IN THE MATTER OF

SUN COMPANY, INC., ET AL.

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

Docket C-3381. Complaint, May 6, 1992--Decision, May 6, 1992

This consent order prohibits, among other things, Sunoco from making any representation concerning the superiority of Ultra octane gasoline in providing engine power or acceleration for any automobile, unless the respondents possess competent and reliable scientific evidence to substantiate the claims.

Appearances

For the Commission: *Joel Winston* and *Marianna R. Watts.*

For the respondents: *Richard B. Herzog, Pepper, Hamilton & Scheetz*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents Sun Company, Inc., and Sun Refining and Marketing Company, corporations, hereinafter sometimes referred to as respondents, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Sun Company, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania. Respondent's office and principal place of business is located at 100 Matsonford Road, Radnor, PA.

Respondent Sun Refining and Marketing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania. Respondent's office

and principal place of business is located at Tenn Penn Center, 1801 Market Street, Philadelphia, PA. It is a wholly-owned subsidiary of Sun Company, Inc.

PAR. 2. Respondents, at all times mentioned herein, have maintained a substantial course of business, including the acts and practices hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents advertise, offer for sale, sell, and distribute gasoline and other petroleum products, including SUNOCO ULTRA 93.5 and 94 gasolines.

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements for SUNOCO ULTRA 93.5 and 94 gasolines, including but not necessarily limited to the attached Exhibits A-C. The aforesaid advertisements contain the following statements:

1. Anncr: When your car's your baby . . . Sing: Nothin's too good for my baby. So nothin' but Ultra . . . Nothin' but Ultra. Anncr: . . . treat it to the power of Sunoco Ultra 93.5. Man: Fill it up. Ultra. Anncr: No other major brand can match it. Sunoco Ultra 93.5 . . . . (Complaint Exhibit A.)

2. Susan: So, we went to Mobil, then another station, then another. I said, "Michael, why don't you just get any gasoline?" He said, "My baby would never forgive me." Mary: His baby? Susan: His car. Mary: How can you forgive yourself for going out with him? Susan: Then I said, "Is there really a difference between 94 and a lower octane?" And Michael said, "That's why they made it 94, baby." ANNCR: Only Sunoco has Ultra 94. No other gasoline can give your car better acceleration. Because no other gasoline has 94 octane - the highest octane under the sun. (Complaint Exhibit B.)

3. Anncr: What's so special about Sunoco Ultra 94? No other gasoline can give your car better acceleration. Because no other gasoline has 94 octane - the highest octane under the sun. . . Don't waste your time going anywhere else. Come to Sunoco and fill up with Ultra 94 - for maximum power and performance. Remember, there's only one 94. Sunoco Ultra. (Complaint Exhibit C.)

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-C, respondents have represented, directly or by implication, that SUNOCO ULTRA 93.5 and 94 gasolines provide superior engine power and acceleration, that would be significant to consumers, for automobiles generally as compared to any other gasoline.

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-C, respondents have represented, directly or by implication, that at the time they made the representation set forth in paragraph five, respondents possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 7. In truth and in fact, at the time respondents made the representation set forth in paragraph five respondents did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. The dissemination by respondents of the aforesaid false and misleading representation, as herein alleged, constituted, and now constitutes, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Owen dissenting.

EXHIBIT A

TELEVISION: AS RECORDED

CLIENT: Sun Refining & Marketing Co.	CODE NO. SUGS-5063
PRODUCT: Sunoco Ultra/Credit Card	DATE: 5/4/90
(MARKETS: CEDAR RAPIDS, DES MOINES, DAVENPORT)	LENGTH: 30 AIRDATE: 5/21-6/17
TITLE: "U-Turn Credit Card Promo"	JOB NO.: 03925-01306

VIDEO	AUDIO
OPEN ON A MAN GETTING INTO RED SPORTSCAR SEEN FROM ABOVE THROUGH A WINDOWPANE. CAR DOOR SLAMS AND WE SEE THE CAR DRIVE DOWN THE ROAD. WS OF RED CAR SPEEDING AROUND A CORNER. CU MAN IN CAR TURNS HIS HEAD AND NOTICES SUNOCO GAS STATION	ANNCR: When your car's your baby...
	SING: Nothin's too good for my baby So nothin' but Ultra... Nothin but Ultra.
THE CAR STOPS SHORT AND TURNS AROUND	ANNCR: ...treat it to the power of Sunoco Ultra 93.5
SUNROOF OPENS AND MAN LOOKS UP SUN SHINES THROUGH THE LOGO ON THE PUMP. CAR IS FILLED UP BY LIT PUMP. MAN DRIVES DOWN THE ROAD INTO THE SUN SPLASH OF SUN ON SCREEN	MAN: Fill it up. Ultra. ANNCR: No other major brand can match it. Sunoco Ultra 93.5
CRAWL WITH SUN IN THE BACKGROUND.	ANNCR: And now until June 30th, participating dealers will accept most gasoline credit cards and make it easy to get a Sunoco card. At Sunoco, you pay one price, cash or credit.
SUPER: SUNOCO ULTRA 93.5 OCTANE BLACK	SFX: Music continues to :30 seconds.

EXHIBIT B

RADIO: AS RECORDED

CLIENT: Sun Refining and Marketing Co. CODE: SU-90-2274

PRODUCT: Ultra Gasoline - 94 LENGTH: 60 DATE: 4/2/90

TITLE: Michael/Flint, New York. Version 1. JOB #: 03925-01296

MARY : So how was your date with Michael last night?
SUSAN: We ran out of gas.
MARY : Ohhh. That good.
SUSAN: First we went to an Amoco station. But they didn't have 94 .
MARY : 94 what?
SUSAN: 94 octane gasoline.
MARY: So?
SUSAN: So, we went to Mobil, then another station, then another. I said, "Michael, why don't you just get any gasoline?" He said, "My baby would never forgive me."
MARY : His baby?
SUSAN: His car.
MARY : How can you forgive yourself for going out with him?
SUSAN: Then I said, "Is there really a difference between 94 and a lower octane?" And Michael said, "That's why they made it 94, baby."
ANNCR: Only Sunoco has Ultra 94. No other gasoline can give your car better acceleration. Because no other gasoline has 94 octane - the highest octane under the sun.
SUSAN: Finally, I said, "Look Michael, both of us want to be fed, now. Who's more important?"
ANNCR: If you want to take good care of your baby, give it Sunoco Ultra 94.
MARY : So where'd he take you?
SUSAN: Never make a man choose between you and his car.

EXHIBIT C

RADIO: AS RECORDED

CLIENT: Sun Refining and Marketing Co. CODE #: SU-90-2265

PRODUCT: Ultra Gasoline - 94 LEGTH: 60. DATE: 4/2/90.

TITLE: Gas Attendants/New York, Flint. Version 1 JOB #: 03925-01296

SFX :	CAR PULLING INTO GAS STATION. BELL RINGS.
ATTENDANT:	What'll it be?
DRIVER:	Fill up to the top with 94.
ATTENDANT:	94? (Ha Ha) This is Amoco.
SFX :	TIRES SCREECH OUT
ANNCR:	There's only one 94 octane gasoline - Sunoco Ultra 94.
SFX:	BELL RINGS.
DRIVER:	Do you have any 94 octane?
ATTENDANT 2:	Sir, we've got 87, 92 and a little half and half could be nice...but 94? We don't have anything that high.
SFX:	TIRES SCREECH.
ANNCR:	What's so special about Sunoco Ultra 94? No other gasoline can give your car better acceleration. Because no other gasoline has 94 octane - the highest octane under the sun.
DRIVER:	Got any 94 octane?
ATTENDANT 3:	What're ya, some kind of wise guy? Mobil doesn't make 94 octane.
SFX:	TIRES SCREECH.
ANNCR:	And Sunoco Ultra 94 has a special detergency to keep your intake system clean.
SFX:	BELL RINGS.
DRIVER:	94?
SUN ATTENDANT:	No . . . problem. Sunoco Ultra 94.
DRIVER:	Don't waste your time going anywhere else. Come to Sunoco and fill up with Ultra 94 - for maximum power and performance. Remember, there's only one 94. Sunoco Ultra.

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 respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 of facts, other than jurisdictional facts, or of violations of law as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules.

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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Sun Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 100 Matsonford Road, Radnor, Pennsylvania.

