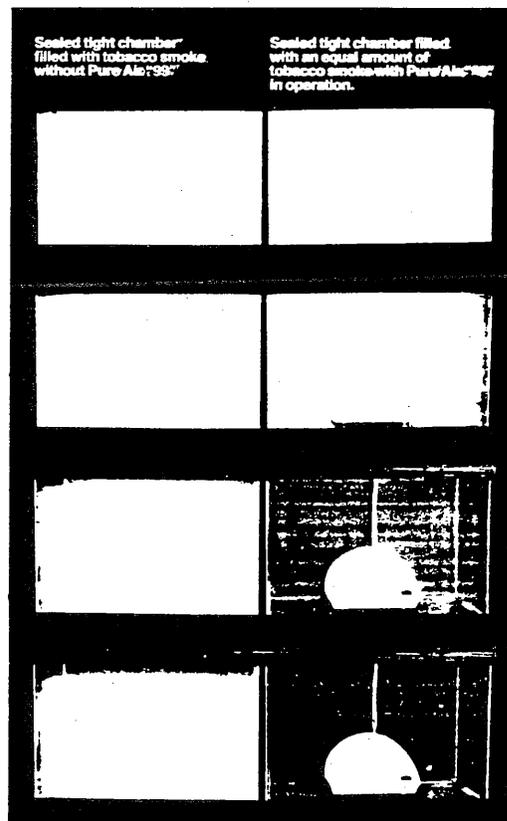
  
 Air Cleaner/Deodorizer

## Clears the air of smoke in minutes. Lab tests prove it!

- Tests showed that in a matter of minutes approximately 85% of the tobacco smoke in the chamber containing Pure Air "99"™ had dissipated.
- Filter material proven in tests over 30 years on purifiers retailing up to \$400.
- **Electrostatic dust and dirt trap.** Air passing through this basic filter material, consisting of thousands of interconnecting fibers, creates a highly effective natural electrostatic charge that captures and holds dust and dirt.
- Filter proven to remove dust, pollen and other impurities from the air.
- Activated charcoal proven to remove smoke and other household odors.
- Bigger filter capacity than major competitors.
- Long-lasting lemon-lime fragrance proven to freshen air.
- Use on table, counter or mount on wall.
- Two speeds of air re-circulation.
- Backed by Pollenex' name and \$3,000,000 Network Prime Time TV.
- Local TV, in top markets (over 300 GRP's per market).
- Network TV, game shows.



Watch for  
George Burns  
as TV  
spokesperson  
for Pure Air "99"™  
starting Sept. 1.



**#1** Pollenex  
No. 1 in health care  
appliances.

See us at the Hardware Show, Booths ME-1002, ME-1101

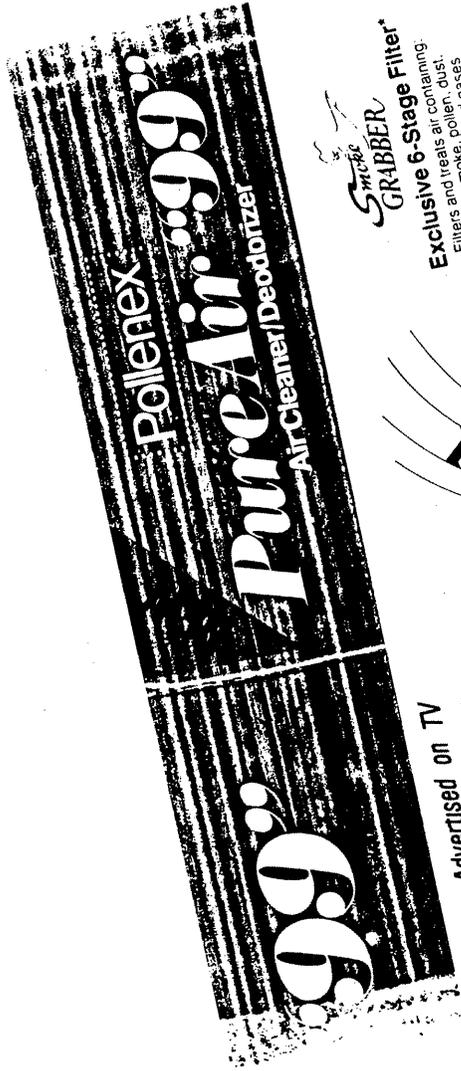
**PURE AIR '99' with the proven filter**



ASSOCIATED MILLS, INC.

Complaint

EXHIBIT C

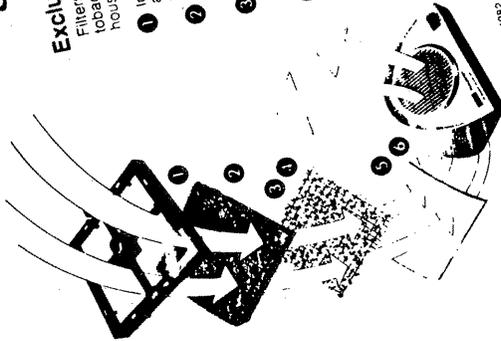


AS Advertised on TV



SMIRK GRABBER

- "6-Stage" Filter with Activated Charcoal
- More powerful
- Larger filter
- Quiet setting for sleeping



SMIRK GRABBER

Exclusive 6-Stage Filter\*

Filters and treats air containing:

tobacco smoke, pollen, dust, household odors and gases

1 Impingement fibers intercept larger airborne particles of pollen, dust and dirt.

2 Fibers are impregnated with a unique coating that holds particles in the filter material.

3 ACTIVATED CHARCOAL absorbs household gases and odors from tobacco smoke, cooking and other sources.

4 ABSORBED\* Crystals attract even more smoke and other odors.

5 Final Filter removes smoke and air-borne pollutants.

6 Special coating on final filter provides electrostatic action that holds captured minute smoke and other particles.

\*Recommended for rooms approximately 18' x 14' x 8'

© 1982 Associated Mills, Inc. 111 N. Canal St. Chicago, IL 60606

1987 PENDING

Complaint

106 F.T.C.

EXHIBIT D

Pollenex<sup>TM</sup>  
**Pure Air '99**  
**Air Cleaner/  
 Deodorizer**  
 With Fragrance Control  
 Model 699

**INSTRUCTIONS  
 AND  
 WARRANTY**

© 1991 Associated Mills, Inc.



**LIMITED WARRANTY**

The product listed is warranted to be free from defects in material and workmanship under normal use and service for a period of 90 days from date of sale to consumer. The manufacturer's obligation shall be limited to repairing or replacing F.O.B. Chicago, Ill. 60606, any part of the product which is defective. Such warranty shall not apply to defects resulting from accidents, abuse or misuse if you must return the product for reasons of malfunction, the following action and steps are required:

- a. Package the product securely to protect from damage or breakage in shipment.
- b. Ship prepaid to Associated Mills by most convenient method.

This warranty gives you specific legal rights and you may also have other rights which vary from state to state. Return of owner registration card is not a condition precedent to warranty coverage.

**ASSOCIATED MILLS, INC.**  
 111 N. Canal, Chicago, IL 60606

ASSOCIATED MILLS, INC.  
 111 N CANAL  
 CHICAGO, IL 60606

POSTCARD

PLACE  
STAMP  
HERE

Complaint

5

**HOW YOUR POLLENEX®  
PURE AIR™ '99™ MODEL 699 WORKS**

You have purchased one of the latest air filtration systems for the home or office.  
Your Model 699 Pure Air '99™ air cleaner and deodorizer has a specially designed fan that forces air through the unique Pollenex® Stage 4™ filter that helps clean and deodorize air polluted with pollen, dirt, and odors to smoke.



**EXCLUSIVE "STAGE 4™" FILTERING SYSTEM**

1. Unique Pollenex® filtering material, written up in medical journals and proven in use for over 30 years. A natural electrostatic dust and dirt trap.
2. ACTIVATED CHARCOAL to remove smoke and other odors.
3. ARSORBEBADS™ to help trap dust and lint.
4. Final filter for final air check.

**HOW TO OPERATE YOUR  
POLLENEX® PURE AIR™ '99™**

Snap out filter on base of unit and remove from plastic wrap. Re-install filter with side latch top. Snap back in place. Do not have unit connected to electrical outlet while you are removing or replacing filter. Have switch in "off" position. To operate plug cord into electric outlet. Turn switch to either HI or LOW speed and your unit is in operation. Unit operates from 110 to 120 volts AC, 60Hz.

**WHERE TO USE YOUR  
POLLENEX® PURE AIR™ '99™**

Use it anywhere in the home or office, where you like to enjoy fresher air: kitchen, bath, bedroom, living room, dining room, powder room, pet areas, sick room, or private office conference room reception area.

**HOW TO GET THE MOST FROM YOUR  
POLLENEX® PURE AIR™ '99™**

You'll enjoy fresher air continuously if you run the unit constantly. It's built for that kind of service. Works effectively in filtering about the same amount of air as would normally be contained in a room in 15 to 20 minutes. That's why you're recirculating, cleaning and deodorizing air every quarter of an hour or so, when your unit is set on high speed. When you first turn on unit, if possible, shut doors and windows in the room. Let unit run on high speed in the closed room for about 30 minutes. That way you'll get an initial concentration of effort. Then you can open the doors, and the unit will continue working effectively.

**HOW TO USE THE EXCLUSIVE FRAGRANCE CONTROL**

Fragrance beads and their control are located in the center of the frame covering Stage 1 of the filter. Dial OFF for no scent, HI or LO for a light Citrus scent.



**WHAT ABOUT THE POLLENEX® "STAGE 4™" FILTER?**

**IMPORTANT:** If you choose to enjoy the light Citrus fragrance you will notice that it will gradually diminish. Effectiveness of filter is not diminished by absence of the odor and is designed to have a long life. If the unit runs constantly, the filter will need replacement only once every two to three months.

Replacement filters are available at your Pollenex® Pure Air '99™ dealer. If he is temporarily out of stock, write Associated Mills/Pollenex®, 111 N. Canal St., Chicago, IL 60606 for the name of another nearby dealer.

**HOW TO CARE FOR YOUR  
POLLENEX® PURE AIR™ '99™**

This unit needs no lubrication. It is engineered to give long useful service with a minimum of care. The exterior housing is made of high impact plastic. To remove dust or fingerprints just use mild soap on a wet cloth. Use a dry cloth to wipe off excess water. Do not use harsh industrial detergents.

**CAUTION:** Be sure to unplug unit before cleaning. Do not immerse unit in water. It will cause permanent damage to unit and could be very dangerous to you.

Associated Mills Inc. • 111 N. Canal Street • Chicago, IL 60606

**Pure Air™ '99™ Air Cleaner  
Deodorizer**



**OWNER REGISTRATION CARD**  
COMPLETE AND MAIL WITHIN 10 DAYS.

Model 699 Other

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_  
PHONE: \_\_\_\_\_  
DATE: \_\_\_\_\_

**21. Please Check**

**ARE YOU**

1. Purchaser/Co purchaser  
2. Gift Recipient  
3. Employee of purchaser  
4. Person other than above completing card  
5. In purchaser's household

**22. Your Age**

1. Under 18  
2. 18-24  
3. 25-34  
4. 35-44  
5. 45+

**23. You Are**

1. Male  
2. Female  
3. Other

**24. Who primarily decided to buy?**

1. Myself  
2. My spouse  
3. Both of us  
4. Other

**25. Marital Status**

1. Married  
2. Single  
3. Widowed  
4. Divorced

**26. Who will use?**

1. Self only  
2. Self and others  
3. Other only  
4. Both self and others

**27. Purchase Recommended By**

1. Dealer  
2. Other

**28. How did you hear about this product?**

1. Advertisement  
2. Store Display  
3. Sales Pitch  
4. Other

**29. How did you use this product?**

1. Regularly  
2. Occasionally  
3. Not used

**30. How satisfied are you with this product?**

1. Very satisfied  
2. Satisfied  
3. Not satisfied  
4. Very dissatisfied

**31. How long have you used this product?**

1. Less than 1 month  
2. 1-3 months  
3. 4-6 months  
4. 7-12 months  
5. More than 12 months

**32. How often do you use this product?**

1. Daily  
2. Several times a week  
3. Once a week  
4. Once a month  
5. Other

**33. For what main purpose was product purchased? Check only one.**

A. Help allergy sufferer  
B. Help eliminate odors  
C. Help eliminate dust  
D. Help eliminate pollen  
E. Help eliminate smoke  
F. Help eliminate pet odors  
G. Help eliminate mold  
H. Help eliminate bacteria  
I. Help eliminate viruses  
J. Help eliminate dust  
K. Help eliminate lint

FEDERAL TRADE COMMISSION DECISIONS  
Complaint

EXHIBIT E

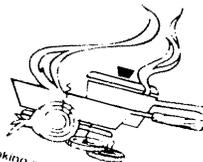
106 F.T.C.

For people who care about the air they breathe!



Over 35 million people are bothered by pollen in the air.

Millions of people in millions of homes and offices would love to breathe fresher air instead of air contaminated with irritating pollutants like pollen and dust, tobacco smoke, cooking and other household odors.



Cooking and other household odors are most obvious.



Dust is a common household problem.



Over 75 million adults don't smoke. Many find breathing in smoke offensive.

Pollenex

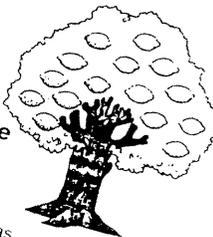
# Pure Air "99"

AIR CLEANER & DEODORIZER



Model 699  
2 Speeds

Helps keep air fresh and fragrant. Like having a lemon-lime tree in your room.

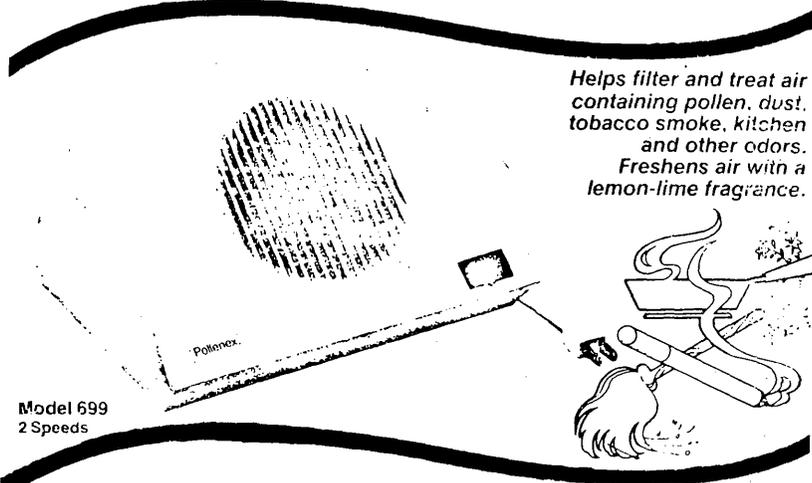


Leaves behind a light lemon-lime fragrance as it recirculates air in the room.

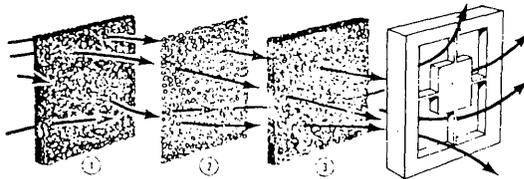
Pollenex—The name that stands for air filtering for 30 years.

Complaint

**NEW** **Pollenex**  
**Pure Air "99"**  
**AIR CLEANER & DEODORIZER**



**NEW! EXCLUSIVE POLLENEX FILTERING SYSTEM**



**AIR IS RECIRCULATED THROUGH** Exclusive Pollenex filter with activated charcoal for air cleaning and deodorizing. Filter material proven in tests over 30 years on Pollenex air filters. Crystal particles saturated with a lemon-lime fragrance to freshen air. Final filter before air is recirculated to room.

This is the most effective air cleaner...  
 The Pollenex filter with activated charcoal...  
 The final filter before air is recirculated to room...  
 The Pollenex filter with activated charcoal...  
 The final filter before air is recirculated to room...

Produced in U.S.A. © Associated Mills, Inc. 12174 Canal St. Chicago, IL 60606

EXHIBIT F

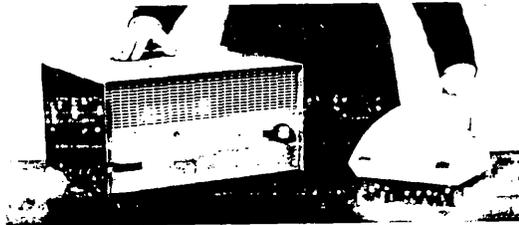
POLLENEX.....PROFIT EDITION

**Booming Sales Predicted for Indoor Air Cleaner**

**Over 102,000,000 Americans are Bothered by tobacco smoke**

The trend toward non smokers has been increasing rapidly over recent years. Moreover, those who find being subjected to tobacco smoke offensive, are increasing substantially in number.

The Pure Air "99" is ideal for homes and offices that are subjected to tobacco smokers and where treatment of air containing tobacco smoke is desirable for a variety of reasons.



**Pollenex® has over 30 years experience in Air Filtering Systems**

Pollenex® has been a pioneer in the field of indoor air filtering, for more than three decades. The basic Pollenex® filtering material has been tested in use in air filtering machines re-

taining for as much as \$400.00. The Pollenex® Pure Air "99" Model 999, is the culmination of all that testing, plus modern technol-

ogical advances in the engineering of air cleaning and deodorizing systems. You can't find a more advanced design piece of equipment for the money.

**New way to deal with household odors without chemical sprays**

Homes collect odors like they collect dust. Chemical sprays that mask them are not only expensive but not the most desirable way to eliminate odors.

With homes tightly sealed today, to save energy costs, cooking odors, bathroom odors, pet odors, tobacco odors and all kinds of household odors are offensive and embarrassing.

New Pure Air "99" helps fight odors, as it filters air with the unique Pollenex® "Stage 1" Filtering System. As it recirculates and helps clean and deodorize air, it leaves behind a refreshing lemon-lime fragrance.

**Over 23,000,000 people are bothered by Pollen in the air**

The new Pure Air "99" helps filter out pollen. Independent Laboratory Testing shows over 90% effectiveness of removal of Giant Ragweed Pollen in air that passes through the Pollenex® filter.

Moreover, the Pollenex® filter in independent tests shows 80% effectiveness in removing fine dust particles that pass through the filter.

Those who care about the air they breathe, will find life pleasant in an environment of fresher, cleaner air. Pure Air "99" is a product the whole family will appreciate.

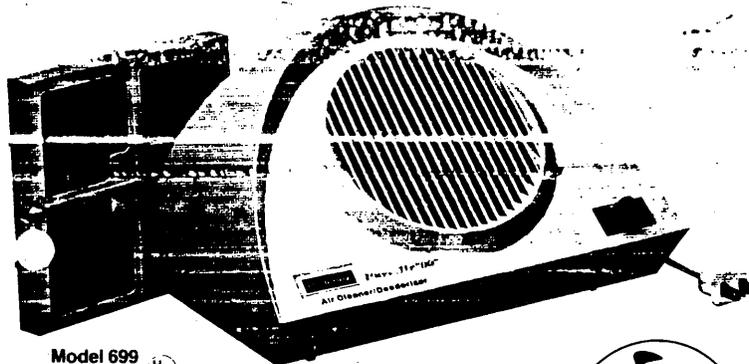


Remember that the allergens are those that can be borne by the wind currents, in addition to the way other factors contribute to a person's response as an allergen. One is the ability of a common type of pollen to produce pollen in large quantities, such as ragweed. A single plant of ragweed has been estimated to produce 1,000,000 grains of pollen per day.

Pollenex **Pure Air "99"**™  
Air Cleaner/Deodorizer

Complaint

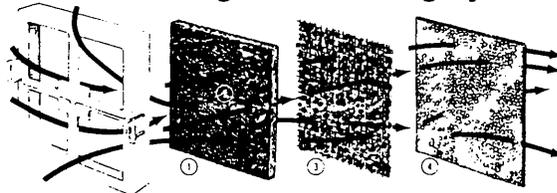
Pollenex  
**Pure Air "99"**™  
 Air Cleaner/Deodorizer



Model 699  
 2 Speeds 



**NEW!**  
 Exclusive "Stage 4"™ Filtering System



- ① Exclusive Pollenex® filtering material.
- ② Treated with activated charcoal.
- ③ PA99™ crystals saturated with lemon-lime fragrance.
- ④ Final filter for final air check.

A specially designed fan forces air through a 4-way air filtration system, helps clean and deodorize air polluted with pollen, dust, tobacco smoke, cooking odors, pet odors and other pollutants. Filters about the same amount of air as would normally be contained in a room 12' X 9' in approximately 15 minutes and it leaves behind a light lemon-lime fragrance.

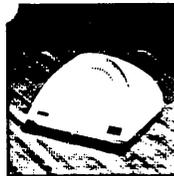
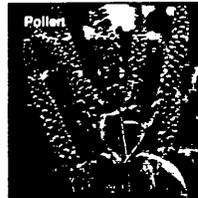
Pollenex

# Pure Air "99"

Air Cleaner/Deodorizer



Filters and treats air containing:



Use on counter or table



Hang on wall



Enjoy all the benefits of fresher air in any room.



Kitchen or Bathroom



Family Room or Living Room



Bedroom



Office or Conference Room

Complaint

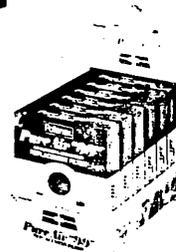
**Pollenex® gives you the product, the package, and all the point-of-sale material you need to build a big booming business.**



**Dynamic Counter Display**  
Compact, contemporary design. Made of durable plastic. Motivating selling message. Can be used with unit connected or disconnected.

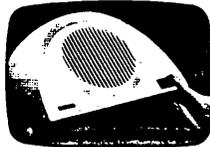


**Dynamic Packaging**  
4-color graphics with full explanation of product, its features and benefits and where it can be used.



**Replacement Filter Display**  
For continuous plus sales. Filters need replacing every two to three months.

**PRIME TIME NETWORK T.V. AND MORE!**  
The biggest advertising program ever put behind an air cleaner/deodorizer.



**Network T.V.**  
\$10 million dollars in network television advertising a select group of top T.V. shows for Fall 1981.

**Network Game Shows**  
Targeted to the best potential market for air cleaners.

**Local Market Spot T.V.**  
High impact, memorable spots with local dealer names in hundreds of T.V. markets.

**Magazine Ads**  
Big space, highly informative, in-depth sell ads in top magazines, reaching the best potential customers.



- The New York Times
- Chicago Tribune
- Los Angeles Times
- Dallas Times Herald
- The Miami Herald

**National Publicity Programs**  
All over America, in all media, people will be hearing about the amazing new Pollenex® Pure Air '89™.

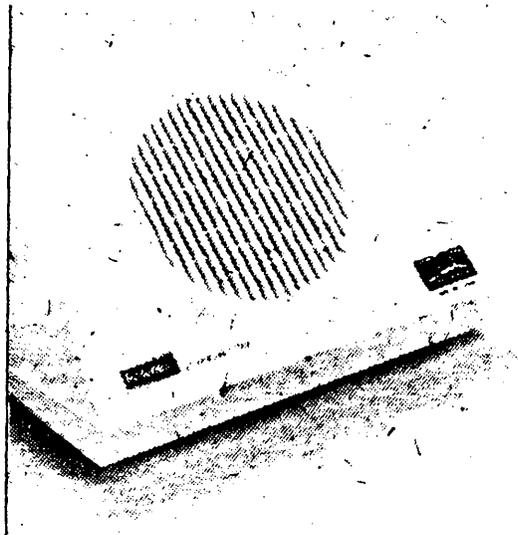
Complaint

106 F.T.C.

EXHIBIT G

**Pollenex "Pure Air 99"  
Air Purifier**  
Reg. 34.95, sale 23.99 less  
\$4 manufacturer's rebate

Unique "smoke grabber"  
filter eliminates odors,  
and smoke from the air.  
Six stage filtering system  
with activated charcoal  
has 2 continuous speeds.  
Extra filters are **5.99 each.**



## DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a proposed form of order; and

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

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

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

1. Respondent Associated Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 111 N. Canal Street, Chicago, Illinois.
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 purposes of this order, the following definitions apply:

1. The terms *air cleaning appliance or equipment* and *appliance or equipment* mean portable household electric cord connected room air cleaners (excluding ashtrays), defined more specifically as machines that (a) operate with an electrical source of power and contain a motor and fan for drawing air through a filter(s); (b) incorporate electrically charged plates in addition to a fan with a filter(s); (c) incorporate a negative ion generator in addition to a fan with a filter(s); or (d) incorporate a negative ion generator only.

2. The term *indoor air contaminants* refers to one or more contaminants including, but not limited to, tobacco smoke, household dust, pollen, or other forms of indoor air pollution.

3. The term *performance characteristics* means:

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 or speed of operation of the appliance or equipment whether expressed generally or in terms of a specific contaminant, in terms of the filtering media or mechanism, or in terms of the appliance itself.

#### PART I

*It is ordered*, That respondent Associated Mills, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699 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, that the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699 cleans the air of most or removes most tobacco smoke from the air people breathe under household living conditions.

B. Representing, directly or by implication, contrary to fact, that the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699 removes substantially all ragweed pollen or dust from the air people breathe under household living conditions.

C. Representing, directly or by implication, contrary to fact, that the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699 effectively filters all the air in a 14 foot × 18 foot room in less than an hour.

#### 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 Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699 or any other air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do

A. Misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean or remove indoor air contaminants.

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.

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 Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699 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, the performance characteristics of any such appliance or equipment unless 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, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" 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 household living conditions, unless respondent possesses and relies upon competent and reliable scientific tests, experiments, analyses, research or studies which either relate to those conditions or which have been extrapolated by generally accepted procedures to those conditions.

## 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 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 materially 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 V

*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 advertisements or other sales materials.

## PART VI

*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 VII

*It is further ordered,* That respondent 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 it has complied with the order.

IN THE MATTER OF  
HAWAII DENTAL SERVICE CORPORATION

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

*Docket C-3158. Complaint, July 26, 1985—Decision, July 26, 1985*

This consent order requires the Hawaii Dental Service Corporation ("HDS"), an organization engaged in the administration and operation of pre-paid dental care programs whose dentist members provide dental care service for a fee, among other things, to cease basing its decision to send dentists to the counties of Maui, Kauai, and Hawaii, on the approval or consent of member dentists who reside in those counties. The order bars the organization from denying membership to any dentist licensed to practice in Hawaii, based in whole or in part on the approval of other dentists in the geographic location of the dentist's proposed practice, and from inducing, encouraging, or assisting any dentist or other nongovernmental organization to take any of the prohibited actions. Within thirty days from the effective date of the order, HDS is required to remove from its constitution and bylaws or other guidelines, any provision, interpretation or policy statement that is inconsistent with the order and publish in its newsletter and another publication, a notice of such removal.

*Appearances*

For the Commission: *Erika Woodinski* and *Ralph E. Stone*.

For the respondents: *Wesley Ishikawa*, Honolulu, Hawaii.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondent has violated the provisions of 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:

PARAGRAPH 1. Respondent Hawaii Dental Service Corporation ("HDS") is a dental service corporation formed pursuant to the laws of the State of Hawaii with its mailing address at 700 Bishop Street, Suite 700, Honolulu, Hawaii. HDS is engaged in the business of the administration and operation of prepaid dental care programs.

PAR. 2. Members of HDS are engaged in the business of providing dental care services for a fee. Except to the extent that competition

has been restrained as herein alleged, members of HDS have been and are now in competition among themselves and with other dentists. Members of HDS elect the board of directors of HDS.

PAR. 3. HDS engages in substantial activities which further its members' pecuniary interests. By virtue of its purposes and activities, HDS is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. In the conduct of their business, members of HDS receive and treat patients from other states, receive substantial sums of money for rendering dental services, which monies flow across state lines, and use supplies which are shipped in interstate commerce. The acts or practices described below are in interstate commerce, or affect the interstate activities of HDS's members, third-party payers, other third parties, and some patients of HDS's members, 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).

PAR. 5. One factor that consumers consider in deciding whether to purchase a prepaid dental service plan is whether the plan has an adequate supply of participating dentists. In the absence of the restraints on competition alleged in this complaint, HDS would be able to make its plan more attractive to consumers by seeking to recruit dentists and send them to be participating dentists in the counties of Maui, Kauai, and Hawaii. Such activities by HDS could increase competition among dentists and increase access to dental care in those counties.

PAR. 6. HDS has acted as a combination of at least some of its members or has agreed with at least some of its members to limit, foreclose, frustrate, or eliminate competition among dentists in the State of Hawaii by agreeing to restrictions on its ability to freely recruit and send dentists to the counties of Maui, Kauai, and Hawaii.

PAR. 7. HDS has acted in furtherance of this combination or agreement by enacting restrictions in its bylaws that prohibit HDS from recruiting and sending dentists to the counties of Maui, Kauai, or Hawaii without the approval of the majority of its members who reside in the affected county, thereby according HDS's members in these counties the power to exclude competition.

PAR. 8. Through the combination or agreement and the acts described above, certain individual members or potential members of HDS are likely to have been or are likely to be deterred from establishing practices in the counties of Maui, Kauai, and Hawaii, to the effect that:

A. Competition among dentists for patients may have been and may be limited, foreclosed, frustrated or eliminated; and

B. Consumers may have been and may be deprived of the benefits of competition among dentists.

PAR. 9. The combination or agreement and the acts described above constitute unfair methods of competition and unfair acts or practices which violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Such combination or agreement is continuing and will continue absent the entry against HDS of 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 a draft of complaint which the San Francisco Regional Office 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 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 Hawaii Dental Service Corporation is a corporation, existing and doing business under and by virtue of the laws of the State of Hawaii with its office and principal place of business located at 700 Bishop Street, Suite 700, Honolulu, Hawaii.

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.

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

A. *HDS* means respondent Hawaii Dental Service Corporation, its Board of Directors, officers, committees, representatives, agents, employees, successors, and assigns; and

B. *Member dentist* means a dentist with whom HDS has a contractual agreement to render dental care to beneficiaries of HDS dental care plans.

## II.

*It is ordered*, That HDS, directly or indirectly, or through any corporation or other device, in connection with the administration and operation of prepaid dental care programs in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, forthwith cease and desist from:

A. Basing the decision to send dentists, dentist groups, or dentist panels to the counties of Maui, Kauai, and Hawaii, in whole or in part, on the approval or consent of other member dentists who reside in those counties;

B. Denying membership in HDS to a dentist licensed to practice in the State of Hawaii based in whole or in part on the approval or consent of other member dentists to the geographic location of the dentist's proposed practice; and

C. Inducing, urging, encouraging, or assisting any dentist, group of dentists, or any other non-governmental organization to take any of the actions prohibited by Part II of this order.