Respondent Sun Refining and Marketing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal

place of business located at 1801 Market Street, Philadelphia, Pennsylvania.

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

ORDER

PART I.

It is ordered, That respondents Sun Company, Inc., and Sun Refining and Marketing Company, corporations, their successor and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, packaging, offering for sale, sale or distribution of SUNOCO ULTRA 93.5 and 94 gasolines or any other gasoline in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, about:

(1) The superiority of ULTRA 93.5 and 94 in providing engine power or acceleration for any automobile; or

(2) The relative or absolute attributes or performance of any gasoline with respect to vehicle engine power, acceleration, or any other performance characteristic,

unless at the time of making such representation, respondents possess and rely upon a reasonable basis consisting of competent and reliable scientific evidence which substantiates the representation. For the purposes of this order, "competent and reliable scientific evidence" shall mean tests, experiments, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area 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.

Provided that, nothing in this order shall prohibit respondents from truthfully representing the numerical octane rating of any gasoline.

PART II.

It is further ordered, That for three (3) years after the date of the last dissemination of the representation to which they pertain, respondents shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this order; and

B. All tests, reports, studies or surveys in respondents' possession or control that contradict any representation of respondents covered by this order.

PART III.

It is further ordered, That respondents shall forthwith distribute a copy of this order to all operating divisions, subsidiaries, franchisees, officers, managerial employees, and all of their employees or agents engaged in the preparation and placement of advertisements or promotional materials covered by this order and shall obtain from each such employee a signed statement acknowledging receipt of the order.

PART IV.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation(s) such as a 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(s) that may affect compliance obligations under this order.

PART V.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order and at such other times as the Commission may require, 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 Owen dissenting.

DISSENTING STATEMENT OF COMMISSIONER DEBORAH K. OWEN

Deciding whether to issue a consent order involves weighing, among other factors, the potential benefits of securing stronger relief, against the costs and risks inherent in further negotiation and possible litigation. Pinpointing where the correct balance lies is often a formidable challenge, and people who share a dedication to tough law enforcement may reasonably disagree as to where it appropriately falls. In this matter, I believe that the relief obtained is grossly insufficient in light of the respondents' past conduct, and because the total consumer injury arising from the claims involved may be very costly.

Accordingly, I dissent from the Commission's decision to issue this consent order.

This is the second time that respondents have tangled with the Commission over ads linking octane and automobile engine performance. In 1974, the Commission ordered respondents' corporate predecessor, Sun Oil Co., to cease and desist from making false performance and uniqueness claims for its gasoline.[1] Since these respondents have a history of self-proclamation as the industry's octane king, I am skeptical that a second, mere "go and do no more" order will have much useful deterrent effect.

Securing stronger relief is certainly called for when there are indications that consumer injury is particularly significant. Consumer injury due to misperceptions about the relation between octane and performance, and the resultant "overbuying" of octane, may be very great. A report released last year by the U.S. General Accounting Office,[2] though cautioning that the existing evidence is not conclusive, suggested that consumers may be spending hundreds of

---

[1] 84 FTC 247 (1974).

[2] U.S. General Accounting Office, Gasoline Marketing: Premium Gasoline Overbuying May Be Occuring, but Extent Unknown, Report to the Chairman, Subcommittee on Antitrust, Monopolies and Business Rights, Committee on Judiciary, U.S. Senate, February, 1991.

millions of dollars, or more, yearly on unnecessary purchases of higher octane gasolines. Such dollar figures may not be surprising in view of the huge size of the gasoline market. In addition, recognizing the widespread nature of consumer misunderstanding about octane and performance, the Commission recently issued a "Facts for Consumers" bulletin, with the cooperation of the American Automobile Association, to help consumers select the octane grade most appropriate for their needs. I suspect, however, that this admirable effort represents only a small corrective to the consumer misperceptions that ads such as Sunoco's have not merely taken advantage of, but have strongly reinforced.

Based on these considerations, I conclude that the public interest would have been better served if the remedy in this matter had provided stronger incentives to insure compliance with the FTC Act, or had provided other relief that would truly benefit consumers. Query why in this instance, unlike others,[3] the Commission is content to have consumer enlightenment financed with taxpayers' dollars, rather than with the ill-gotten gains of a company that the Commission has found reason to believe has violated the FTC Act -- more than once.

[3] *United States v. Sears, Roebuck and Co.*, Civil Action No. 89-3383 TAF (DCC 1989); *American Life Nutrition, Inc., et al.*, FTC Docket No. C-3310.

CONCURRING STATEMENT OF COMMISSIONER DENNIS A. YAO

I agree with much of Commissioner Owen's dissenting view that some type of stronger relief is called for in this matter. There is some reason to believe that consumer misperception about the value of high octane gasoline in improving automobile performance will persist after the advertisements in question are withdrawn and thus that an order requiring Sun to place advertisements which correct past misleading advertising might be needed here.[1] In my view, however, the arguments in favor of ordering such corrective advertising as an appropriate and workable remedy for this case are not sufficiently supported. Nevertheless, an alternative remedy such as a consumer education program, in which a company is required to provide to consumers educational materials about the relative value of certain characteristics of goods,[2] may be appropriate for cases such as this one, particularly in light of Sun's involvement in a previous deceptive advertising campaign concerning the value of high octane gasoline.[3] Although the Commission is not ordering such relief here, consumers would often benefit from educational materials provided by firms which have repeatedly engaged in deceptive advertising.

---

[1] *See, e.g., Warner-Lambert Co.*, 86 FTC 1398 (1975), *aff'd as modified*, 562 F.2d 749 (DC Cir. 1977), *cert. denied*, 435 U.S. 950 (1978).

[2] *See, e.g., United States v. Sears, Roebuck & Co.*, Civil Action No. 89-3383 TAF (DCC 1989).

[3] *Sun Oil Co.*, 84 FTC 247 (1974).

IN THE MATTER OF

RMED INTERNATIONAL, INC., ET AL.

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

Docket C-3382. Complaint, May 14, 1992--Decision, May 14, 1992

This consent order prohibits, among other things, a Colorado-based company, that makes "TenderCare" disposable diapers, and its president from making degradability claims in the future unless they possess competent scientific evidence to substantiate such claims.

Appearances

For the Commission: *Michael Dershowitz* and *Georgianna A. Forbes.*

For the respondents: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents RMED International, Inc., a corporation, and Edward Reiss, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent RMED International, Inc. ("RMED") is a Colorado corporation with its office and principal place of business located at 675 Industrial Drive, Delta, Colorado.

Respondent Edward Reiss is an officer of the corporate respondent named herein. He formulates, directs, and controls the acts and practices of the corporate respondent. His business address is the same as that of the corporation.

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

PAR. 2. Respondents have, or have caused to be, advertised, offered for sale, sold, and distributed disposable diapers to the public under the trade name "TenderCare."

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

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements and package labels for "TenderCare" diapers, including, but not necessarily limited to, the attached Exhibits A through H.

The aforesaid package labels contain the following statements:

BIODEGRADABLE (Exhibits A and B).
Biodegradable Outer Diaper Backing. (Exhibit B).
Bag IS Biodegradable. (Exhibit B).

The aforesaid advertisements contain the following statements:

[TenderCare] is completely biodegradable. (Exhibit C) (emphasis in original).

TenderCare disposable diapers offer a new choice for parents concerned about the quality of the environment...(Exhibit D).

Most mass-marketed disposable diapers are not biodegradable, so they contribute every day to the growing environmental crisis. These non-biodegradable diapers will become a lasting problem which your children and perhaps your great-great grandchildren will have to solve. But with biodegradable TenderCare diapers, it doesn't have to be that way. (Exhibit D).

What's more, other disposable diapers do not biodegrade which means they're harmful to the environment. (Exhibit E).

Because TenderCare Diapers biodegrade, you can feel even better about using a disposable diaper. (Exhibit E).

TenderCare, America's first biodegradable, chemical-free disposable diaper is setting the standard for biodegradable products by adding POLYCLEAN to the plastic liner. (Exhibit F) (emphasis in original).

POLYCLEAN is currently the only biodegradable additive for plastic known to break down in America's solid waste landfills. (Exhibit F)(emphasis in original).

PolyClean has 6% corn starch contained in most biodegradable plastics, but also includes a trace element of minerals that will cause a chemical reaction in the plastic several months after it hits the solid waste disposal system which will break the plastic down into a wax residue. This residue can then be biologically attacked. (Exhibit G).