## III.

*It is further ordered*, That HDS shall:

A. Within thirty (30) days after this order becomes final, remove from its constitution and bylaws, and from any other existing policy statements or guidelines of HDS, any provision, interpretation or policy statement which is inconsistent with Part II of this order, and within sixty (60) days after this order becomes final, publish in the *Hawaii Dental Service Newsletter* and one other publication generally circulated to dentists practicing in the State of Hawaii, a notice of the

removal of such provision, interpretation, policy statement or guideline;

B. Within thirty (30) days after this order becomes final, distribute a copy of this order to each of HDS's supervisory personnel having procedural or policy responsibilities with respect to the subject matter of this order, and secure a signed statement acknowledging receipt of said order;

C. Within ninety (90) days after this order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this order;

D. For a period of five (5) years after this order becomes final, maintain and make available to the Commission staff, for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by this order; and

E. Within one (1) year after this order becomes final, and annually thereafter for a period of four (4) years, file, if requested by Commission staff, a written report with the Federal Trade Commission setting forth in detail any action taken in connection with the activities covered by this order.

#### IV.

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

IN THE MATTER OF  
DECORATING PRODUCTS ASSOCIATION OF  
CENTRAL FLORIDA

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

*Docket C-3159. Complaint, July 26, 1985—Decision, July 26, 1985*

This consent order requires Decorating Products Association of Central Florida (DPACF), an association composed of wallcovering retailers and suppliers, among other things, to cease, individually or in concert with others, engaging in conduct having the purpose or effect of fixing prices, terms or conditions of sale of wallcoverings; coercing sellers of wallcoverings to adopt or abandon any practice or policy concerning pricing, conditions of sale, distribution method, or choice of customers. DPACF is also barred from suggesting or recommending to its members that they refuse to deal or otherwise attempt to affect a supplier's pricing or distribution methods; and from assisting any affiliated organization or its members in engaging in the prohibited conduct. The organization is further required to mail a copy of the order to each of its members and to publish it in its newsletter in a timely fashion. Finally, the order obligates DPACF to require its members to agree in writing to be bound by the terms of the order as a condition of membership; and to terminate for a period of one year any member believed to have engaged in the prohibited practices after the effective date of the order.

*Appearances*

For the Commission: *Kevin T. Cronin and Joseph Eckhaus.*

For the respondents: *J. Thomas Cardwell, Akerman, Senterfitt & Eidson, Orlando, Fla.*

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, having reason to believe that the respondent named in the above caption 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 this complaint stating its charges as follows:

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

and commercial walls, such as simple wallpapers, vinyls, fabrics and foils.

B. *Supplier* means a manufacturer or a distributor of wallcoverings or an entity engaged in the sale of wallcoverings to others for resale to consumers.

PAR. 2. Respondent Decorating Products Association of Central Florida ("DPACF") is an unincorporated association, organized in or about May, 1980, with its mailing address at Post Office Box 183, Orlando, Florida. DPACF is a local affiliate of the National Decorating Products Association ("NDPA"). Membership in DPACF constitutes membership in NDPA. NDPA and DPACF are composed of full voting members, which are retail businesses engaged in the promotion and sale of wallcoverings, and non-voting associate members, which are suppliers of wallcoverings.

PAR. 3. DPACF was organized, *inter alia*, to facilitate the exchange of information among its members concerning methods for conducting business in the sale and distribution of wallcoverings. Its affairs are discussed and policy determined at monthly meetings presided over by DPACF's president.

PAR. 4. Full voting members of respondent are engaged in the operation of retail decorating products stores where wallcoverings are sold. Annual retail sales of wallcoverings in the United States are approximately \$1.5 billion. Except to the extent that competition has been restrained as herein alleged, full voting members of respondent have been and are now in competition among themselves and with other retail sellers of wallcoverings.

PAR. 5. Respondent engages in substantial activities which further the pecuniary interests of its members. By virtue of its purposes and its activities, respondents are corporations within the meaning of Section 4 of the Federal Trade Commission Act, *as amended*, 15 U.S.C. 44.

PAR. 6. Respondent, and its members, engage in acts and practices, including the acts and practices described below, which are in or affect commerce within the meaning of the Federal Trade Commission Act, *as amended*.

#### COUNT I

PAR. 7. Respondent DPACF has acted as a combination of, or has conspired with, at least some of its members to restrain competition by refusing to deal with a supplier that was planning to open a chain of retail wallcovering stores.

PAR. 8. Respondent DPACF and at least some of its members have engaged in various acts or practices in furtherance of this combination or conspiracy, including, among other things:

A. Removing, or urging and encouraging members and others to remove, certain wallcovering sample books from their store shelves;

B. Discontinuing, or urging and encouraging members and others to discontinue, promotion of the products of certain suppliers;

C. Not placing, or urging and encouraging members and others not to place, customer orders for wallcoverings through certain suppliers.

PAR. 9. The combination or conspiracy and the acts and practices alleged in Paragraphs Seven and Eight have had, or have the tendency or capacity to have, the following effects, among others:

A. Restraining competition in connection with the sale and distribution of wallcoverings;

B. Restraining the ability of suppliers to distribute wallcoverings in a manner that would place suppliers in competition with respondents' members and other retail sellers of wallcoverings;

C. Depriving consumers of the benefits of additional price, quality and service competition in connection with the purchase and sale of wallcoverings.

PAR. 10. The combination or conspiracy and the acts and practices alleged in Paragraphs Seven and Eight constitute unfair methods of competition or unfair or deceptive acts and practices by respondent in violation of Section 5 of the Federal Trade Commission Act, *as amended*, 15 U.S.C. 45.

#### COUNT II

PAR. 11. Respondent DPACF and others have combined or conspired between and among themselves, and with at least some of their members to restrain competition by attempting to fix or restrain the prices paid to wallcovering suppliers by retailers, and by refusing or threatening to refuse to deal with suppliers that imposed charges for cutting single rolls of wallcovering.

PAR. 12. Respondent DPACF and at least some of their members and others have engaged in various acts or practices in furtherance of these combinations or conspiracies, including, one or more of the following:

A. Threatening, and urging members to threaten, to refuse to deal with suppliers that imposed cutting charges;

B. Refusing to pay, or urging members to refuse to pay, cutting charges imposed by suppliers;

C. Publishing and circulating to suppliers, and others, statements implying that members would refuse to deal with suppliers imposing cutting charges, or urging members to refuse to pay cutting charges imposed by suppliers.

alleged in Paragraphs Eleven and Twelve have had, or have the tendency or capacity to have, the following effects, among others:

- A. Fixing, maintaining, or stabilizing prices of wallcoverings;
- B. Restraining competition in connection with the sale and distribution of wallcoverings;
- C. Depriving consumers of the benefits of additional price, quality and service competition in connection with the purchase and sale of wallcoverings.

PAR. 14. The combination or conspiracy and the acts and practices alleged in Paragraphs Eleven and Twelve constitute unfair methods of competition or unfair or deceptive acts and practices by respondent in violation of Section 5 of the Federal Trade Commission Act, *as amended*.

#### COUNT III

PAR. 15. Respondent DPACF has acted as a combination of, or has conspired with, at least some of its members to restrain competition by refusing or threatening to refuse to deal with suppliers engaged in the direct sale of wallcoverings to building contractors.

PAR. 16. Respondent DPACF and at least some of its members have engaged in various acts or practices in furtherance of this combination or conspiracy, including, among other things:

- A. Publishing statements urging members to refuse to deal with suppliers that sell directly to building contractors;
- B. Identifying in published statements a supplier involved in the direct sale of wallcoverings to building contractors and urging members to refuse to deal with such suppliers;
- C. Threatening and attempting to coerce suppliers into discontinuing their direct sales to building contractors.

PAR. 17. The combination or conspiracy and the acts and practices alleged in Paragraphs Fifteen and Sixteen have had, or have the tendency or capacity to have, the following effects, among others:

- A. Restraining competition in connection with the sale and distribution of wallcoverings;
- B. Depriving consumers of the benefits of additional price, quality and service competition in connection with the purchase and sale of wallcoverings.

PAR. 18. The combination or conspiracy and the acts and practices alleged in Paragraphs Fifteen and Sixteen constitute unfair methods of competition or unfair or deceptive acts and practices by respondent in violation of Section 5 of the Federal Trade Commission Act, *as amended*. These combinations or conspiracies, as well as those alleged

in Counts I and II, are continuing and will continue in the absence of 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 a draft of complaint which the Bureau of Competition 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 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 is an unincorporated association with its mailing address at P.O. Box 183, Orlando, Florida.
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 for purposes of this order the following definitions shall apply:

- A. *DPACF* means the Decorating Products Association of Central

P.O. Box 183, Orlando, Florida), its members, officers, directors, committees, representatives, agents, employees, successors and assigns.

B. *Wallcoverings* mean flexible materials used to cover residential and commercial walls, such as simple wallpapers, vinyls, fabrics and foils.

## II.

*It is further ordered*, That DPACF, individually or in concert with any other person, directly or indirectly, or through any corporate or other device, shall cease and desist from:

A. Conduct having the purpose or effect of:

1. fixing, maintaining, or stabilizing prices, terms or conditions of sale of wallcoverings;

2. coercing any seller of wallcoverings to adopt, abandon, or refrain from adopting or abandoning any practice or policy concerning prices, terms or conditions of sale, or distribution methods or choice of customers.

B. Expressly or impliedly advocating, suggesting, advising, or recommending that any of DPACF's members refuse to deal with any seller of wallcoverings on account of, or that any of DPACF's members engage in any other act to affect, or to attempt to affect, the prices, terms or conditions of sale, or distribution methods or choice of customers of any seller of wallcoverings.

C. Publishing or circulating the results of any survey of, or otherwise identifying, prices, terms or conditions of sale, distribution methods, or choice of customers of any seller of wallcoverings in order to coerce, compel or induce any seller of wallcoverings to adopt or abandon or to refrain from adopting or abandoning any practice or policy concerning prices, terms or conditions of sale, or distribution methods or choice of customers.

D. Aiding or assisting any affiliates of the National Decorating Products Association ("NDPA") or NDPA members in engaging in any of the acts prohibited by this Part II.

## III.

*It is further ordered*, That this order shall not be construed to prevent DPACF from providing information or its members' views to other sellers of wallcoverings, provided, however, that the information or views are not presented in a manner constituting an actual or threatened refusal to deal.

## IV.

*It is further ordered, That DPACF shall:*

A. Within 30 days following service of this order, mail a copy of this order to each of its members.

B. Within 60 days following service of this order, publish this order in an issue of DPACF's newsletter in the same type size normally used for articles in the DPACF's newsletter.

C. As a condition of continued membership in DPACF, require within 90 days following service of this order, or as a condition of initial membership in DPACF, require within 90 days of such membership, that any members agree in writing to be bound by the provisions of Part II of this order.

D. Terminate for a period of one year its affiliation with any DPACF member within one hundred and twenty (120) days after learning or having reason to believe that said member has engaged, after the date this order becomes final, in any act or practice that, if engaged in by DPACF would be prohibited by Part II of this order.

## V.

*It is further ordered, That DPACF shall:*

A. Within sixty (60) days following service of this order, file a written report with the Commission, setting forth in detail the manner and form in which it has complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to DPACF, require.

B. For a period of three (3) years following service of this order, maintain in its files a copy of all correspondence received from, or sent to, sellers of wallcoverings, associations of sellers of wallcoverings, or other DPACF members, and make such copies available for inspection by representatives of the Federal Trade Commission upon written request.

C. Notify the Commission at least thirty (30) days prior to any proposed change in DPACF's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change that may affect compliance obligations arising out of this order.

IN THE MATTER OF  
SALOMON/NORTH AMERICA, INC.

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

*Docket C-2859. Consent Order, Jan. 6, 1977—Modifying Order, July 30, 1985*

This order modifies the 1977 consent order (89 F.T.C. 24) issued against respondent by deleting provisions in the original order that prohibited the company from barring transshipment (sales between retailers) or limiting the retail locations from which dealers may sell its products. The modifying order is the result of respondent's request to the Commission for modification of the terms of the original order.

ORDER REOPENING AND MODIFYING ORDER  
ISSUED ON JANUARY 6, 1977

On March 25, 1985, respondent Salomon/North America, Inc. ("Salomon") filed its "Request of Salomon/North America, Inc. for Modification of Consent Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen the proceeding in Docket No. C-2859 and to modify the order issued by the Commission in this case on January 6, 1977, by deleting the provisions that restrict Salomon's ability to limit the transshipping of its products and that prohibit Salomon from limiting the retail locations from which dealers may sell its products. Salomon also requests deletion of Paragraph II of the order which creates a limited exception to the order's provision that restricts Salomon's ability to limit the transshipment of its products. Salomon's Request was on the public record for thirty days and no comments were received.

After reviewing Salomon's request and other available information, the Commission has concluded that the public interest warrants reopening and modification of the order in the manner requested by Salomon. The transshipment and location restriction provisions of the order (subparagraphs I.B and I.C) were adopted principally as "fencing-in" restraints ancillary to the order's ban on resale price maintenance ("RPM"). Salomon has shown that it does not fix the prices at which its authorized dealers resell Salomon ski products, that Salomon ski product prices vary from dealer to dealer, and that the transshipment and location restriction provisions therefore have served their purpose to encourage the emergence of intrabrand price competition in Salomon products. To the extent that subparagraphs

I.B and I.C were intended as a remedy for the alleged anticompetitive effects of transshipment and location restrictions independent of RPM, the Supreme Court's ruling in *Continental T.V. Inc. v. GTE Sylvania, Inc.*, 433 U.S. 26 (1977), constitutes a change in law that justifies reexamination of the provisions. Such a reexamination, based on the record presented by Salomon and other information, demonstrates that transshipment and location restraints by Salomon would pose no threat to interbrand competition.

Salomon's inability to ban transshipping and sales from unauthorized locations would likely cause Salomon significant competitive injury by, among other things, lessening the efficiency of Salomon's distribution system, discouraging dealers from remaining with Salomon, exposing Salomon's customers to increased risk of injury and, consequently, exposing Salomon to personal injury claims.

The transshipment and location restriction provisions in question appear to have served their remedial purpose. There is no indication that Salomon has engaged in RPM (or has breached the order's transshipping and location restriction provisions) from January 6, 1977, to date, and nothing in the record suggests that there is a need to continue the order's transshipment and location restriction provisions to ensure that RPM is not reinstated by Salomon.

Accordingly, *it is ordered* that this matter be, and it hereby is, reopened and that subparagraphs I.B, I.C and Paragraph II of the order be, and they hereby are, deleted.

IN THE MATTER OF  
SOUTHWEST SUNSITES, INC., ET AL.

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

*Docket 9134. Complaint,\* April 29, 1980—Decision, Aug. 9, 1985*

This consent order requires Porter Realty, Inc. and Irvin Porter, among other things, to cease, in connection with the advertising or sale of land or the inducement of payments for land, representing that the purchase of any land is a sound financial investment; involves little monetary risk; is a way to achieve financial security; and will result in economic benefit to the purchaser stemming from an increase in the value of the land as a result of mineral rights, exploration, profitable resale or as a hedge against inflation. Respondents are prohibited from representing that any land is currently usable as a homesite, farm or ranch, unless that land is immediately usable for the cited purpose without any substantial improvement or development by the purchasers; and from misrepresenting in any manner the cost of obtaining or availability of electric power, telephone service, potable water, sewage disposal, or any utility; and any interest in land by respondents or others. Respondents are further required to prepare a "Fact Sheet" containing specified information and to distribute a copy to all purchasers in a prescribed manner. Advertisements, promotional material and sales presentations must include statements warning that investment is risky and that prospective buyers should consult a qualified professional before purchasing; and that substantial expenditures may be necessary to make lots suitable for use. Contracts must contain a seven-day right-to-cancel provision and a disclosure that refunds will be made within 30 days after the seller receives a cancellation notice. Additionally, respondents are required to provide consumers with cancellation forms; honor all valid cancellation requests; and make refunds in a timely manner. The order further requires that sales representatives receive a copy of the order; that respondents institute a surveillance program designed to reveal those who fail to comply with the provisions of the order and discontinue dealing with any person who engages in any prohibited act or practice.