This plastic does not require sunlight. The break down will happen more quickly with oxygen and water, since the chemical and biological processes will both be at work. But it will happen within two to five years even in low oxygen environments. (Exhibit G).

When you choose diapers for your baby, we hope that you will choose a diaper that . . . will not sit in a landfill for 200 to 500 years. (Exhibit G).

As we all know by now, disposable diapers, like many other disposable products, once discarded, remain intact and become part of what the EPA calls [the] "staggering garbage crisis" facing us today. TenderCare diapers are part of a solution to this problem. The plastic used in TenderCare diapers has FDA approved ingredients that aid in the degradation (sic) process allowing these diapers to turn into harmless carbon dioxide and water in a fraction of the time it takes conventional plastic diapers. (Exhibit H).

PAR. 5. Through the use of the statements contained in the advertisements and labels referred to in paragraph four, including but not necessarily limited to the advertisements and labels attached as Exhibits A through H, respondents have represented, directly or by implication, that:

1. "TenderCare" disposable diapers will completely break down, decompose, and return to nature in a reasonably short period of time after consumers dispose of them as trash.

2. Compared to other disposable diapers, "TenderCare" disposable diapers offer a significant environmental benefit when consumers dispose of them as trash that is buried in a landfill.

3. "TenderCare" disposable diapers will completely break down, decompose, and return to nature within 2 to 5 years.

4. "TenderCare" disposable diapers will break down, decompose, and return to nature significantly faster than other disposable diapers after consumers dispose of them as trash that is buried in landfills.

5. "TenderCare" disposable diapers will completely break down, decompose, and return to nature in a short enough period of time to significantly reduce the amount of garbage in landfills.

PAR. 6. Through the statements contained in the advertisements and labels referred to in paragraph four, including but not necessarily limited to the advertisements and labels attached as Exhibits A through H, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 7. In truth and in fact, at the time respondents made the representations set forth in paragraph five respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. The dissemination by respondents of the aforesaid false and misleading representations, as alleged in this complaint, constitutes unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

EXHIBIT A

EXHIBIT B

Superabsorbent
BIODEGRADABLE
Disposable Diapers
TenderCare™ Special Patented Construction
Tapered Hourglass Shape
Elastic Legs for Proper Fit With Adequate Ventilation
Biodegradable Outer Diaper Backing
Printed Moisture Barrier
For more information about TenderCare products call toll free 1-800-344-6379)
Keep Plastics away from baby's face.
Avoid exposure to open flame.
Most baby clothing and diapers can burn.
Bag IS Biodegradable
IMPORTANT: Please be environmentally conscious when disposing of soiled diapers. Proper disposal is recommended. Flush all solid waste in toilet. Do not flush diaper.
PROUDLY MADE IN USA
EXHIBIT B

EXHIBIT C

IT'S TIME TO CHANGE YOUR BABY'S DIAPERS

Your baby will spend approximately ***20,000 hours*** in diapers. Today's superabsorbent diapers are very convenient and do a great job of keeping your baby dry.

But here's ***something you may not know:***

Most superabsorbent diapers, including the big, nationally-advertised brands, ***use chemicals to keep your baby dry.*** Moisture turns these chemicals into a gel that sits right next to baby's skin and genital area. And you won't find these chemicals listed on package labels because the FDA does not regulate infant diapers.

But here's ***the good news.*** Now there's ***chemical free TenderCare***™, a new disposable, superabsorbent diaper that's soft, comfortable, free of absorbency chemicals, perfumes, deodorants and is ***completely biodegradable.***

Instead of chemicals, new TenderCare™ keeps your baby dry with a ***unique design***—a 100% natural "wicking" technique ***developed by a pediatrician*** and refined by a team of neo-natal specialists. This patented* design ***not only traps moisture***, but also allows more air circulation for healthy skin and less diaper rash.

To find out how you can start using these remarkable new diapers, call toll free ***1-800-34-IM DRY (1-800-344-6379).***

Tender♥Care™

Because babies should only be exposed to love.

EXHIBIT C

MRS. GOOCH'S

Available at Mrs. Gooch's on the West coast

*U.S. patent #4,643,727 © 1988 R.Med International A Division of Rocky Mountain Medical Corporation

PROUDLY USA MADE IN

EXHIBIT D

Change the World one diaper at a time.

Introducing biodegradable, chemical-free TenderCare™ disposable diapers.

Every so often, a revolutionary new product comes along that makes life better. Now, TenderCare disposable diapers offer a new choice for parents concerned about the quality of the environment and the possible risks to their children from exposure to chemicals.

Biodegradable

Most mass-marketed disposable diapers are not biodegradable, so they contribute every day to the growing environmental crisis. These nonbiodegradable diapers will become a lasting problem which your children and perhaps your great-great grandchildren will have to solve. But with biodegradable TenderCare diapers, it doesn't have to be that way.

*U.S. Patent 4,643,727 © 1989 Rhind International

Chemical-free

TenderCare diapers use a patented* 100% natural "wicking" action to draw wetness away from babies' bottoms, keeping them dry and comfortable.

This unique design replaces acrylic acid polymer salts, used by other diapers to keep babies dry. These chemicals work by turning wetness into a gel, which sits next to your baby's skin. For TenderCare, that's too close for comfort.

Changing to TenderCare is one way you can make a difference and help create a cleaner, better world for you and your baby. TenderCare Diapers can be delivered right to your home. Call 1-800-344-6379 to find out more. And tell a friend. Together, we can change the world one diaper at a time.

Call 1-800-34-TM-DRY

Tender Care

Because babies should only be exposed to love.

EXHIBIT D

EXHIBIT E

18 Biodegradable EXHIBIT E

It's time to change your baby's diapers.

Almost all of today's "super-absorbent" diapers rely on chemicals to keep baby dry... and these chemicals are only a few millimeters away from baby's skin. What's more, other disposable diapers do not biodegrade which means they're harmful to the environment.

Our TenderCare Diapers are biodegradable.

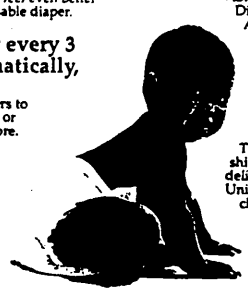
TenderCare diapers are soft, super-absorbent, comfortable and contain absolutely no chemicals to harm your baby or the world he lives in. The secret is in the patented design that drains moisture away from baby and traps it in a special reservoir. Air gets next to skin, instead of moisture. That saves baby's bottom from excess irritation and promotes healthier skin. And since there are no perfumes or deodorants, there's less chance of skin reactions.

Because TenderCare Diapers biodegrade, you can feel even better about using a disposable diaper.

We'll deliver every 3 weeks automatically, if you wish.

No more reminders to reorder your diapers or frantic trips to the store.

We'll send our diapers to you every three weeks (each package contains about a three week supply). If your child goes through diapers at a different rate, we'll adjust your deliveries accordingly. As your child grows, just contact our Customer Service Department toll free and we'll change the size of diapers you receive beginning with your next shipment. What could be easier?

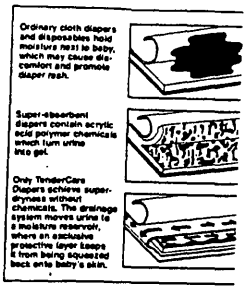


There's absolutely no obligation whatsoever.

You can receive our TenderCare Diapers for three weeks or for several years. Just let us know if you wish to stop the shipments... we'll do so immediately. The whole idea is to make your shopping easier.

Here's all you do.

Call our toll free number 1-800-LITTLE-1 (1-800-538-8531) weekdays between 9AM and 5PM. Tell our Customer Service Representative that you want to begin receiving our diapers on a regular basis. The item number is #K002. Specify the size, shipping address, and provide your VISA Card, MasterCard, Discover Card or American Express Card number. We'll do the rest. Every three weeks we'll send your diapers out and charge your credit card for $59 (California residents need to add 6.5% sales tax). There are no extra shipping charges for UPS delivery in the continental United States. We only charge your credit card as we ship your diapers to you! And there are no other hidden or upfront charges for this service.



Call today. Whether you want to give us a try or receive regular shipments, it's a great start toward promoting a healthier baby and environment. We don't know of an easier way for you to put your diaper worries behind you.