*Appearances*

For the Commission: *Gary D. Kennedy.*

For the respondents: *Aninslee R. Ferdie, Ferdie & Gouz, Coral Gables, Fla.*

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respond-

\* Complaint previously published at 105 F.T.C. 7 (1985).

ents having been served with a copy of that complaint, together with a notice of contemplated relief; and

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

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

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

(1) Respondent Porter Realty, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 717 Ponce de Leon Boulevard, in the city of Coral Gables, State of Florida.

(2) Respondent Irvin Porter is an officer or former officer of respondent, Porter Realty, Inc. During all relevant times, respondent Porter has formulated, directed, and controlled the policies, acts, and practices of said corporation, and his address is the same as that of said corporation.

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

#### ORDER

As used in this order, the following definitions shall apply:

(A) *Respondents* means respondent Porter Realty, Inc., its successors and assigns, and its officers, directors, representatives and employees, or respondent Irvin Porter, or both, and any corporation, subsidiary, division, agent, or other device through which either corporate or individual respondent acts.

(B) *Seller* means one who owns and, directly or indirectly, sells, offers to sell, or advertises for sale any land.

seller in selling, offering to sell, or advertising for sale any land, but shall not include an attorney at law whose representation of another person consists solely of rendering legal services.

(D) *Land, property, or lot* means any real property unimproved by a commercial or residential building sold, offered for sale, or advertised for sale by respondents, but shall not include any real property sold or offered for sale to a purchaser pursuant to a single contract for a sum in excess of \$50,000.

(E) *Purchaser or buyer* means any individual who is a potential or actual vendee of the land offered for sale or sold by respondents.

(F) *Commission* means the Federal Trade Commission and/or its duly authorized representatives and employees.

(G) *Homesite* means any lot in which (1) potable water is available at a reasonable cost, (2) the lot is suitable for a septic tank or there is reasonable assurance that the lot can be served by a central sewage system, (3) the lot is legally accessible, and (4) the lot is free from periodic flooding.

## I

*It is ordered*, That respondent Porter Realty, Inc., a corporation, its successors and assigns, and its officers, representatives, and employees, and Irvin Porter, individually and as an officer or former officer of said corporation, directly or through any corporation, subsidiary, division, agent, or other device, in connection with the advertising, marketing, offering for sale, sale, or inducement of payments for land, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from:

A. Representing, directly or by implication, through the use of any means, that:

1. The purchase of any land has been, is, or will be a good, profitable, short-term, safe, or sound financial investment;
2. There has been, is, or will be little or no financial risk involved in the purchase of any land;
3. The resale of any land is not or will not be difficult, or such land can be or has been resold within a certain time;
4. The purchase of any land is a way to achieve financial security or self-sufficiency, to deal with inflation, or to make money;
5. The value of, or demand for, any land has increased, is increasing, or will increase;
6. Purchasing any interest in land will result in any economic benefit to the purchaser, including but not limited to a benefit result-

ing from an increase in the value of the land from its use or development for any purpose, or as a result of mineral rights, exploration, or extraction; the land's profitable resale; the provision of a hedge against inflation; or the receipt of income or reduction of expenses from growing any crop, raising any animal, or any other source;

7. Any land is suitable for use as a homesite, farm, or ranch, for personal or commercial purposes;

unless such representation is not misleading and unless, at the time such representation is made, respondents possess and rely upon competent and reliable evidence which substantiates the representation, including, at a minimum, (a) data sufficient to demonstrate that the typical owner of such land is likely to achieve the results represented, and (b) where the representation predicts or projects future occurrences, evidence that would generally be accepted by the community of experts qualified to make such representations as providing a reasonable basis for the projection.

B. Failing to maintain evidence in support of and upon which respondents rely in making any representation about the value, suitability, or use of land, including evidence substantiating the representations described in Paragraph I.A., such evidence to be retained for three years from the date of respondents' last use of such representation and to be furnished to the Commission upon request.

C. Representing, directly or by implication, through the use of any means, that any land is currently usable as a homesite, farm, or ranch, unless such land is immediately usable for such purpose without any substantial improvement or development by the purchaser.

D. Misrepresenting in any manner:

1. The cost of obtaining or availability of electric power, telephone service, potable water, sewage disposal, or any utility;

2. The past, present, planned, proposed, or potential purchase, use, or development of any interest in land by respondents or any other party;

3. The extent, location, value, nature, or significance of any actual or potential mineral right or resource or any activity related thereto.

## II

*It is further ordered,* That respondents, in connection with the advertising, marketing, offering for sale, or sale of land in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, as amended, shall:

tion as is set forth or referred to in Attachment A to this order (incorporated herein by reference), and distribute to all purchasers a copy of the Fact Sheet in the following manner:

1. If respondents invite the purchaser by mail to attend a meeting sponsored by respondents, respondents shall include the Fact Sheet with the invitation;

2. If respondents arrange to meet with the purchaser in his or her home or other location, respondents shall mail the Fact Sheet to the purchaser, allowing sufficient time for the Fact Sheet to arrive at least two days prior to the meeting;

3. If the initial contact with the purchaser is in person (for example, at a booth located in a public place), respondents shall, after identifying briefly the purpose of the contact, give the Fact Sheet to the purchaser, request that he or she read it, and provide ample uninterrupted time for it to be read completely before continuing with any sales presentation;

4. If the initial contact is by telephone or the sale is to be completed entirely through the mail, the Fact Sheet shall accompany the initial mailing to the purchaser.

B. Refrain from misrepresenting any information in the Fact Sheet.

C. Refrain from making any representation, directly or by implication, through the use of any means, about:

1. The present, planned, proposed, or potential development, improvement, or facilities of the land or of the subdivision or project in which the land is located where such representation differs in any material respect from the information contained in the Fact Sheet or the Property Report required by the Interstate Land Sales Full Disclosure Act and related regulations, 15 U.S.C. 1701 to 1720 (1982); 24 C.F.R.1700.1 *et seq.* (1983);

2. The respondents' or purchasers' rights or obligations where such representation differs in any material respect from the parties' rights or obligations as stated in the contract, the Fact Sheet, or the Property Report required by the Interstate Land Sales Full Disclosure Act and related regulations.

D. Where respondents are sellers, honor any purchaser's request to rescind the contract and recover all payments thereunder at the purchaser's option, if respondents fail to distribute a copy of the Fact Sheet to such purchaser as required by Paragraph II.A., provided that the purchaser makes such request within thirty days after receiving a copy of the Fact Sheet.

## III

*It is further ordered,* That where respondents are sellers, in connection with the advertising, marketing, offering for sale, or sale of land in or affecting commerce as commerce is defined in the Federal Trade Commission Act, as amended, they shall:

A. Disclose clearly and prominently in every written promotional material, magazine or newspaper advertisement greater than one-quarter page, and oral sales presentation the following statements:

1. THE FUTURE VALUE OF LAND IS UNCERTAIN. THESE LOTS ARE NOT BEING SOLD AS A FINANCIAL INVESTMENT. YOU SHOULD NOT COUNT ON YOUR LOT RISING IN VALUE OR YOUR BEING ABLE TO RESELL IT. DISCUSS ANY POSSIBLE PURCHASE WITH A QUALIFIED PROFESSIONAL.

2. THESE LOTS MAY BE SUITABLE FOR USE ONLY WITH SUBSTANTIAL EXPENDITURES FOR THE EXTENSION OF UTILITIES, WATER, AND OTHER NECESSITIES. THESE EXPENDITURES VARY DEPENDING ON THE LOCATION OF THE LOT AND COULD BE SO GREAT AS TO MAKE USE OF THE LAND IMPRACTICAL.

B. Disclose clearly and prominently in every radio advertisement, television advertisement, and magazine or newspaper advertisement of one-quarter page or less the following statement:

**REMEMBER—BUYING LAND MAY BE RISKY. CONSULT A QUALIFIED PROFESSIONAL BEFORE BUYING.**

C. Include clearly and prominently, immediately preceding the space provided for the purchaser's signature in each contract for the sale of land, the following statement in 12-point boldface type:

**SEVEN DAY RIGHT TO CANCEL**

**YOU HAVE THE RIGHT TO CANCEL YOUR CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME UNTIL MIDNIGHT OF THE SEVENTH DAY AFTER YOU SIGN THIS CONTRACT. SEE THE ATTACHED "RIGHT OF CANCELLATION" FOR AN EXPLANATION OF THIS RIGHT.**

**IF YOU CHOOSE TO CANCEL WITHIN THIS TIME, ANY PAYMENT YOU MADE UNDER THIS CONTRACT WILL BE REFUNDED AND ANY DOCUMENT YOU SIGNED WILL BE CANCELLED AND RETURNED WITHIN THIRTY DAYS AFTER THE SELLER RECEIVES YOUR CANCELLATION NOTICE.**

TO RECONSIDER YOUR DECISION AND CANCEL THIS CONTRACT WITH FULL REFUND, WE RECOMMEND THAT, *BEFORE SIGNING*, YOU CONSIDER YOUR NEEDS CAREFULLY AND HAVE THIS CONTRACT AND THE ATTACHED NOTICE TO BUYERS REVIEWED BY A QUALIFIED PROFESSIONAL.

D. Furnish each purchaser, at or before the time the purchaser signs a contract for the sale of land, with two copies of a form, containing only such information as is set forth or referred to in Attachment B to this order (incorporated herein by reference), captioned in 12-point boldface type, "RIGHT OF CANCELLATION," and with all other writing in 10-point boldface type.

*Provided, however,* That if respondents fail to distribute the "RIGHT OF CANCELLATION" forms as required by this paragraph, the period during which the purchaser may cancel the contract shall be extended until seven days after the purchaser receives said "RIGHT OF CANCELLATION."

*Provided further,* That during the seven-day cancellation period after a purchaser's signing of a land purchase contract, respondents shall not initiate any contact or communication, personal, telephonic, or otherwise, with such purchaser, but if respondents initiate any such contact, the period during which the purchaser may cancel the contract shall be extended until thirty days after the date of purchase.

E. Honor any signed and timely exercise of a "RIGHT OF CANCELLATION" (or its functional equivalent) by the purchaser, and within thirty business days after the receipt of such notice of cancellation, (a) refund all payments made under the contract, and (b) cancel and return any contract or other legal document executed by the purchaser.

F. Refrain from misrepresenting, soliciting, or obtaining any purchaser's assent to or otherwise imposing any condition, waiver, or limitation upon the right of a purchaser to cancel a transaction or receive a refund under any provision of this order or by any applicable statute or regulation.

#### IV

*It is further ordered,* That respondents shall, within thirty days of a request by the Commission, Southwest Sunsites, Inc., Green Valley Acres, Inc., Green Valley Acres, Inc. II, Sydney Gross, or Edwin Kritzler, furnish to such requester a list of the names and last known addresses for each purchaser of land in the subdivisions known as Southwest Sunsites, Green Valley Acres, and Green Valley Acres II who bought such land through respondents, insofar as this informa-

tion appears in files or records within respondents' custody and control.

*Provided further*, That whenever it appears that an address supplied by respondents is not a purchaser's correct present address and whenever a subsequent request for such purchaser's present address is made by the Commission, Southwest Sunsites, Inc., Green Valley Acres, Inc., Green Valley Acres, Inc. II, Sydney Gross, or Edwin Kritzler, respondents shall, within ten days of such request, make all reasonable efforts, including contacting credit bureaus, telephone and utility companies, county land records, and purchasers' relatives or representatives whose addresses are in respondents' files, to obtain the correct present address of such purchaser and furnish it to the requester.

## V

*It is further ordered*, That respondents shall:

A. Forthwith deliver by certified mail or in person, a copy of this order to all present and future sales representatives and other employees, independent brokers, advertising agencies, and others who sell or promote the sale of land or who otherwise have contact with the public on behalf of respondents in connection with the sale of land.

B. Provide each person described in Paragraph V.A. with a form, to be returned to respondents, clearly stating that person's intention to conform his or her sales practices to the requirements of this order.

C. Inform each person described in Paragraph V.A. that respondents shall not use the services of any such person, unless such person agrees to and does file notice with respondents that he or she will conform his or her practices to the requirements of this order.

D. In the event such person will not agree to so file notice with respondents and to conform his or her practices to the requirements of this order, respondents shall not use the services of such person.

E. Inform the persons described in Paragraph V.A. that respondents are obligated by this order to discontinue dealing with those persons who engage on their own in the acts or practices prohibited by this order, or who fail to adhere to the affirmative requirements of this order.

F. Institute a reasonable program of continuing surveillance adequate to reveal whether the practices of each person described in Paragraph V.A. conform to the requirements of this order, and promptly investigate and make good faith efforts to resolve any complaints about any such person received by respondents, and maintain

records of any such complaint, investigation, and disposition of the complaint for ten years from the date of the complaint, such records to be furnished to the Commission upon request.

G. Discontinue dealing with any person described in Paragraph V.A. who more than once engages on his or her own in the acts or practices prohibited by this order.

H. Forthwith deliver a copy of this order to each of respondents' subsidiaries.

I. Notify the Commission at least thirty days prior to any proposed change in the corporate respondent, such as dissolution, assignment, reorganization, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this order.

J. Within sixty days after service upon it of this order and annually for three years thereafter, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Azcuenaga did not participate.

#### ATTACHMENT A

#### FACT SHEET FOR BUYERS

FACT SHEET CONCERNING: (insert name of subdivision)  
 NAMES OF SELLER/AGENT: (insert name of seller and agent)  
 EFFECTIVE DATE OF NOTICE: (insert date of notice)

#### IMPORTANT

YOU ARE ADVISED THAT THE FUTURE VALUE OF LAND IS UNCERTAIN. THESE LOTS ARE NOT BEING SOLD AS A FINANCIAL INVESTMENT. YOU SHOULD NOT COUNT ON YOUR LOT RISING IN VALUE OR YOUR BEING ABLE TO RESELL IT. IF YOU OFFER YOUR LOT FOR SALE, YOU MAY FACE THE COMPETITION OF THE SELLER'S OWN SALES PROGRAM, WHICH MAY INVOLVE AN EXTENSIVE SALES CAMPAIGN. REAL ESTATE BROKERS ALSO MAY NOT BE INTERESTED IN SELLING YOUR LOT OR LISTING IT FOR SALE.

YOU ARE ALSO ADVISED THAT THESE LOTS MAY BE SUITABLE FOR USE ONLY WITH SUBSTANTIAL EXPENDITURES FOR THE EXTENSION OF UTILITIES, WATER, AND OTHER NECESSITIES. THESE EXPENDITURES VARY DEPENDING ON THE LOCATION OF THE LOT AND COULD BE SO GREAT AS TO MAKE USE OF THE LAND IMPRACTICAL.

AS OF THE DATE OF THIS FACT SHEET, THE SELLER HAS SOLD \_\_\_\_\_ (insert number) LOTS IN \_\_\_\_\_ (insert name of subdivision). \_\_\_\_\_ (insert number) LOTS REMAIN UNSOLD AND AVAILABLE FOR SALE.

(In connection with any land for which federal property reports are *not* provided as required by the Interstate Land Sales Full Disclosure Act and related regulations, 15

U.S.C. §§1701 to 1720 (1982), 24 C.F.R. §§1700.1 et seq. (1983), provide the following information:)

THIS FACT SHEET PROVIDES IMPORTANT INFORMATION ABOUT THE VALUE OF THESE LOTS AND THE AVAILABILITY AND ESTIMATED COSTS TO YOU OF UTILITIES, WATER, AND OTHER NECESSITIES.

#### WATER

(Provide the following information regarding water services:

(a) the method of water service to be used;

(b) if individual wells are to be used: whether the seller is responsible for installing such wells; whether evidence exists that water can be found under every lot offered for sale; the estimated depth at which water can be found in the applicable area; the estimated cost of drilling a well for household purposes and for agricultural purposes if agricultural use is feasible; and whether and under what conditions a refund or exchange will be offered in the event a productive well cannot be installed;

(c) if water is to be provided by a central system: who is responsible for constructing such a system; the estimated amount of any construction costs or any connection or use fees to be paid by the purchaser, including the estimated cost of installing water mains to either the most remote lot in the subdivision or the lot the prospective purchaser is considering purchasing; the estimated service availability date of the water system; and, if the seller is responsible for constructing the system, whether a separate account or fund has been established to finance such construction and the extent of construction completed as of the date of the Fact Sheet.)

#### SEWER SERVICE

(Provide the following information about sewer service:

(a) the method of sewage disposal to be used;

(b) if sewage disposal is to be by septic tank or other individual system: whether the seller is responsible for installing the system; the estimated cost of the system; whether a permit is required for such a system; and whether and under what conditions a refund or exchange will be offered if the purchaser is unable to install a septic tank or other on-site sewage system;

(c) if sewage disposal is to be by a central treatment and collection system: who is responsible for constructing such a system; the estimated amount of any construction costs or any connection or use fees to be paid by the purchaser; the estimated service availability date of the system; and, if the seller is responsible for constructing the system, whether a separate account or fund has been established to finance such construction and the extent of construction completed as of the date of the Fact Sheet.)

#### ELECTRIC SERVICE

(Provide the following information about electric service:

(a) whether primary service lines have been extended in front of, or adjacent to, each lot;

(b) if not, the utility company's policy and charges for extension of primary lines, and the estimated cost for extending primary service to either the most remote lot in the subdivision or the specific lot the prospective purchaser is considering purchasing.)

#### TELEPHONE SERVICE

(Provide the following information about telephone service:

(a) whether primary service lines have been extended in front of, or adjacent to, each lot;

(b) if not, the utility company's policy and charges for extension of primary lines, and the estimated cost for extending primary service to either the most remote lot in the subdivision or the specific lot the prospective purchaser is considering purchasing.)

**IMPORTANT: BEFORE SIGNING ANY DOCUMENT, OBTAIN AND READ THOROUGHLY THE CONTRACT AND THIS FACT SHEET. IT IS DESIRABLE TO HAVE A QUALIFIED PROFESSIONAL EVALUATE THE TERMS OR MERITS OF THIS PURCHASE BEFORE YOU SIGN ANYTHING.**

(In connection with any land for which federal property reports are provided as required by the Interstate Land Sales Full Disclosure Act and related regulations, 15 U.S.C. §§1701 to 1720 (1982), 24 C.F.R. §§1700.1 et seq. (1983), provide the following information:)

**IMPORTANT: BEFORE SIGNING ANY DOCUMENT, OBTAIN AND READ THOROUGHLY EACH PROPERTY REPORT AND CONTRACT. THE PROPERTY REPORT CONTAINS ADDITIONAL INFORMATION THAT YOU SHOULD KNOW AND UNDERSTAND BEFORE YOU SIGN A CONTRACT TO BUY THIS LAND. IT IS DESIRABLE TO HAVE A QUALIFIED PROFESSIONAL EVALUATE THE TERMS OR MERITS OF THIS PURCHASE BEFORE YOU SIGN ANYTHING.**

#### ATTACHMENT B

##### RIGHT OF CANCELLATION

(insert date purchaser signed the contract)

Date of Transaction

(insert lot identification information)

Lot Identification

YOU HAVE THE RIGHT TO CANCEL YOUR CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME UNTIL MIDNIGHT OF THE SEVENTH DAY AFTER YOU SIGN THE CONTRACT. YOU SHOULD USE THIS TIME TO EXAMINE WITH CARE THIS CONTRACT AND THE FACT SHEET OR PROPERTY REPORT. WE ALSO RECOMMEND THAT YOU HAVE THIS CONTRACT AND OTHER INFORMATION ABOUT THE PROPERTY REVIEWED BY A QUALIFIED PROFESSIONAL.

NO REPRESENTATIVE OF THE SELLER SHOULD CONTACT YOU IN ANY WAY DURING THIS SEVEN DAY PERIOD. IF, HOWEVER, THE SELLER OR ITS REPRESENTATIVE CONTACTS YOU DURING THIS SEVEN-DAY PERIOD, YOU MAY CANCEL THE PURCHASE BY NOTIFYING THE SELLER BY MIDNIGHT OF THE THIRTIETH DAY AFTER THE DATE OF PURCHASE.

IF YOU CANCEL WITHIN THIS TIME, ANY PAYMENTS YOU MADE UNDER THE CONTRACT WILL BE REFUNDED AND ANY DOCUMENT YOU SIGNED WILL BE CANCELLED AND RETURNED WITHIN THIRTY DAYS AFTER THE SELLER RECEIVES YOUR CANCELLATION NOTICE.

TO CANCEL THE TRANSACTION, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE, OR ANY OTHER WRITTEN NOTICE OR TELEGRAM STATING YOU ARE EXERCISING YOUR RIGHT TO CANCEL, TO (insert name of seller), AT (insert address of seller's place of business) POSTMARKED (if mailed) OR FILED FOR TRANSMISSION (if telegraphed) NOT LATER THAN MIDNIGHT OF (insert date not earlier than the seventh day following the date the purchaser signed the contract).

I (WE) HEREBY CANCEL THIS TRANSACTION. (EACH BUYER MUST SIGN THIS NOTICE.)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Buyer's signature)

\_\_\_\_\_  
(Buyer's signature)

## Complaint

## IN THE MATTER OF

## WEIN PRODUCTS, INC., ET AL.

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

*Docket C-3160, Complaint, Aug. 13, 1985—Decision, Aug. 13, 1985*

This consent order requires four California firms and two individuals engaged in the advertising, sale and distribution of "DECIMATE", an ultrasonic pest control product, among other things, to cease representing that DECIMATE or any other ultrasonic pest control product will eliminate cockroaches, rats, mice, or other such pests from a home or place of business; will eliminate them within a specified period of time; will protect a home or place of business from rodent and insect infestations or cause any area to be free of such pests; and will serve as an effective alternative to the use of conventional pest control products. The firms are also barred from making any performance or effectiveness claims for ultrasonic pest control devices unless they possess and rely upon proper substantiating evidence when making those claims.

*Appearances*

For the Commission: *Harrison J. Sheppard.*

For the respondents: *Joseph W. Price, Price, Gess & Ubell, Newport Beach, Calif.*

## 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 Wein Products, Inc., a corporation, El Mar Trading Corporation, a corporation, El Mar Corporation, a corporation; Stanley Weinberg, individually and as an officer and director of Wein Products, Inc.; and Allen Schor, individually and as an officer and director of El Mar Trading Corporation and El Mar Corporation, all of which corporate and individual respondents are hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Wein Products, Inc. is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of California, with its offices and principal place of business located at 115 W. 25th Street, Los Angeles, California.

Respondents El Mar Trading Corporation and El Mar Corporation are corporations organized, existing, and doing business under and by virtue of the laws of the State of California, with their offices and principal place of business located at 821 E. Artesia Boulevard, Carson, California.

Respondent Stanley Weinberg is an officer and director of Wein Products, Inc. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

Respondent Allen Schor is an officer and director of El Mar Trading Corporation and El Mar Corporation. He formulates, directs and controls the policies, acts and practices of said corporations, including the acts and practices hereinafter set forth. His address is the same as that of said corporations.

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

PAR. 2. Respondents manufacture, advertise, offer for sale, sell and distribute ultrasonic pest control products under the brand name of "DECIMATE". Wein Products, Inc. is the manufacturer of the DECIMATE and El Mar Trading Corporation and El Mar Corporation are the sole distributors for the product.

PAR. 3. Respondents, at all times mentioned herein, have maintained a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of the DECIMATE ultrasonic pest control product, respondents have disseminated, directly and through their marketers and distributors, various promotional materials, including suggested advertisements, sales brochures and promotional pamphlets, which contain statements respecting the performance of the DECIMATE ultrasonic pest control product. Examples of such promotional materials are attached hereto as Exhibits A through E.

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

A. DECIMATE is the safest, most effective and most economical method yet devised for the control and elimination of common household pests. . . . Now, scientific research has proven that high intensity ultrasonic sound waves are effective in ridding an area of many types of pests, including rats, roaches, mice and mosquitoes.

B. In four to six weeks your home will be free of pests, without the use of possible

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## Complaint

C. Say Goodbye to roaches, rodents, mosquitoes, crickets and other household pests without toxic chemicals.

D. Effective—eliminates pests from your home in 4–6 weeks or sooner in an open space up to 2000 sq. ft.

E. Proven effective against rats, roaches, fleas, flies, mice, spiders, and many more pests.

F. Finally! An economical, effective solution to your pest problem. Would you believe it if someone told you you could make one purchase that would keep your home or business free of pests for years to come and yet cost only pennies a day? Believe it—DECIMATE works! And without dangerous poisons or toxic chemicals.

G. . . . will have no effect on your home except to rid it of insects and rodents.

H. DECIMATE THE POWERFUL . . . ULTRASONICALLY ELIMINATES INSECTS AND RODENTS.

## PART I

*Pest Elimination Claims*

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

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

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

PAR. 7. In truth and in fact, use of the DECIMATE does not:

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

Therefore, the representations set forth above were, and are, false and misleading.

## PART II

*Claims of Ability To Control Pests*

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

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

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

PAR. 9. In truth and in fact, use of the DECIMATE:

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

Therefore, the representations set forth above were, and are, false and misleading.

## PART III

*Area Coverage Claims*

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

PAR. 10. Through the use of the statements referred to in Paragraph Five, and others not expressly set out therein, respondents have represented, and are now representing, directly or by implication, that use of the DECIMATE will effectively cover an area of up to 2000 to 3500 square feet in the home or a place of business.

cover areas of up to 2000 to 3500 square feet in the home or place of business because, among other reasons, ultrasound:

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

Therefore, the representations set forth above were, and are, false and misleading.

#### PART IV

##### *Reasonable Basis—Substantiation*

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

PAR. 12. Through the use of the statements referred to in Paragraph Five, and others not expressly set out therein, respondents have represented and are now representing, directly or by implication, that at the time of making the representations respondents possessed and relied upon a reasonable basis for those representations.

PAR. 13. In truth and in fact, at such times, respondents did not possess and rely upon a reasonable basis for making those representations.

Therefore, the representations set forth above were, and are, false and misleading.

PAR. 14. The use by respondents of the aforesaid representations as set forth in Parts I- IV, and the placement in the hands of distributors and retailers of promotional materials through which others may have conveyed those representations have had the tendency and capacity to mislead consumers and to induce the purchase of respondents' ultrasonic pest control products.

PAR. 15. The acts and practices of respondents, as herein alleged, constituted, and now constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

Complaint

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## APPENDIX A

# DECI-MATE

## ULTRASONIC PEST REPELLER

## INTRODUCTION

DECI-MATE is the safest, most effective and most economical method yet devised for the control and elimination of common household pests.

In recent years, many giants of the Food Preparation Industry have come to rely on the power of Ultrasonic Sound Waves as the solution to the enormous pest problems they face. Now, because of technological breakthroughs in design and manufacturing techniques, this method is available to everyone at affordable prices.

Until very recently, the primary way man has dealt with pests has been through the use of chemical poisons. While chemical eradication can be immediately effective, it can also be toxic to humans and animals. Now, scientific research has proven that high intensity ultra-

sonic sound waves are effective in ridding an area of many types of pests, including rats, roaches, mice and mosquitoes.

This non-toxic but slower method of eradication has no effect on humans, but in a few short weeks, will effectively raze many types of pests from a given area. The constant pulsing of DECI-MATE will force these pests to give up their source of food, water and shelter. It must be stressed that the effect is a gradual one as the creature will withstand tremendous nervous system abuse before leaving.

NOTE: Certain pests are more susceptible to ultrasound during specific stages of their life cycle. Eggs and larvae are not affected.

## HOW IT WORKS

DECI-MATE's solid state circuitry delivers a tremendous blast of power to a special ultrasonic driver that produces 150 decibels of ultrasound pressure level. The circuitry then sweeps the ultrasonic waveform from 25KHz to 65KHz. This tremendous blast of ultrasonic energy dramatically disturbs pests' eating, sleeping and reproducing patterns. Because the waveform is continuously and automatically variable, pests have no way to develop immunity to ultrasound. In four to six weeks your home will be free of pests, without the use of possible cancer-causing chemicals and pesticides. This is an ideal method for allergy sufferers or anyone who wants an environmentally safe method of eradication.

Do not expect pests to leave on first exposure but rely on the tremendous power of your DECI-MATE to produce what scientists refer to as "NEGATIVE PHONO-



TAXIS" in the pest. Pests will suffer from continual discomfort while the DECI-MATE is turned on.

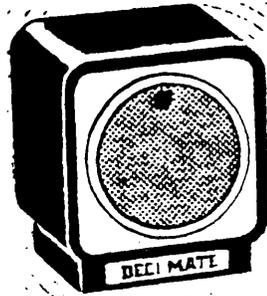
## INSTALLATION

Installation is simple. Just plug DECI-MATE into any convenient 110 volt household outlet and it begins to work immediately.

## MAINTENANCE

DECI-MATE's Solid State Circuitry is designed to give you years of maintenance-free operation at less than a penny a day. Just take care that the unit does not come into contact with water. Total power consumed by DECI-MATE is less than half of a nite lite.

## APPENDIX B



# **FINALLY!**

## **An Economical, Effective Solution To Your Pest Problem.**

Would you believe it if someone told you you could make one purchase that would keep your home or business free of pests for years to come and yet cost only pennies a day? Believe it — **DECI-MATE** works! And without dangerous poisons or toxic chemicals. The amazing **DECI-MATE** is completely safe for your family and most domestic and commercial animals. This could be the last dollar you spend on pest control!

**Proven Effective Against:**  
Rats, Roaches, Fleas, Flies, Mice,  
Spiders, and many more pests.

### **Guaranteed**

Each unit is warranted for a full year against defects and has a 30 day money-back guarantee.



# **DECI-MATE™**

ULTRASONIC PEST REPELLER

## APPENDIX C

# DECOMATE

ULTRASONIC PEST REPELLER

**SAY GOOD BYE TO ROACHES,  
RODENTS, MOSQUITOS, CRICKETS  
AND OTHER HOUSEHOLD PESTS  
WITHOUT TOXIC CHEMICALS**



**SAFE, CLEAN,  
ELECTRONICALLY  
ULTRASONICALLY**

- Safe for people, dogs and cats.
- Uses less energy than a nite lite.
- Ideal for home, apartment, hospital, store, warehouse: wherever pests can find food or shelter.
- Up to 100 times more powerful than any other comparable product on the market today. Covers up to 2,000 sq. ft.

EL MAR TRADING CORP.

Carson, CA 90746

Complaint

APPENDIX D

# DECIMATE

# DECIMATE

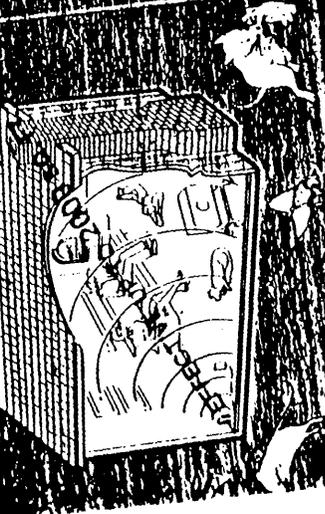
**SAFE**—Not harmful to your health, your family, or your home.