Trial size Diapers, #E001, $14.95
(No additional UPS shipping charge in continental U.S.)
Size S: 6-14 lbs., 66 diapers
Size M: 12-22 lbs., 48 diapers
Size L: 22-30 lbs., 32 diapers
Size T: Over 30 lbs., 28 diapers

TenderCare Diapers, #E140, $59
(No additional UPS shipping charge in the continental U.S.)
Size S: 6-14 lbs., 264 diapers
Size M: 12-22 lbs., 192 diapers
Size L: 22-30 lbs., 132 diapers
Size T: Over 30 lbs., 112 diapers

For automatic shipments every three weeks, order #K002 and specify size. There is no extra charge for this service.

New

Baby's pacifier serenades her to sleep.

This is more than just a beautiful pacifier. It's practically a musical instrument. Suck or biting the non-toxic nipple activates the tiny music box into playing a warm rendition "Rock A Bye Baby". Nipple detaches easily from pacifier for easy washing. Soothing and Buy two and SAVE. Pacifier designs may vary slightly.

Musical Pacifier, #G003, $7.95
(1.50 shpg/hdlg)
*Buy two and Save $2, $13.90
(2.00 shpg/hdlg)

EXHIBIT F

Call
1-800-34-IM-DRY

Change the World One Diaper at a Time

TenderCare, America's first biodegradable, chemical-free disposable diaper is setting the standard for biodegradable products by adding POLYCLEAN™ to the plastic liner.

POLYCLEAN™ is currently the only biodegradable additive for plastic known to break down in America's solid waste landfills.

TenderCare Diapers are the most absorbent, chemical-free diaper made. The natural "wicking" action draws wetness away from babies skin, keeping them dry and comfortable. Call 1-800-344-6379 for free information on Free Home Delivery.

Tender Care

EXHIBIT G

TenderCare™

Because babies should only be exposed to love.

Chamberlains has carried Chemical-free TenderCare Biodegradable diapers for months now, but recently the credibility of biodegradable products is being questioned in the media. Unfortunately, the information is often inaccurate, incomplete or contradictory. More often than not, biodegradable and photodegradable plastics are taken to be the same, when they are actually very different. And mentions of TenderCare usually do not discuss their main feature, which is super absorbency without chemicals.

The plastic used in Tendercare is called "Poly-Clean" and was developed by Archer Daniels Midland. You may know them for their work in helping to reduce acid rain and carbon dioxide in the environment. Poly-Clean has 6% corn starch contained in most biodegradable plastics, but also includes a trace element of minerals that will cause a chemical reaction in the plastic several months after it hits the solid waste disposal system which will break the plastic down into a wax residue. This residue can then be biologically attacked.

This plastic does not require sunlight. The break down will happen more quickly with oxygen and water, since the chemical and biological processes will both be at work. But it will happen within two to five years even in low oxygen environments. This is a relatively new process, and unfortunately many journalists do not have updated information when writing their articles.

TenderCare diapers were developed and patented by a pediatrician concerned about babies wearing diapers that contain a chemical compound which has not had long term safety testing.

Even though TenderCare was the first biodegradable diaper in the U.S., the chemical issue is really our main concern. TenderCare diapers were developed and patented by a pediatrician concerned about babies wearing diapers that contain a chemical compound which has not had long term safety testing. And all of the ultra thin and absorbent diapers on the market contain these acrylic acid polymer salt chemicals to absorb wetness. Because these diapers are so absorbent, many babies diapers are not changed often enough to keep their skin healthy. TenderCare diapers unique design absorbs moisture and traps it away from babies' skin.

When you choose diapers for your baby, we hope you will choose a diaper that does not contain these absorbing chemicals, and will not sit in a landfill for 200 to 500 years. Please try TenderCare, available in four sizes.

Mandarin Orange Spice® Chicken

3 Pounds Frying Chicken Cut Into Serving Peices
4 Mandarin Orange Spice Herb Tea Bags (non caffeine)
1/2 Cup Boiling Water
1/2 Cup Soy Sauce
2 Tbsp. Honey
2 Tsp. Vegetable Oil

Open tea bags and empty contents into a bowl. Add the boiling water and let stand about 5 minutes. Stir in honey, soy sauce, and oil. Put chicken in a glass baking dish. Pour marinade over chicken. Cover and allow to marinate 3-4 hours at room temperature, turning once. (Can be marinated overnight in the refrigerator.) Bake chicken in marinade (covered) at 325° for an hour or until chicken is tender. Serve marinade over rice. Serves 4 to 6.

EXHIBIT H

EXHIBIT H

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 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 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 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 Act, and that a 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 makes the following jurisdictional findings and enters the following order:

1. Respondent RMED International, Inc. is a Colorado corporation, with its office and principal place of business located at 675 Industrial Drive, Delta, Colorado.

Respondent Edward Reiss is an officer of said corporation. He formulates, directs, and controls the acts and practices of said corporation, and his business address is the same as that of said corporation.

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

DEFINITION

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

"*RMED plastic product*" means any product or product packaging composed of plastic, in whole or in part, that is offered for sale, sold, or distributed to the public by respondents, their successors and assigns, under the "TenderCare" brand name or any other brand name; and also means any plastic product or product packaging that is sold or distributed to the public by third parties under private labeling agreements with respondents, their successors and assigns.

I.

A. *It is ordered*, That respondents RMED International, Inc., a corporation, its successors and assigns, and its officers, and Edward Reiss, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any RMED plastic product, including, but not limited to, disposable diapers and their plastic packaging, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols:

(1) That any such plastic product is "degradable," "biodegradable," or "photodegradable;" or,

(2) Through the use of such terms as "degradable," "biodegradable," "photodegradable," or any other similar term or expression, that any such plastic product offers any environmental benefits compared to other products when consumers dispose of them as trash that is ordinarily buried in a sanitary landfill or incinerated,

unless, at the time of making such representation, respondents possess and rely upon a reasonable basis, consisting of competent and

reliable scientific evidence that substantiates such representation. For the purposes of this order, to the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

B. *Provided, however*, respondents will not be in violation of this order, in connection with the advertising, labeling, offering for sale, sale, or distribution of RMED plastic products, if they truthfully represent that their plastic products will compost, degrade into usable compost, or otherwise be converted into usable compost, when disposed of in facilities that collect municipal solid waste for composting (that is, the accelerated breakdown of waste into soil-conditioning material), provided that the labeling of such products and any advertising referring to the degradability of such products discloses clearly, prominently, and in close proximity to such representation:

(1) That such products are not designed to degrade in landfills; and either

(2)(a) That facilities to compost such products are generally unavailable in the U.S., or

(2)(b) The approximate percentage of the U.S. population having access to composting programs for such products.

If the advertising and labeling of respondents plastic products otherwise complies with Subpart A of Part I of this order, respondents will not be in violation of this order if they do not make the disclosures in this proviso (Subpart B).

II.

It is further ordered, That respondents RMED International, Inc., a corporation, its successors and assigns, and its officers, and Edward

Reiss, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any RMED plastic product, including, but not limited to, disposable diapers and their plastic packaging, in or defecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols, that any such product offers any environmental benefit, unless the specific nature of that benefit is clear from the context or is disclosed clearly, prominently, and in close proximity thereto; and, at the time of making such representation, respondents possess and rely upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation. For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such terms if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the principal display panel of the package. The principal display panel of the package is that part of the package that faces the consumer when presented under normal and customary conditions of display for retail sale.

III.

It is further ordered, That for three (3) years from the date that the representations to which they pertain are last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this order; and

B. All tests, reports, studies, surveys, or other materials in their possession or control that contradict, qualify, or call into question

such representation or the basis upon which respondents relied for such representation.

IV.

It is further ordered, That respondent RMED International, Inc. shall 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 such sales materials covered by this order.

V.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as a 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 under this order.

VI.

It is further ordered, That the individual respondent shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years, from the service date of this order, he shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the manufacture, sale, or distribution of plastic products, or of his affiliation with a new business or employment in which his own duties and responsibilities relate to the manufacture, sale, or distribution of plastic products. When so required under this paragraph, each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of the respondent's duties and responsibilities in connection with the business or employment. The expiration of the

notice provision of this paragraph shall, not affect any other obligation arising under this order.

VII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, and at such other times as the Commission may require, 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

U.S. PIONEER ELECTRONICS CORP.