**EFFECTIVE**—Eliminates pests from your home in 4-6 weeks of sprayer, in an open space up to 2,000 sq. ft.

**ECONOMICAL**—DECIMATE™ is a one time investment that protects your home year round while saving less than half the energy of a white fly.

**DECIMATE™**—Reduces Exterminator and chemical costs when used in a long-term control program.

- Say Goodbye to:
- Fleas
  - Mosquitoes
  - Fleas
  - Mice
  - Squants & Skunks
  - Ants
  - Ticks
  - Spiders



DECIMATE™ IS THE ONLY PEST CONTROL PRODUCT THAT IS READY TO USE.

DECIMATE™ IS THE ONLY PEST CONTROL PRODUCT THAT IS READY TO USE.

DECIMATE™ IS THE ONLY PEST CONTROL PRODUCT THAT IS READY TO USE.

Ei Mear Corp. warrants to the original purchaser with valid proof of purchase total replacement of DECIMATE™ should malfunction occur within one (1) year from date of purchase. This warranty does not apply to any product damaged by accident, misuse, abuse, neglect, improper voltage, fire, flood, application or if the product was altered or repaired by anyone other than Ei Mear Corp.

### PERFORMANCE WARRANTY

If you are not completely satisfied with results at the end of 45 days, return unit and proof of purchase to your dealer for a full refund.

Ei Mear Corp., 821 E. Arroyo Blvd., Carson, California 90746

Patent Pending

**DECOMATE™**

**The POWERFUL**

**Safe Around Children and Pets**

DECOMATE™ contains no dangerous poisons and produces no harmful vapors. And because DECOMATE™ ultrasonic sound is well beyond the hearing range of people and most common household pets, it will have no effect on them, except in the case of insects and rodents.

**CAUTION**

**AUTOMATIC VARIABLE FREQUENCY**

**ULTRASONICALLY ELIMINATES INSECTS AND RODENTS**

## 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 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 respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 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 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 Wein Products, Inc., is a California corporation with its offices and principal place of business located at 115 W. 25th Street, Los Angeles, California.

Respondents El Mar Trading Corporation and El Mar Corporation are California corporations with their offices and principal place of business located at 821 E. Artesia Boulevard, Carson, California.

Respondent Stanley Weinberg is an officer and director of Wein Products, Inc.

Respondent Allen Schor is an officer and director of the El Mar corporations.

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

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

## ORDER

## I

*It is ordered,* That respondents Wein Products, Inc., a corporation, El Mar Trading Corporation, a corporation, and El Mar Corporation, a corporation, their successors and assigns, and their officers; Stanley Weinberg, individually and as an officer and director of Wein Products, Inc.; and Allen Schor, individually and as an officer and director of El Mar Trading Corporation and El Mar Corporation; and respondents' 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 "Decimate" or any other ultrasonic pest control product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that the Decimate or any other ultrasonic pest control product will:

(1) eliminate cockroaches, rats, mice or other pests from a home or place of business;

(2) eliminate rodents or insects from a home or place of business within two to six weeks, or within any other specified period of time;

(3) protect an area where said product is in use in a home or place of business from rodents or insects, or will cause an area to be free of rodents or insects;

(4) protect, from rodent or insect infestations areas up to 2000 square feet in a home or place of business, or in any other specified square footage area; or

(5) serve as an effective alternative to the use of conventional products such as sprays, powders, traps or other chemicals in providing protection from insect and rodent infestation.

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

C. Representing, directly or by implication, that any ultrasonic pest control product is effective in providing protection from insect or rodent infestation in a home or place of business unless at the time

of making such representation respondents possess and rely upon competent and reliable evidence which either directly relates to such home or place of business use conditions, or which can properly be applied to such conditions. Evidence in the form of tests, experiments, analyses, research studies, or other evaluations shall be competent and reliable only if they are conducted in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant professions or sciences to yield accurate, reliable, and reproducible results.

## II

*It is further ordered,* That for a period of three (3) years after the last date of dissemination of any representation concerning the performance characteristics or efficacy of any product covered by this order, respondents shall maintain and upon request make available to the Commission for inspection and copying copies of all materials relied upon to substantiate the representation, and copies of all documents in respondents' possession that contradict, qualify, or otherwise call into question said representation, including complaints from consumers.

## III

*It is further ordered,* That respondents shall for a period of three (3) years distribute, or cause to be distributed, a copy of this order to all present and future managerial employees, distributors, independent sales agents, and direct purchasers.

## IV

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

A. Corporate respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents that may affect compliance obligations arising out of this order, such as dissolution, assignment of the ultrasonic pest control business, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

B. Respondent Allen Schor shall promptly notify the Commission of the discontinuance of his present business or employment in connection with the marketing of ultrasonic pest control products and of his affiliation with any new business or employment in the ultrasonic pest control business, stating the nature of the business or employ-

ment in which he is newly engaged, as well as a description of his duties and responsibilities in connection with such new ultrasonic pest control business or employment and the address of such new business or employment.

## V

*It is further ordered,* That respondents 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  
LOUISIANA STATE BOARD OF DENTISTRY

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

*Docket 9188. Complaint, Oct. 29, 1984—Decision, Aug. 26, 1985*

This consent order requires the Louisiana State Board of Dentistry (the Board), the sole licensing authority for dentists in Louisiana, among other things, to cease adopting or maintaining any rule, regulation, policy or course of conduct that would tend to prevent or hinder the advertising or publishing of pricing discounts for dental products and services. The Board is also barred from prohibiting any dentist or dental organization from advertising the availability of a discounted price; taking or threatening to take disciplinary action against advertisers of such prices; declaring the publication of discounted prices to be illegal, unethical, unprofessional or otherwise improper; and inducing or encouraging any individual or organization to take any of the actions prohibited by the order. The Board is additionally required to distribute a copy of the order and an explanatory announcement to all dentists licensed to practice in Louisiana; and provide such material to all those applying for a license for a period of two years.

*Appearances*

For the Commission: *Elizabeth R. Hilder and Oscar M. Voss.*

For the respondent: *John Gallagher, Jr. and Guy Wootan, Wootan, Hennen, Pelayo & Gallagher, New Orleans, Louisiana and Phillip A. Wittmann and Stephen G. Bullock, Stone, Pigman, Walther, Wittmann & Hutchinson, New Orleans, Louisiana.*

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, having reason to believe that the named respondent 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 Louisiana State Board of Dentistry (hereinafter "the Board") is organized, exists, and transacts business under the laws of the State of Louisiana (Louisiana Revised Statutes Section 37:751 *et seq.*), with its principal office at Ten-O-One Howard Avenue, Suite

4308, New Orleans, Louisiana. The Board is subject to the Commission's jurisdiction pursuant to Section 5 of the Federal Trade Commission Act.

2. The Board is composed of nine dentists and one dental hygienist, as provided in La. Rev. Stat. Section 37:753.

3. While serving their membership terms, dentist members of the Board may, and do, continue to engage in the business of providing dental care services for a fee. Compensation for serving on the Board is limited to fifty dollars per day and necessary traveling expenses for each day actually engaged in the duties of Board membership, and is paid out of fees collected by the Board.

4. The licensed dentists in each of the eight Louisiana congressional districts select from among themselves nominees for appointment to the Board. The Governor of Louisiana appoints from the nominees of each congressional district one dentist to represent each district. The Governor appoints a ninth dentist as an at large member.

5. The Board is the sole licensing authority for dentists in Louisiana. It is unlawful for individuals to practice or to offer to practice dentistry in Louisiana unless they hold a current license to practice issued by the Board.

6. The Board is authorized by Louisiana law, La. Rev. Stat. Section 37:776(15), to take disciplinary action against any licensee who engages in unprofessional conduct as defined in La. Rev. Stat. Section 37:775. Disciplinary action by the Board may include the suspension or revocation of a license, or the imposition of a fine, probation, or other limitations or restrictions on a licensee.

7. The dental hygienist serving on the Board may vote only on matters pertaining to the profession of dental hygiene. Board actions pertaining to dentists in the State of Louisiana are decided by nine dentists, each of whose principal occupation is the private practice of dentistry.

#### *Trade and Commerce*

8. Except to the extent that competition has been restrained as alleged below, and depending on their specialties and geographic location, dentists in Louisiana compete with each other and with dentists serving on the Board.

9. There are more than 1800 dentists practicing in Louisiana. More than \$200 million is spent on dental care annually in Louisiana by Louisiana residents, governmental entities, and private third-party payors.

10. In the conduct of their businesses, dentists in Louisiana receive and treat patients from other states, receive substantial sums of

from private insurers for rendering dental 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 the interstate activities of dentists in Louisiana and third parties who pay for dental services, 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 Regulation of Dental Advertising*

11. The State of Louisiana does not ban truthful price advertising by dentists.

a. In 1940, the Louisiana legislature enacted La. Rev. Stat. Section 37:775 defining unprofessional conduct by dentists, and included provisions prohibiting the advertising of prices for dental services and any other advertising by dentists other than publication of a professional card. La. Rev. Stat. Section 37:775(8) and (14).

b. In February 1978, following the United States Supreme Court's decision in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), the Louisiana Attorney General issued an opinion letter declaring that the prohibition on price advertising by dentists "denies the public of its right to receive vital information guaranteed by the free speech provisions of the First Amendment to the United States Constitution," and that "any attempt to enforce [La. Rev. Stat. Sections] 37:775 and 776 . . . against truthful and informative advertising would be subject to constitutional attack and, in our opinion, [would be] in bad faith."

c. In December 1978, the United States District Court for the Eastern District of Louisiana held that truthful newspaper advertising concerning the availability or cost of routine dental services is commercial speech protected by the First Amendment, and that La. Rev. Stat. Section 37:775(8) and (14), and La. Rev. Stat. Section 37:776(12) [now Section 37:776(15)], are unconstitutional to the extent that they restrict such advertising. *Dewey v. Louisiana State Board of Dentistry*, 491 F.Supp. 132 (1978), *aff'd per curiam*, 625 F.2d 499 (5th Cir. 1980).

12. The statutes of Louisiana now in effect do not prohibit dentists from offering or truthfully advertising discounts from their usual fees. The State of Louisiana has no established or articulated policy of restricting dentists from offering or advertising discounts from their usual fees.

*Board Conduct*

13. The Board has restrained competition among dentists in Louisiana 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 dentists of truthful information about the prices of their services. In particular, since at least February 1982, respondent has combined or conspired to:

a. Prohibit licensed dentists from truthfully advertising discounts from their usual fees; and

b. Coerce individual dentists into abandoning their efforts to advertise truthful information about discounts from their usual fees.

14. The Board has engaged in various acts or practices in furtherance of this combination or conspiracy, including, among other things, the following:

a. The Board, since at least February 1982, has prohibited advertising by dentists of discounts from their usual fees, without regard to the truth or falsity of the advertising, on the purported ground that such advertising violates a Louisiana statutory provision that declares the advertisement of free dental services as an inducement to secure dental patronage to be unprofessional conduct (La. Rev. Stat. Section 37:775(7));

b. The Board has intimidated dentists who advertised discounts from their usual fees by sending them letters signed by the Board's attorney stating that such advertising is unprofessional conduct and therefore grounds for suspension of a dental license under La. Rev. Stat. Section 37:776(15), and demanding that they file a written statement with the Board promising to cease advertising discounts;

c. The Board has coerced dentists who advertised discounts from their usual fees into ceasing such advertising, including a group of dentists who advertised in August 1983, a "Back to School Special" offering cleaning, examination, fluoride treatment, and bitewing x-rays for a specified price;

d. In August 1983, the Board brought disciplinary proceedings under La. Rev. Stat. Section 37:776(15) against, and imposed a fine and a public reprimand on, a dentist for advertising a discount from his usual fees on the ground that his advertising of a discount constituted unprofessional conduct; and

e. The Board has taken the above actions with knowledge that restriction by the Board of truthful advertising of the cost and availability of routine dental services violates the United States Constitution, and, in particular, that use of La. Rev. Stat. Section 37:776(15)

*Louisiana State Board of Dentistry*, 491 F.Supp. 132 (1978), *aff'd per curiam*, 625 F.2d 499 (5th Cir. 1980).

#### *Effects*

15. The effects of the combination or conspiracy described above are and have been to restrain competition unreasonably and injure consumers in the following ways, among others:

a. Price competition among dentists for patients is being unreasonably restrained;

b. Consumers of dental care services are being deprived of the benefits of vigorous price competition among dentists; some consumers have paid higher prices for dental care and some consumers have delayed or foregone needed dental care;

c. Dentists are being prevented from disseminating truthful information about their fees, and restrained in their ability to make dental care services fully and readily available to consumers needing such services, including, for example, services provided through innovative dental care financing arrangements that involve discounting of fees; and

d. Consumers are being deprived of truthful information about dentists' fees, such as information about dentists' offering of discounts to the elderly or others.

#### *Violation*

16. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition or unfair or deceptive acts or practices that violate Section 5 of the Federal Trade Commission Act. This combination or conspiracy is continuing and will continue unless the Commission enters appropriate relief against the Board.

#### DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; 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 allegations set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission

by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

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

1. Respondent Louisiana State Board of Dentistry is organized, exists, and transacts business under the laws of the State of Louisiana, with its principal office at Ten-O-One Howard Avenue, Suite 4308, in the City of New Orleans, State of Louisiana.

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.

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

A. *Board* shall mean the Louisiana State Board of Dentistry, its officers, committees, representatives, agents, employees, and successors.

B. *Discounted price* shall mean a price offered or charged by a person or organization for any dental product or service that is less than the price the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a *discounted price*.

C. *Price advertising* shall mean advertising or publishing information about the price of any dental product or service. It shall not include express offers to provide a product or service free of charge.

D. *Disciplinary action* shall mean:

1. the revocation or suspension of, or refusal to grant, a license to practice dentistry in Louisiana, or the imposition of a reprimand, fine, probation, or other penalty or condition; or

## II.

*It is ordered,* That the Board, in or in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall cease and desist from, directly or indirectly, or through any device:

A. Prohibiting, restricting, impeding, or discouraging any person or organization from advertising the availability of, offering, or publishing a discounted price, or otherwise engaging in price advertising. Such conduct includes, but is not limited to:

1. adopting or maintaining any rule, regulation, policy, or course of conduct that prohibits or seeks to prohibit any person or organization from advertising the availability of, offering, or publishing discounted prices;

2. taking or threatening to take any disciplinary action against any person or organization for advertising the availability of, offering, or publishing discounted prices; and

3. declaring it to be an illegal, unethical, unprofessional, or otherwise improper practice for any person or organization to advertise the availability of, offer, or publish discounted prices; and

B. Inducing, urging, or encouraging any dentist, group of dentists, or dental association to take any of the actions prohibited by this Part.

*Provided,* That nothing in this order shall prevent the Board from adopting and enforcing reasonable rules, including reasonable affirmative disclosure requirements, or taking disciplinary or other action, to prevent advertising that the Board reasonably believes to be fraudulent, false, deceptive, or misleading within the meaning of Louisiana Revised Statutes Sections 37:775(3), 37:776(12), 37:776(16) or any Louisiana statutory provision governing dental advertising enacted subsequent to the date this Order becomes final, as limited by the First and Fourteenth Amendments to the United States Constitution.

In particular, nothing in this order shall prevent the Board from finding to be fraudulent, false, deceptive, or misleading:

a. advertising by a dentist in which a price is represented to be a discounted price when in fact it is the customary or usual price charged by that dentist;

b. advertising by a dentist of a discounted price for a dental service and failing to provide the same quality and components of service at the discounted price that are normally provided at the regular, non-discounted price for that service; and

c. a dentist's failure to disclose the expiration date of an advertised

discount offer if the dentist fails to make the discounted price available for a reasonable period of time from publication of the offer.

### III.

*It is further ordered,* That this order shall not be construed to prevent the Board from petitioning for or seeking legislation concerning the practice of dentistry as defined in Louisiana Revised Statutes Sections 37:751 *et seq.*

### IV.

*It is further ordered,* That the Board shall:

A. Distribute by mail an announcement in the form shown in Appendix A, and a copy of this order:

1. to each person licensed to practice dentistry in Louisiana, and to each person who has at the time this order becomes final a pending application for such a license, within sixty (60) days after this order becomes final; and

2. for a period of two (2) years after this order becomes final, to each person who hereafter applies for a license to practice dentistry in Louisiana, within sixty (60) days after he or she applies for the license;

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

C. For a period of five (5) years after this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Part II of this order, including records of rulemaking and enforcement proceedings, and written communications, and any summaries of oral communications, to or from the Board regarding the advertising of the availability of, or the offering or publishing of, discounted prices, or other price advertising.

D. In addition to the report required by Part IV.B., at such times as the Commission may by written notice to the Board reasonably require, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which the Board has complied and is complying with this order; and

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

ana that may affect compliance obligations arising out of this order, such as the complete or partial elimination of that authority, the complete or partial assumption of that authority by another governmental entity, or the dissolution of the Board.

APPENDIX A

[Date]

ANNOUNCEMENT

As you may be aware, the Louisiana State Board of Dentistry 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 dentists from advertising the availability of discounts from their usual fees, or otherwise restrict price advertising for dental services or products, except as provided below. In particular, with respect to advertising of discounts, the Board may not (1) adopt rules, regulations, or policies prohibiting the advertising of discounted prices for dental care, (2) take disciplinary action (such as the imposition of a fine, or the suspension or revocation of a dental license) or threaten disciplinary action against dentists who so advertise, or (3) declare it to be illegal or unethical for dentists to so advertise, except as provided below. The Board is also prohibited from encouraging any dentist or dental 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 dentists for, (1) advertising free dental services or examinations as an inducement to secure dental patronage (which is expressly prohibited by Louisiana law), or (2) advertising that is fraudulent, false, deceptive, or misleading. Furthermore, the order does not affect the Board's authority to adopt and enforce reasonable affirmative disclosure requirements to prevent advertising that the Board reasonably believes is fraudulent, false, deceptive, or misleading.

In particular, the order provides that the Board may find to be fraudulent, false, deceptive, or misleading:

- a. advertising by a dentist in which a price is represented to be a discounted price when in fact it is the customary or usual price charged by that dentist;
- b. advertising by a dentist of a discounted price for a dental service and failing to provide the same quality and components of service at the discounted price that are normally provided at the regular, nondiscounted price for that service; and
- c. a dentist's failure to disclose the expiration date of an advertised discount offer if the dentist fails to make the discounted price available for a reasonable period of time from publication of the offer.

For more specific information, you should refer to the attached FTC order.

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President  
Louisiana State Board of Dentistry

Complaint

106 F.T.C.

## IN THE MATTER OF

## KAISER ALUMINUM &amp; CHEMICAL CORPORATION

DISMISSAL ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT*Docket 9080. Complaint, April 27, 1976—Dismissal Order, Aug. 27, 1985*

The Federal Trade Commission has dismissed a complaint that charged Kaiser Aluminum & Chemical Corp. substantially lessened competition in the basic refractories industry by acquiring two basic refractories plants from International Mineral and Chemical Corp.'s Lavino Division. After the Commission placed a consent agreement with respondent that would settle the charges on the public record for comment (50 FR 19697), Kaiser sold all of its basic refractories plants to other companies and indicated that it has no indication of remaining in the business. As a result, the Commission has determined that it is in the public interest to reject the consent agreement and dismiss the complaint.

## COMPLAINT

The Federal Trade Commission having reason to believe that Kaiser Aluminum and Chemical Corporation, a corporation subject to the jurisdiction of the Commission, has acquired the two operating basic refractory plants, inventory and related assets of the Lavino division of International Minerals and Chemical Corporation, a corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and/or 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 charging as follows:

## I. DEFINITIONS

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

(a) *Basic refractories* are non-metallic insulating materials composed predominately of magnesia, magnesite, dolomite, or chromite or chrome ore, or a combination thereof.

(b) *Basic refractory bricks and shapes* are non-metallic insulating materials composed predominately of magnesia, magnesite, dolomite, or chromite or chrome ore, or a combination thereof and which are formed during manufacture into bricks and other special shapes.

(c) *Basic refractory specialties* are non-metallic insulating materials composed predominately of magnesia, magnesite, dolomite, or chromite or chrome ore, or a combination thereof and which are sold in a "hulk" or non-shaped form

## II. KAISER ALUMINUM & CHEMICAL CORPORATION

1. Respondent Kaiser Aluminum and Chemical Corporation (hereinafter "Kaiser") is now and was at the time of the acquisition hereinafter described a Delaware corporation with its principal office and place of business at 300 Lakeside Drive, Oakland, California.

2. Kaiser is a fully-integrated aluminum producer and a highly-diversified industrial corporation engaged in a number of enterprises including, but not limited to, the production of agricultural chemicals, industrial chemicals, refractories materials and strontium products. In addition, Kaiser is engaged in commodities trading and owns fifty percent of Kaiser Aetna, a large real estate development firm. Kaiser also is engaged in mining or manufacturing in more than a dozen other countries. Kaiser Steel Corporation, an affiliated corporation of Kaiser, is a major consumer of basic refractories and is supplied primarily by Kaiser.

3. In 1973, Kaiser and its subsidiaries had total sales and revenues of \$1.28 billion, net income before extraordinary items of \$66.54 million, and total assets of \$1.81 billion. Kaiser was ranked by Fortune magazine as the 133rd largest in sales and 67th largest in assets in 1973 among the nation's industrial corporations.

4. Kaiser, prior to the acquisition, operated seven refractory plants in the United States and, in whole or in part, owned six additional plants located in as many other countries.

5. Prior to and since the acquisition Kaiser has been a leading domestic supplier of refractories to the steel, cement and glass industries.

6. In 1973, Kaiser had total domestic refractory shipments of \$65.8 million, representing 8.4% of the total United States shipments of refractory products.

7. In 1973, Kaiser had total domestic basic refractory sales of \$38.5 million, representing 15.7% of the total United States sales of basic refractory products and ranked number two among the nation's basic refractory producers.

8. In 1973, Kaiser had total domestic basic refractory bricks and shapes sales of \$21.4 million, representing 12.2% of the total United States basic refractory bricks and shapes sales and ranked number five among the nation's basic refractory bricks and shapes producers.

9. In 1973, Kaiser had total basic refractory specialties sales of \$17.1 million, representing 24.4% of the total United States basic refractory specialties sales and ranked number one among the nation's basic refractory specialties producers.

10. At all times relevant herein, Kaiser sold and shipped the relevant products throughout the United States and was and is now

engaged in commerce as "commerce" is defined in the amended Clayton Act and in the amended Federal Trade Commission Act.

### III. THE ACQUISITION

11. On February 28, 1974, Kaiser, at a cost of \$16.9 million, acquired two basic refractory plants and related assets located at Plymouth Meeting, Pennsylvania and Gary, Indiana. These facilities comprised the Lavino Division of International Minerals and Chemical Corporation (hereinafter "Lavino").

### IV. LAVINO

12. In 1973 Lavino had refractory shipments of \$27.7 million representing 3.7% of the total United States shipments of refractory products.

13. In 1973 Lavino had basic refractory sales of \$27.7 million representing 11.3% of the total United States basic refractories sales and ranked number three among the nation's basic refractory producers.

14. In 1973 Lavino had basic refractory bricks and shapes sales of \$25.5 million representing 14.5% of the total United States bricks and shapes sales and ranked number two among the nation's basic refractory bricks and shapes producers.

15. In 1973, Lavino had basic refractory specialties sales of \$2.2 million representing 3.1% of the total United States basic refractory specialties sales and ranked number five among the nation's basic refractory specialty producers.

16. At all times relevant herein Lavino sold and shipped the relevant products throughout the United States and was engaged in commerce as "commerce" is defined in the amended Clayton Act and in the amended Federal Trade Commission Act.

### V. TRADE AND COMMERCE

17. The relevant geographic market is the United States as a whole.

18. The relevant product market is the manufacture and sale of basic refractories. The relevant product submarkets are:

- (a) manufacture and sale of basic refractory bricks and shapes and
- (b) manufacture and sale of basic refractory specialties.

#### A. Basic Refractories Market

19. Trade and commerce in the sale of basic refractories in the United States is substantial, with 1973 sales amounting to \$245.8 million.

20. In 1973, prior to the acquisition, concentration in the manufac-

ture and sale of basic refractories was high with the top four firms accounting for 57% of sales and the top eight accounting for 86%.

21. By virtue of the acquisition of Lavino, Kaiser controlled facilities which accounted for 26.9% of the 1973 sales of basic refractories and became *pro forma* the leading manufacturer of basic refractories in that year.

22. On a *pro forma* basis the acquisition of Lavino by Kaiser increased the 1973 four-firm concentration from 57% to 66% and eight-firm concentration from 86% to 90% in sales of basic refractories.

23. There have been no new entrants into the manufacture and sale of basic refractories since 1962.

24. Barriers to entry into the manufacture and sale of basic refractories are high and are increasing.

#### B. Basic Refractory Bricks and Shapes

25. Trade and commerce in the sale of basic refractory bricks and shapes in the United States is substantial, with 1973 sales amounting to \$175.7 million.

26. In 1973, prior to the acquisition, concentration in the manufacture and sale of basic refractory bricks and shapes was high with the top four firms accounting for 66% of sales and the top eight accounting for 94%.

27. By virtue of the acquisition of Lavino, Kaiser controlled facilities which account for 26.7% of the 1973 sales of basic refractory bricks and shapes and became *pro forma* the leading manufacturer of basic refractory bricks and shapes in that year.

28. On a *pro forma* basis the acquisition of Lavino by Kaiser increased the 1973 four-firm concentration from 66% to 79% and eight-firm concentration from 94% to 96% in sales of basic refractory bricks and shapes.

29. There have been no new entrants into the manufacture and sale of basic refractory bricks and shapes since 1962.

30. Barriers to entry into the manufacture and sale of basic refractory bricks and shapes are high and are increasing.

#### C. Basic Refractory Specialties

31. Trade and commerce in the sale of basic refractory specialties in the United States is substantial, with 1973 sales amounting to \$70.1 million.

32. In 1973, prior to the acquisition, concentration in the manufacture and sale of basic refractory specialties was high with the top four firms accounting for 80% of sales and the top eight accounting for 92%.

33. By virtue of the acquisition of Lavino, Kaiser controlled facili-

ties which accounted for 27.5% of the 1973 sales of basic refractory specialties and strengthened its position as the largest manufacturer of basic refractory specialties in that year.

34. On a *pro forma* basis the acquisition of Lavino by Kaiser increased the 1973 four-firm concentration from 80% to 83% and eight-firm concentration from 92% to 94% in sales of basic refractory specialties.

35. There have been no new entrants into the manufacture and sale of basic refractory specialties since 1962.

36. Barriers to entry into the manufacture and sale of basic refractory specialties are high and are increasing.

#### VI. EFFECTS OF THE ACQUISITION

37. The effects of the acquisition set forth in Paragraph 11 may be substantially to lessen competition or tend to create a monopoly in the relevant markets, in violation of Section 7 of the Clayton Act, *as amended*, and the acquisition constitutes an unfair method of competition and unfair act and practice within the meaning of Section 5 of the Federal Trade Commission Act, *as amended*, in the following ways among others:

(a) eliminating substantial competition between Kaiser and Lavino and among Kaiser, Lavino and other competitors in the relevant markets;

(b) significantly increasing the already high levels of concentration in the relevant markets;

(c) significantly raising the already high barriers to entry into the relevant markets;

(d) increasing and threatening to still further increase concentration in the relevant markets through additional mergers by other competitors; and

(e) strengthening the position of Kaiser in the relevant markets.

#### VII. VIOLATIONS CHARGED

38. The acquisition set forth in Paragraph 11 constitutes a violation of Section 7 of the Clayton Act, *as amended*, (15 U.S.C. 18).

39. The acquisition set forth in Paragraph 11 constitutes a violation of Section 5 of the Federal Trade Commission Act, *as amended*, (15 U.S.C. 45).

FINAL ORDER RETURNING MATTER TO ADJUDICATION  
AND DISMISSING COMPLAINT

On September 25, 1984, this matter was withdrawn from adjudication for consideration by the Commission of a proposed consent agreement. The Commission accepted the proposed consent and placed it on the public record on May 8, 1985, for comment pursuant to Section 3.25(f) of the Commission's Rules of Practice and Procedures.

Having considered the views of the parties to the consent and the comment received from the public, the Commission has determined that the public interest would best be served by rejecting the consent agreement and dismissing the complaint. In this instance, the respondent has transferred control of all of its operating refractories facilities in the United States to other entities and has stated that it has no intention of engaging in the refractories business. Such being the case, the public interest no longer requires that respondent be subject to a Commission order. Therefore

*It is ordered,* That this matter be returned to adjudication and

*It is further ordered,* That the complaint issued in the matter be, and it hereby is, dismissed.

IN THE MATTER OF  
MONTANA BOARD OF OPTOMETRISTS

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

*Docket C-3161. Complaint, Aug. 29, 1985—Decision, Aug. 29, 1985*

This consent order requires the Montana Board of Optometrists (the Board), among other things, to cease adopting or maintaining any rule, regulation, policy or course of conduct that has the effect of prohibiting, restricting, or discouraging any qualified person from advertising price-related terms or claims of professional superiority; and declaring such advertising to be illegal, unethical, or unprofessional. The Board is barred from taking or threatening disciplinary action against any individual or organization that advertises price-related terms and claims of professional superiority; and from inducing or assisting others to take any of the prohibited actions. The Board is additionally required to distribute a copy of the order and an explanatory announcement to all optometrists licensed to practice in Montana; and provide such material to all those applying for a license for a period of five years.

*Appearances*

For the Commission: *Cynthia Wicker.*

For the respondent: *Geoffrey Brazier, Montana State Department of Commerce, Helena, Mont.*

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 Montana Board of Optometrists ("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 Montana Board of Optometrists is organized, exists and transacts business under the laws of the State of Montana, with its principal office and place of business located at The Department of Commerce, 1424 9th Avenue, Helena, Montana. Mont. Code Ann. Titles 2 and 37. The Board is subject to the Commission's jurisdiction

2. The Board is composed of four members: three optometrists and a public member. Board members are appointed to four year terms by the Governor of the State of Montana, with the consent of the state senate. Mont. Code Ann. § 2-15-1846.

3. When making appointments to the Board, the governor may consider the recommendations of private associations. Mont. Code Ann. § 37-1-132.

4. The governor often appoints to the Board optometrists who are members of the Montana Optometric Association. All of the current Board members who are optometrists are members of the Montana Optometric Association.

5. The Board is the sole licensing authority for optometrists. It is unlawful to practice optometry in Montana unless licensed by the Board. Mont. Code Ann. § 37-10-301(1)(a).