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

Docket C-2755. Consent Order, Oct. 24, 1975 -- Modifying Order, May 19, 1992

This order reopens the proceeding and modifies the Commission's consent order issued in 1975 (86 FTC 1002) with Pioneer Electronics (USA) Inc. so that Pioneer is no longer prohibited from unilaterally terminating a dealer who sells Pioneer home-electronics products at a price other than the suggested retail price.

ORDER REOPENING AND MODIFYING ORDER ISSUED OCTOBER 24, 1975

On December 6, 1991, Pioneer Electronics (USA) Inc., the successor corporation to U.S. Pioneer Electronics ("Pioneer"), filed a "Petition to Reopen Proceedings and to Modify Consent Order" ("Petition") in Docket No. C-2755, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Federal Trade Commission's Rules of Practice, 16 CFR 2.51. The Petition requested that the Federal Trade Commission ("Commission") reopen the consent order issued on October 24, 1975, U.S. Pioneer Electronics Corp., 86 FTC 1002 (1975), and previously modified on March 18, 1983, 101 FTC 372 (1983), to set aside and modify several provisions contained in paragraph I of the order.

On April 8, 1992, the Commission issued an "Order Granting in Part and Denying in Part Request to Reopen and Modify Order Issued October 24, 1975, and Order to Show Cause" ("Order Modifying Order and Show Cause") which granted part of Pioneer's Petition by deleting paragraph I.6., relating to restrictions on Pioneer withholding cooperative advertising allowances, and partially modifying paragraph I.10. to remove the restrictions on Pioneer's right to terminate a dealer unilaterally because the dealer has advertised Pioneer products at prices other than those Pioneer deemed appropriate or approved. The Commission, however, denied Pioneer's request to

modify paragraphs I.2., I.5., I.8. and the other portions of I.10., which prohibit Pioneer from among other things, threatening, intimidating, coercing, delaying shipments or otherwise taking action against a dealer for not following suggested advertised prices.

At the same time, the Commission ordered Pioneer to show cause within 30 days why the 1975 order against Pioneer should not further be modified to remove the prohibition on Pioneer terminating a dealer for selling its products at prices other than Pioneer deemed appropriate or approved.

On April 21, 1992, Pioneer filed its "Answer to Federal Trade Commission's Order to Show Cause, Issued April 8, 1992" with the Commission, stating that it does not object to the modification of paragraph I.10. as stated in Part X of the April 8, 1992, Order Modifying Order and Show Cause. Accordingly,

It is ordered, That this matter be, and it hereby is, reopened; and

It is further ordered, That paragraph I.10. of the order in this matter be, and it hereby is, modified to read as follows:

Threatening, intimidating, coercing, delaying shipments, or taking any other action (other than terminating) to prevent the sale of respondent's products by a dealer because said dealer has advertised or sold, is advertising or selling, or is suspected of advertising or selling such products at other than prices that respondent may deem to be appropriate or has approved.

IN THE MATTER OF

SLENDER YOU, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3383. Complaint, May 22, 1992--Decision, May 22, 1992

This consent order prohibits, among other things, a Tennessee company and its officers from making false and misleading representations regarding the weight loss and physical fitness benefits of any exercise machines or devices and diet or fitness programs, and would require the respondents to have competent and reliable scientific evidence to substantiate such claims at the time they are disseminated.

Appearances

For the Commission: *Thomas S. Jefferson* and *Theresa M. Mc Grew*.

For the respondents: *Samuel K. Crocker, Crocker & DeSha* and *C. Bennett Harrison, Jr., Cornelius & Collins*, Nashville, TN.

COMPLAINT

The Federal Trade Commission, having reason to believe that Slender You, Inc., a corporation, and Diane K. Clark and Robert E. Clark, individually and as officers of said corporation, hereinafter referred to as respondents, have violated Sections 5(a) and 12 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges that:

PARAGRAPH 1. Respondent Slender You, Inc., is an Indiana corporation, with its principal office and place of business located at 334 Industrial Parkway, Crossville, Tennessee.

Respondents Diane K. Clark and Robert E. Clark are officers of the corporate respondent and are responsible for formulating,

directing and controlling the acts and practices of respondent Slender You, Inc., including the acts and practices alleged in this complaint. Their principal office and place of business is the same as that of the corporation.

PAR. 2. Respondents have manufactured, advertised, offered for sale, sold and distributed to the public passive exercise machines, including such machines known or referred to as toning tables, vibrator tables, leg tables, situp tables, stretch tables, sandbag tables and waist, tummy and hip tables.

PAR. 3. The acts or practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business respondents have prepared, or caused to be prepared, and have disseminated, or caused the dissemination of, advertisements and promotional materials for passive exercise machines by various means in or affecting commerce including, *inter alia*, placing advertisements for broadcast by radio and television, in magazines and newspapers distributed through the mail and across state lines, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of respondents' passive exercise machines and the use of said machines by consumers.

PAR. 5. Respondents have caused to be prepared and placed for publication and have caused the dissemination of advertising and promotional materials, including but not limited to, the advertising and promotional materials attached hereto as Exhibits A through D, and have employed the use of various consumer testimonials and endorsements in said advertising and promotional materials to promote the sale of their passive exercise machines and the use of said machines by consumers.

PAR. 6. Typical of the statements made in such advertisements and promotional materials, but not necessarily all inclusive thereof, are the following:

1. "Nearly everyone loses at least 10 inches in 13 weeks through high repetition, positive energy exercise."

2. "I weighed over 200 pounds before I started. Now I've lost 23 ½ pounds and 36 ½ inches."

3. "Reduces excess fat on upper arms, midriff, waist and back."

4. "Our six motorized tables do the hard work for you, toning and firming your muscles."

5. "Helping to tone and firm your muscles and break down unwanted 'cellulite'."

6. "It [Slender You] pumps a surplus of oxygen into your system and rids the body of fat-inducing acid waste."

7. "Each 60 minute Slender You without approximates seven hours of traditional exercise."

8. "Introducing the no sweat workout."

9. "No sweat and no pain. "

PAR. 7. Through the use of the statements referred to in paragraph six and other statements contained in advertisements and promotional materials not specifically set forth herein, respondents have represented, directly or by implication, that use of respondents' passive exercise machines in a manner requiring little or no effort by the user:

1. Reduces overall body fat as well as body fat in particular areas such as hips, thighs, buttocks, arms, or stomach.

2. Results in the loss of inches or girth from various parts of the body, including the stomach, hips, thighs and buttocks.

3. Reduces overall body weight.

4. Helps to tone and firm muscles in particular areas of the body in a normal healthy individual.

5. Contributes to the break down or removal of cellulite.

6. Rids the body of fat inducing acid or other bodily waste.

7. Provides health or physical fitness benefits for normal healthy individuals comparable or superior to the health or physical fitness benefits provided by a program of rigorous physical exercise.

PAR. 8. In truth and in fact, use of respondents' passive exercise machines in a manner requiring little or no effort by the user:

1. Does not result in the loss of inches or girth from various parts of the body including the stomach, hips, thighs or buttocks.

2. Does not reduce overall body fat or fat from any particular area of the body such as the hips, thighs, buttocks, arms or stomach.

3. Does not reduce overall body weight.

4. Does not help to tone or firm muscles in particular areas of the body in a normal healthy individual.

5. Does not contribute to the breakdown or removal of cellulite.

6. Does not rid the body of fat inducing acid or other bodily waste.

7. Does not provide health or physical fitness benefits for normal healthy individuals comparable or superior to the health or physical fitness benefits provided by a program of rigorous physical exercise.

Therefore, the claims set forth in paragraph seven were and are false and misleading.

PAR. 9. Through the use of the statements referred to in paragraph six and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time respondents made the representations set forth in paragraph seven respondents possessed and relied upon a reasonable basis for those representations.

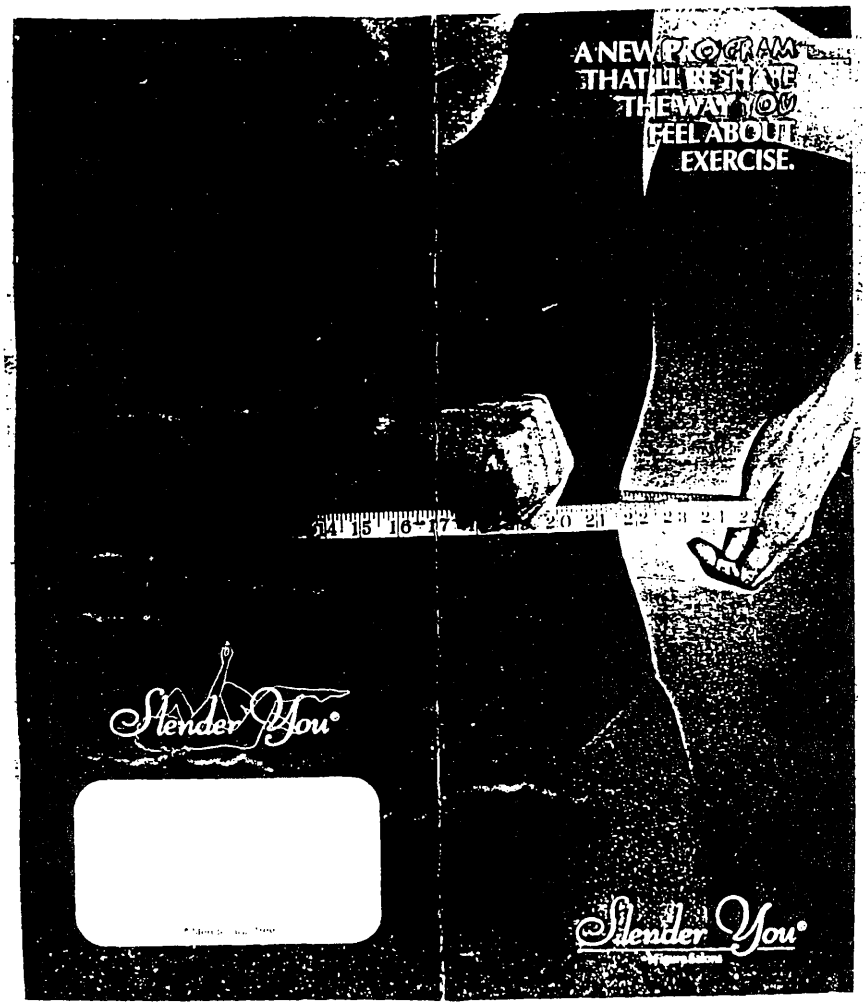
PAR. 10. In truth and in fact, at the time respondents made the representations set forth in paragraph seven respondents did not possess and rely upon a reasonable basis for those representations. Therefore, the representation set forth in paragraph nine was and is false and misleading.

PAR. 11. Through the use of the advertisements and promotional materials referred to in paragraph six, and others not specifically set forth herein, respondents have represented, directly or by implication, that various testimonials and endorsements contained therein reflect the typical or ordinary experiences of consumers, in terms of weight loss and inch loss, after using Slender You passive exercise machines in a manner requiring little or no effort by the user.

PAR. 12. In truth and in fact, the various testimonials and endorsements contained in respondents' advertising and promotional materials do not reflect the typical or ordinary experiences of consumers, in terms of weight loss or inch loss, after using Slender You passive exercise machines in a manner requiring little or no effort by the user. Therefore, the representation set forth in paragraph eleven was and is false and misleading.

PAR. 13. The acts and practices of respondents as alleged in this complaint, and the placement in the hands of others of the means and instrumentalities by and through which others may have used said acts and practices, constitute unfair and deceptive acts or practices in or affecting commerce and the dissemination of false advertisements in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

EXHIBIT A


A NEW PROGRAM
THAT'LL RESHAPE
THE WAY YOU
FEEL ABOUT
EXERCISE.
Slender You®
Slender You®

INTRODUCING THE NO-SWEAT WORKOUT.

We know what you're thinking. No pain, no gain. Right?

Well, not always.

Introducing Slender You®, the new inch loss program that's changing some old ideas about exercise.

HOW CAN IT POSSIBLY WORK?

Good question. You see, unlike traditional forms of exercise that leave you feeling tired and out of breath, the Slender You® workout actually *energizes* your body. It pumps a *surplus* of oxygen into your system and rids the body of fat-inducing acid waste.

Here's how it works. Twice a week, you spend 10 minutes on each of six motorized machines. Each machine exercises different parts of your body—legs, stomach, buttocks, hips, upper arms—helping to tone and firm your muscles and break down unwanted "cellulite."

Through high-repetition movement of the various muscle groups, the machines increase the flow of blood and oxygen, while flushing out the fat-inducing acid waste.

But wait. Doesn't traditional exercise do the same thing? In a way, yes.

But with traditional exercise, you also *use up* most of that oxygen under the strain of the heavy physical exertion. (That's really why you're out of breath after a good long workout.) As a result, you may end up with even *more* acid waste in your system than before you started (especially if you don't cool down properly).

WHAT THEY DON'T TELL YOU IN AEROBICS.

People sometimes forget that, in addition to reducing fat, regular exercise *adds* muscle. And muscle adds inches. That's why some people can exercise virtually all the time and still never look any thinner. What they're actually doing is building muscle.

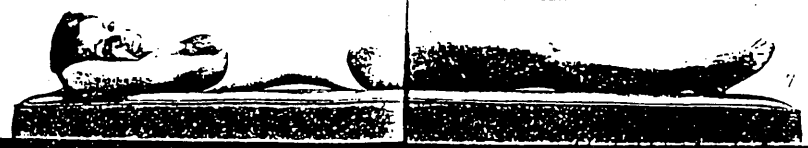
The Slender You® program does *not* build muscle. It simply tones and firms what's already there, while increasing the oxygen supply to your system.

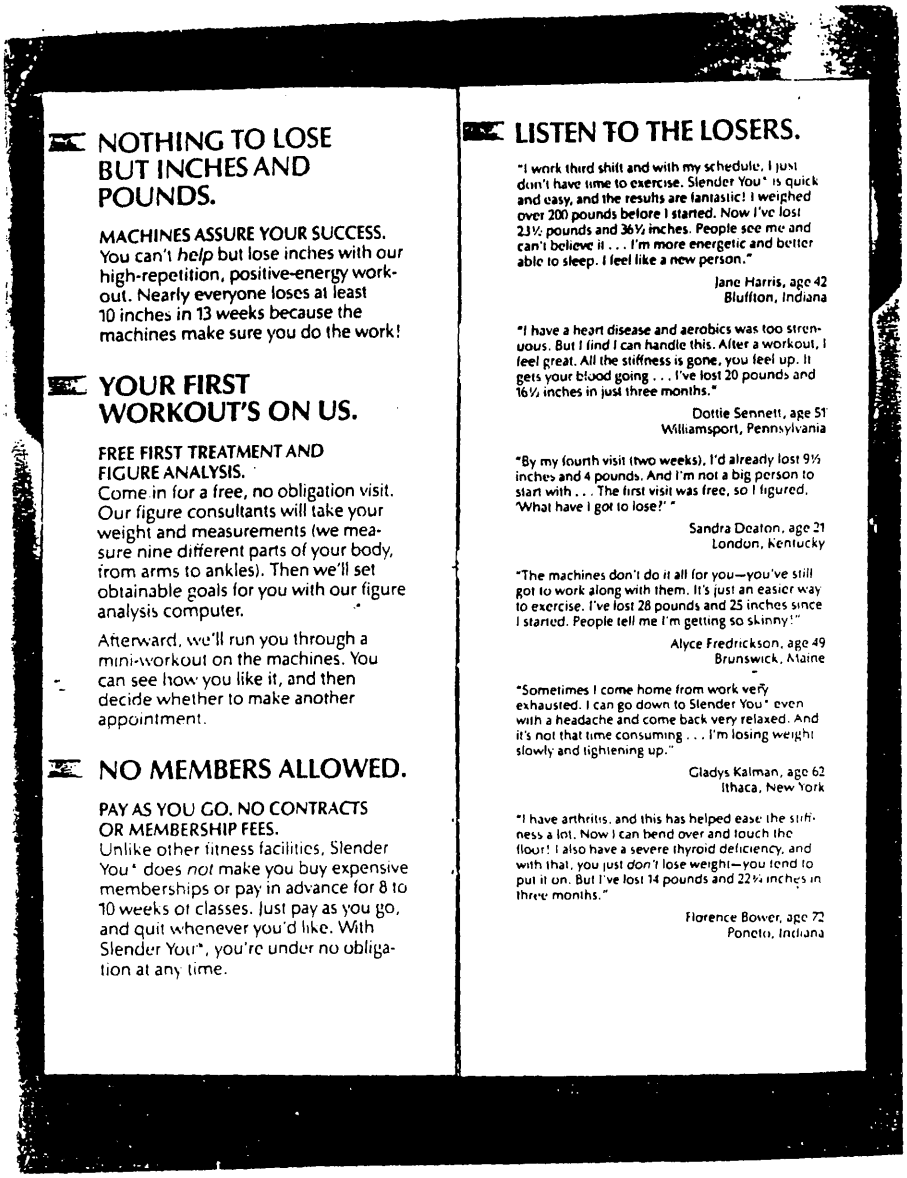
You end up with a trimmer figure *and* a healthy surplus of energy! No sweat. No huffing and puffing. No strained and tired muscles.