6. The Board is responsible for establishing standards and rules governing the licensing, certification, registration, and conduct of optometrists in the state, so long as such standards and rules are consistent with state law. Mont. Code Ann. §§ 37-1-131(1) and 37-10-202(1). The Board is further authorized to discipline persons who violate its rules or the state laws relating to the practice of optometry. These disciplinary actions include, but are not limited to, revocation, suspension, limitation, or restriction of a license to practice optometry in Montana. Mont. Code Ann. § 37-1-136.

7. While serving their membership terms, members of the Board who are optometrists must engage in the "exclusive practice" of optometry in Montana. Mont. Code Ann. § 2-15-1846. Board members spend a relatively small percentage of their time on Board matters, and compensation is limited to \$50.00 per day of actual service. Mont. Code Ann. § 37-1-133.

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

9. In the conduct of their business, optometrists in Montana 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 optometric 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 FAVORING TRUTHFUL, NONDECEPTIVE  
ADVERTISING BY OPTOMETRISTS

10. Since at least 1981 the State of Montana has had a clearly articulated policy protecting the dissemination of truthful, nondeceptive, information about optometric goods and services.

11. The Montana State Law relating to advertising by optometrists is contained in Title 37, Chapter 10 of the Montana State Code. Prior to 1981 Montana banned the advertising of optometric goods and services "at a price or stated terms of a price or as being free." Mont. Code Ann. § 37-10-301(1)(k). In 1980 the Office of the Legislative Auditor, acting under the dictates of the Montana Sunset Law of 1977, reviewed the Montana Board of Optometrists. At the conclusion of that review, the Legislative Auditor reported to the Legislative Audit Committee of the Montana State Legislature that the above statute appeared to be unconstitutional.

12. The Montana Legislative Audit Committee subsequently recommended the introduction of a bill repealing Section 37-10-301(1)(k). That bill passed, and became effective April 29, 1981.

13. The statute states that "(t)his chapter does not prohibit legitimate or truthful advertising by a registered optometrist." Mont. Code Ann. § 37-10-311(i). Title 37, Chapter 10's restrictions on optometric advertising are now limited to "advertis[ements] in which ambiguous or misleading statements are made," and "the use in advertising of the expression 'eye specialist' or 'specialist in eyes' in connection with the name of an optometrist." Mont. Code Ann. § 37-10-311(h) & (i).

14. State law limits the Board's rulemaking authority to rules "not inconsistent with the provisions of [Chapter 10]." Mont. Code Ann. § 37-10-202.

BOARD CONDUCT

15. In direct violation of the state policy protecting truthful advertising the Board has combined or conspired with its members or others, or acted as a combination or conspiracy of its members or others, to unreasonably restrain trade by preventing the dissemination of truthful, nondeceptive, information about ophthalmic goods and services. In furtherance of this combination or conspiracy the Board has adopted:

A. Rule 8.36.407(2), which declares that it constitutes unprofessional conduct to advertise:

1. Free eye examinations;
2. Any stipulated amount of money as down payment, or that no down payment is required;

4. The terms "credit," or "installment," or any "similar word."

B. Rule 8.36.406(f), which bans an optometrist from making claims of professional superiority or of having equipment others cannot obtain.

16. The Board has furthered this combination or conspiracy by using these rules, and other means, to coerce individuals to abandon their efforts to disseminate truthful information about the nature and quality of ophthalmic goods and services.

17. In addition, the Board issued at least two cease and desist orders, in which it cited a Board rule forbidding optometric advertisements containing the terms "Contact Lens Clinic" and "Vision Center" after that rule had been repealed.

18. By these and other means the Board has continued its course of conduct, despite the fact that in 1979 the Montana Attorney General advised it that the above described regulations violate state and federal antitrust laws, and recommended that the Board repeal the regulations.

#### CONSUMER AND COMPETITIVE INJURY

19. 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 ophthalmic goods and services are deprived of the benefits of vigorous competition;

B. Consumers and potential consumers are deprived of truthful information about free eye examinations or consultations;

C. Consumers and potential consumers are deprived of truthful information about credit and payment terms for ophthalmic goods and services;

D. Consumers and potential consumers are deprived of truthful information about differences in skills, training and experience among optometrists, and the services they provide;

E. Optometrists are prevented from disseminating truthful information about their fees, credit and payment terms;

F. Optometrists are prevented from disseminating truthful information about their skills, training and experience, and the services they provide; and

G. Optometrists in general are unreasonably restrained from competing in the market for optometric goods and services, and new optometrists in particular are confronted by artificial barriers to entry into the market.

20. 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, and having duly considered the comments filed thereafter by interested parties pursuant to Section 2.34 of its Rules, the Commission hereby issues its complaint, 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 Montana, with its principal office and place of business located at Department of Commerce, 1424 9th Avenue, Helena, Montana.

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 Montana Board of Optometrists, its succes-

B. *Disciplinary action* shall mean:

1. The refusal to grant, or the restriction, revocation or suspension of, a license to practice optometry in Montana; the refusal to admit a person to examination for a license to practice optometry; 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.

C. *Price-related terms* are terms that refer to:

1. Free eye examinations;

2. Down payments, or any stipulated amount of money as a down payment, or any indication that no down payment is required;

3. Periodic payments, or any stipulated amount of money as periodic payments;

4. Credit, installment, or any other term relating to deferred payments.

D. *Professional superiority* shall mean any truthful claim of specialization, skill, equipment, treatment, training, experience or service offered, or any other information that would tend to distinguish an advertiser's practice from other ophthalmic practices.

I.

*It is ordered*, That the Montana Board of Optometrists, its officers, agents, committees, representatives, employees, successors, and assigns, 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 or conditions of sale for any ophthalmic 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 price-related terms or claims of professional superiority;

2. taking or threatening to take any disciplinary action against any person or organization for advertising price-related terms or claims of professional superiority;

3. declaring it to be an illegal, unethical, unprofessional, or otherwise improper practice for any person or organization to advertise price-related terms or claims of professional superiority; and

B. Inducing, urging, encouraging or assisting any optometrist or any optometric association, group of optometrists, 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: (1) advertising that uses the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist; or (2) advertising in a manner that the Board reasonably believes is ambiguous or misleading within the meaning of Mont. Code Ann. § 37-10-311(2)(h) & (i).

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

## 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. to each person presently licensed to practice optometry in Montana, and to each person who has on the date of service of this order a pending application for such a license, within thirty (30) days after the date of service of this order; and

2. for a period of five (5) years after the date of service of this order, to each person who hereafter applies for a license to practice optometry in Montana, within thirty (30) days after such person applies for the license;

B. For a period of five (5) years after the date of service of this order, 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 ophthalmic 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 optometry in Mon-

such as the complete or partial elimination of that authority, the complete or partial assumption of that authority by another governmental entity, or the dissolution of the Board;

D. Within sixty (60) days after the date of service of this order, 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 Montana Board of Optometrists 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 optometrists from truthfully advertising their services. The Board may not (1) adopt or maintain rules, regulations, or policies that prohibit truthful advertising of price-related terms and claims of professional superiority with respect to the sale of optometric 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 optometrist 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 ambiguous or misleading.

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.

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[Title]

Montana Board of Optometrists

## IN THE MATTER OF

## ORANGE COUNTY BOARD OF REALTORS, INC., ET AL.

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

*Docket C-3162. Complaint, Sept. 9, 1985—Decision, Sept. 9, 1985*

This consent order requires, among other things, that an Orange County, N.Y. Board of Realtors and its wholly-owned subsidiary, which provide a multiple listing service for its member real estate brokers, cease restricting or interfering with any broker's offering or acceptance of an exclusive agency listing or with the publishing of such listing on the multiple listing service. The companies are further required to publish exclusive agency listings in a non-discriminatory manner, and to timely amend their by-laws, rules and regulations, and other materials to conform to the provisions of the order.

*Appearances*

For the Commission: *L. Barry Costilo, Jacques Feuillan and Alan J. Friedman.*

For the respondents: *James R. Loeb, Rider, Drake, Summers & Loeb, Newburgh, New York.*

## 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 respondents Orange County Board of Realtors, Inc., and Multiple Listing Service of the Orange County Board of Realtors, Inc., have violated and are violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

## 1. As used in this complaint:

a. *Member or member firm* shall mean any real estate brokerage firm that is entitled to participate in the multiple listing service offered by respondents.

b. *Listing* shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

c. *Exclusive right to sell listing* shall mean any listing under which

the property owner appoints the broker as his or her exclusive agent for the sale of the property and agrees to pay the broker an agreed commission if the property is sold, whether by the broker or any other person including the owner.

d. *Exclusive agency listing* shall mean any listing under which the property owner appoints a broker as his or her exclusive agent at an agreed commission, but reserves the right to sell the property personally with no commission owed or at an agreed reduction in commission.

2. Respondents Orange County Board of Realtors, Inc., and Multiple Listing Service of the Orange County Board of Realtors, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondents' principal offices and places of business are at 50 North Church Street, Goshen, New York, in Orange County. The population of Orange County is approximately 260,000.

3. Each respondent is now and has been at all times relevant herein a corporation organized in substantial part for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

4. Respondent Orange County Board of Realtors controls the acts and practices of its wholly-owned subsidiary, respondent Multiple Listing Service of the Orange County Board of Realtors. Only members of the Orange County Board of Realtors may be members of the Multiple Listing Service of the Orange County Board of Realtors. Respondents coordinate and act together in carrying out the business of the Multiple Listing Service of the Orange County Board of Realtors.

5. Respondents are now and have been since at least 1974 providing a multiple listing service ("MLS") for member real estate brokerage firms doing business in Orange County. The member firms are owned and operated by real estate brokers who, for a commission, provide the service of bringing together buyers and sellers of residential real estate, as well as other related services designed to facilitate such sales. Each member firm agrees to submit all of its Orange County exclusive right to sell residential property listings for publication on the multiple listing service to the entire MLS membership and to share brokerage commissions with those member firms that successfully locate purchasers for properties it has listed. Only members may participate in the MLS.

6. Membership in respondents' multiple listing service provides valuable competitive advantages in the brokering of residential real estate in Orange County. It significantly increases the opportunities of brokerage firms to enter into listings with residential property

owners. It also significantly reduces the costs of obtaining up-to-date and comprehensive information on listings and sales that is important for brokerage firms to compete effectively in the market.

7. Respondents' multiple listing service is the only real estate multiple listing service serving Orange County. The vast majority of the active, full-time residential real estate brokerage firms doing business in Orange County have been and are now members of the MLS. Approximately 105 firms are members of respondents' MLS, including the ten largest Orange County residential real estate brokerage firms in terms of dollar sales.

8. Publication of listings on respondents' multiple listing service is generally considered by sellers and their brokers to be the fastest and most effective and convenient means of obtaining the broadest market exposure for residential property in Orange County.

9. For each year since at least 1974, the vast majority of the total dollar volume of residential real estate sales in Orange County occurred through brokerage firms and involved listings published on respondents' MLS. Sales of real estate listings published on respondents' MLS totaled about \$58 million for 1982 and \$86.5 million for 1983. Almost the entire dollar sales volume of MLS-published listings represents sales of residential real estate in Orange County.

10. Except to the extent that competition has been restrained as described in Paragraph 12 below, respondents' members are now and have been in competition among themselves and with other firms in the provision of residential real estate brokerage services.

11. In adopting the policies and engaging in the acts and practices described in Paragraph 12 below, respondents have been and are now acting as a combination of their members, or in conspiracy with some of their members, to restrain trade in the provision of residential real estate brokerage services.

12. Through MLS regulations in effect since at least 1974, respondents have been refusing to publish any exclusive agency listing on their multiple listing service, restricting the multiple listing service to only exclusive right to sell listings. These regulations have effectively prevented property owners and brokers from arranging a brokerage contract that allows the owner to pay less or no commission if the owner locates the buyer independently of any broker.

13. The purposes or effects, and the tendency and capacity, of the policies, acts, and practices of respondents as described in Paragraph 12 above have been and are to unreasonably restrain competition in one or more of the following ways, among others:

- a. restrain price competition among brokerage firms;
- b. restrain competition among brokerage firms based on willingness

to accept different contract terms that may be attractive and beneficial to consumers;

c. substantially limit the ability of consumers to negotiate lower prices for brokerage services and brokerage contract terms that may be more advantageous than an exclusive right to sell listing;

d. substantially limit the ability of residential property sellers to compete with real estate brokers in locating purchasers; and

e. substantially limit consumers' ability to choose among a variety of brokerage firms competing on the basis of price, contract terms, and services.

14. In the conduct of their businesses and through the policies, acts, and practices described in Paragraph 12 above, respondents and their members involve or affect:

a. a substantial interstate flow of funds used in the financing of Orange County real estate;

b. a substantial amount of Orange County real estate financing guaranteed or insured under federal government programs;

c. the sale of a substantial amount of title and homeowners' insurance by interstate insurers to Orange County property owners;

d. the franchise operations of those interstate chains of real estate brokerage firms that include one or more members of respondents' MLS; and

e. the interstate or international sale of computer services to respondents' MLS.

As a result of these and other events and effects, the policies, acts, and practices of respondents and their members as described in Paragraph 12 above are in or affecting commerce within the meaning of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

15. The policies, acts, practices, and combinations or conspiracies described in Paragraph 12 above constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The alleged conduct is continuing in nature and will continue in the absence of the relief requested.

#### 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 Competition 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 attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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. Each respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents' offices and principal places of business are located at 50 North Church Street, in the City of Goshen, State of New York.

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

#### ORDER

##### *Definitions*

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

1. *Member* shall mean any real estate brokerage firm that is entitled to participate in the multiple listing service offered by respondents Orange County Board of Realtors, Inc., and Multiple Listing Service of the Orange County Board of Realtors, Inc.

2. *Listing* shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

3. *Exclusive right to sell listing* shall mean any listing under which the property owner appoints the broker as his or her exclusive agent for the sale of the property and agrees to pay the broker an agreed commission if the property is sold, whether by the broker or any other person including the owner.

4. *Exclusive agency listing* shall mean any listing under which the

property owner appoints a broker as his or her exclusive agent for the sale of the property at an agreed commission, but reserves the right to sell the property personally with no commission owed or at an agreed reduction in the commission.

### I.

*It is ordered,* That each respondent and its directors, officers, committees, representatives, agents, employees, subsidiaries, successors, and assigns, directly or indirectly or through any device, in or in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Restricting or interfering with:

1. any broker's offering or acceptance of any exclusive agency listing; or
2. the publishing on respondents' multiple listing service of any exclusive agency listing of a member.

B. Publishing on respondents' multiple listing service any exclusive agency listing:

1. in any manner different from the publishing of any exclusive right to sell listing; or
2. in any category separate from exclusive right to sell listings;

*provided, however,* that nothing contained in subparts I.A. or I.B. shall prohibit respondents from: (a) including a simple designation, such as a code or symbol, that a published listing is an exclusive agency listing; and (b) applying reasonable terms and conditions equally applicable to, and not discriminatory in their impact upon, the publication of any listing, whether exclusive agency or exclusive right to sell.

### II.

*It is further ordered,* That each respondent shall:

A. Within sixty (60) days after this order becomes final, amend its by-laws and rules and regulations and any other of its materials to conform to the provisions of this order.

B. For a period of five (5) years after this order becomes final, furnish promptly a copy of this order to any person who requests a copy.

C. For a period of ten (10) years after this order becomes final, make

available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, all documents that relate to determining whether either respondent has been and is complying with this order.

### III.

*It is further ordered,* That respondents shall jointly:

A. Within thirty (30) days after this order becomes final, furnish a copy of this order to each member of the multiple listing service.

B. Within sixty (60) days after this order becomes final, submit a written report to the Federal Trade Commission setting forth in detail the manner and form in which respondents have complied and are complying with this order.

C. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in either 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 either corporation that may affect compliance obligations arising out of this order.