EVERYONE LOSES INCHES.

Best of all, the machines assure your success. Nearly everyone loses at least 10 inches in 13 weeks through high-repetition, positive-energy exercise.

Try the Slender You® inch loss program. You've got nothing to lose but inches and pounds. And after just a few workouts, we think you'll agree. At Slender You®, great results really *are* no sweat.





NOTHING TO LOSE BUT INCHES AND POUNDS.

MACHINES ASSURE YOUR SUCCESS.
You can't *help* but lose inches with our high-repetition, positive-energy workout. Nearly everyone loses at least 10 inches in 13 weeks because the machines make sure you do the work!

YOUR FIRST WORKOUT'S ON US.

FREE FIRST TREATMENT AND FIGURE ANALYSIS.
Come in for a free, no obligation visit. Our figure consultants will take your weight and measurements (we measure nine different parts of your body, from arms to ankles). Then we'll set obtainable goals for you with our figure analysis computer.

Afterward, we'll run you through a mini-workout on the machines. You can see how you like it, and then decide whether to make another appointment.

NO MEMBERS ALLOWED.

PAY AS YOU GO. NO CONTRACTS OR MEMBERSHIP FEES.
Unlike other fitness facilities, Slender You® does *not* make you buy expensive memberships or pay in advance for 8 to 10 weeks of classes. Just pay as you go, and quit whenever you'd like. With Slender You®, you're under no obligation at any time.

LISTEN TO THE LOSERS.

"I work third shift and with my schedule, I just don't have time to exercise. Slender You® is quick and easy, and the results are fantastic! I weighed over 200 pounds before I started. Now I've lost 23½ pounds and 36½ inches. People see me and can't believe it . . . I'm more energetic and better able to sleep. I feel like a new person."

Jane Harris, age 42
Bluffton, Indiana

"I have a heart disease and aerobics was too strenuous. But I find I can handle this. After a workout, I feel great. All the stiffness is gone, you feel up. It gets your blood going . . . I've lost 20 pounds and 16½ inches in just three months."

Dottie Sennett, age 51
Williamsport, Pennsylvania

"By my fourth visit (two weeks), I'd already lost 9½ inches and 4 pounds. And I'm not a big person to start with . . . The first visit was free, so I figured, 'What have I got to lose?' "

Sandra Deaton, age 21
London, Kentucky

"The machines don't do it all for you—you've still got to work along with them. It's just an easier way to exercise. I've lost 28 pounds and 25 inches since I started. People tell me I'm getting so skinny!"

Alyce Fredrickson, age 49
Brunswick, Maine

"Sometimes I come home from work very exhausted. I can go down to Slender You® even with a headache and come back very relaxed. And it's not that time consuming . . . I'm losing weight slowly and tightening up."

Gladys Kalman, age 62
Ithaca, New York

"I have arthritis, and this has helped ease the stiffness a lot. Now I can bend over and touch the floor! I also have a severe thyroid deficiency, and with that, you just *don't* lose weight—you tend to put it on. But I've lost 14 pounds and 22¾ inches in three months."

Florence Bower, age 72
Poneto, Indiana

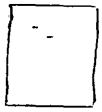

LEG TABLE
Circular motion helps slim entire leg area, especially inner thighs and "saddle bag" outer thighs. This elevated position improves circulation in the lower extremities. Approximates a two-mile walk.
SIT-UP TABLE
Works with you to exercise upper stomach and diaphragm while toning lower back. Helps you do 90 sit-ups in 10 minutes.

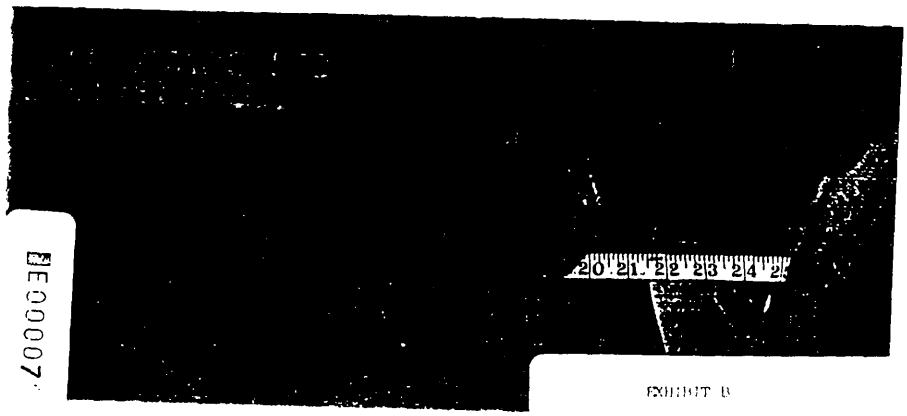

WAIST, TUMMY, HIP TABLE
Gently raises and lowers legs, helping to trim inches from your waist, stomach and hips. Also strengthens lower back muscles. Equivalent of 900 back kicks.
VIBRATOR TABLE
Improves circulation by increasing blood flow. Helps rid the body of excess water and acid waste while giving the skin cells a soft, warm glow. Leaves you feeling relaxed and re-energized.


STRETCH TABLE
Massage action works with you to exercise your entire upper body. Lifts ribcage, improves posture, reduces excess fat on upper arms, midriff, waist and back. Improves overall body tone and firmness.
SANDBAG TABLE
Gentle, rhythmic action breaks down "cellulite" on hips and thighs for lighter, smoother skin tone. Lifts and firms flabby buttocks. Strengthens and firms stomach muscles.

EXHIBIT B

© Slender You '86





EE00007

EXHIBIT B

INTRODUCING THE NO-SWEAT WORKOUT.

NOW THERE'S A PLEASURABLE WAY TO A SLIMMER, TRIMMER, MORE SHAPELY YOU.

Because there's no sweat and no pain, you'll actually enjoy working out the SLENDER YOU® way. Our inch loss program is reshaping old ideas about exercise.

You know traditional forms of exercise leave you tired, aching and fatigued.

But the SLENDER YOU® program actually energizes your body and leaves you feeling great!

Here's how:

Twice a week you spend 10 minutes on each of six mechanized exercise tables. These tables do the hard work for you, helping firm and tone your body.

No sweat. No strain. No kidding!

Nearly everyone loses 10 inches or more in just 13 weeks.

And no membership fees. Quit when you like. Once you consider our low cost and the great results, chances are you won't want to quit!

Your invitation to a SLENDER YOU® inch loss program is on us, free of all cost to you. Just visit or phone our salon. You've got nothing to lose but inches and pounds.

Great results really are no sweat at SLENDER YOU®.

STRETCH TABLE
Massage action works with you to exercise your entire upper body. Lifts bosom, improves posture. Helps reduce excess fat on upper arms, midriff, waist and back. Improves overall body tone and firmness.

LEG TABLE
Circular motion helps slim entire leg area, especially inner thighs and "saddle bag" outer thighs. This elevated position improves circulation in the lower extremities. Approximates a two-mile walk.

WAIST, TUMMY, HIP TABLE
Gently raises and lowers legs, helping to trim inches from your waist, stomach and hips. Also strengthens lower back muscles. Equivalent of 900 back kicks.

SANDBAG TABLE
Gentle, rhythmic action breaks down "cellulite" on hips and thighs for tighter, smoother skin tone. Lifts and firms buttocks. Strengthens and firms stomach muscles.

SIT-UP TABLE
Works with you to exercise upper stomach and diaphragm while toning lower back. Helps you [illegible] in 10 minutes.

VIBRATOR TABLE
Improves circulation by increasing blood flow. Helps rid body of excess water and acid waste while giving the skin cells a soft, warm glow. Leaves you feeling relaxed and [illegible]

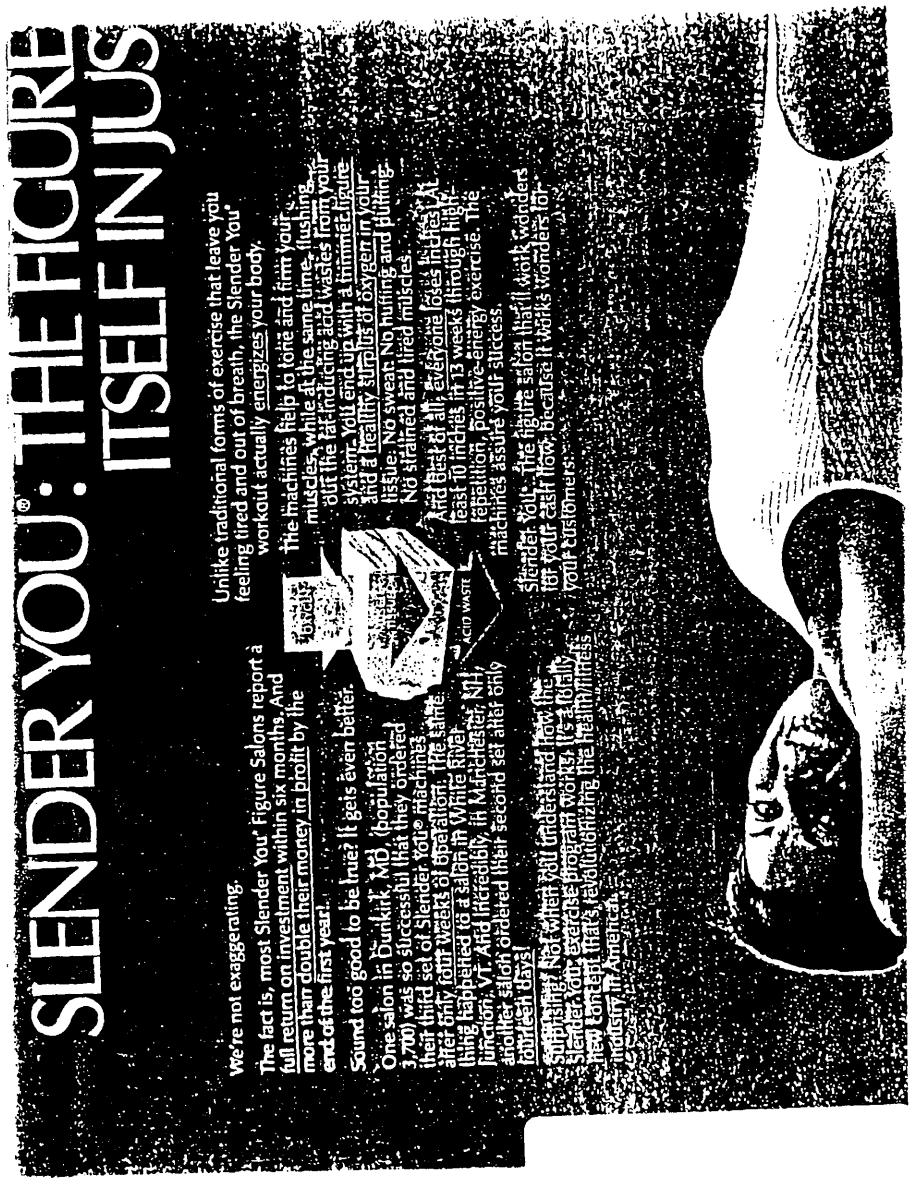
SLENDER YOU, INC., ET AL.

Complaint

EXHIBIT C

592

EXHIBIT D


SLENDER YOU®: THE FIGURE ITSELF INJUS
We're not exaggerating.
The fact is, most Slender You® Figure Salons report a full return on investment within six months. And more than double their money in profit by the end of the first year!
Sound too good to be true? It gets even better.
One salon in Dunkirk, NY (population 1,700) was so successful that they ordered their third set of Slender You® machines after only four weeks of operation. The same thing happened to a salon in White River Junction, VT. And incredibly, in Manchester, NH, another salon ordered their second set after only fourteen days!
Unlike traditional forms of exercise that leave you feeling tired and out of breath, the Slender You® workout actually energizes your body.
The machines help to tone and firm your muscles, while at the same time, flushing out the fat-inducing acid wastes from your system. You'll end up with a trimmer figure and a healthy surplus of oxygen in your tissue. No sweat. No pumping and pulling. No strained and tired muscles.
And best of all, as a phone goes it takes at least 10 inches in 13 weeks through high repetition, positive energy exercise. The machines assure your success.
Slender You. The figure salon that will work wonders for your cash flow, because it works wonders for your customers.
Sounds great! Not when you understand how the Slender You® exercise program works. It's totally new concept that's revolutionizing the health/fitness industry in America.

592

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 Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Slender You, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 334 Industrial Parkway, in the city of Crossville, State of Tennessee.

2. Respondents Diane K. Clark and Robert E. Clark are officers of Slender You, Inc. Their address is the same as that of the corporate respondent.

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

I.

It is ordered, That respondents Slender You, Inc., a corporation, its successors and assigns, and Diane K. Clark and Robert E. Clark, individually and as officers and directors of Slender You, Inc., and respondents' agents, representatives, and, employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, selling or distributing of an "passive exercise machine" in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that use of any such machine in a manner requiring little or no effort by the user:

a. Reduces or helps to reduce overall body fat or body fat in any particular areas of the human body.

b. Results in or contributes to inch loss or weight loss or the reduction of any particular part of the human body.

c. Tones or firms human tissue including muscle in a normal healthy individual.

d. Removes or eliminates cellulite or any other form of subcutaneous body fat.

e. Flushes out or contributes to the removal of fat inducing acid waste, toxic waste or any other bodily waste from an individual's body system.

f. Provides health or physical fitness benefits similar or superior to those provided by rigorous forms of exercise for normal healthy individuals.

II.

It is further ordered, That respondents Slender You, Inc., a corporation, and Diane K. Clark and Robert E. Clark, individually and as officers of the corporation, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, selling or distributing of any passive exercise machine or any fitness

or diet program 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 use of any such machine or program:

1. Reduces or helps to reduce overall body fat or body fat in any particular area of the human body;
2. Results in or contributes to inch loss or weight loss or the reduction of any particular part of the human body;
3. Tones or firms human tissue including muscle;
4. Removes or eliminates cellulite or any other form of subcutaneous body fat;
5. Flushes out or contributes to the removal of fat-inducing acid waste, toxic waste or any other bodily waste from an individual's body system; or
6. Provides health or physical fitness benefits similar or superior to those provided by rigorous forms of exercise.

unless at the time of making such representation, they possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of the order, for any test, analysis, research, study or other evidence to be "competent and reliable," the test, analysis, research, study, or other evidence shall be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results.

B. Representing, directly or by implication, that any consumer endorsement or testimonial in favor of any such machine or program represents the typical or ordinary experience of members of the public who use the machine or program unless such is the case.

III.

It is further ordered, That respondents shall for at least three (3) years after the date the representation is last disseminated, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this order.

B. All tests, reports, studies, surveys, demonstrations or other evidence, including consumer complaints, in their possession or control that contradict, qualify or call into question any representation covered by this order.

C. A copy of each non-identical form of promotional material disseminated by respondents.

IV.

It is further ordered, That respondents shall for at least three (3) years after the date of service of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying records of the name and last known address of each dealer, distributor, purchaser or lessee for commercial use of respondents' passive exercise machine, along with a copy of any training manuals or other training material disseminated to such persons.

V.

It is further ordered, That respondents shall:

A. Within sixty (60) days after the date of service of this order send via Certified mail with return receipt, a copy of this order to the last known name and address of each person or firm that is a current or former Slender You salon operator or dealer, and to each purchaser of Slender You equipment, and that respondents shall maintain for three (3) years and upon request make available to the Federal Trade Commission for inspection and copying each such return mail receipt, as well as a list of the names, addresses and phone numbers of those parties to whom respondents distributed a copy of this order.

B. Distribute a copy of this order to each of respondents' current officers, agents, representatives or employees who are engaged in the preparation of advertisements or other promotional materials, or any training or instructional materials, for passive exercise machines.

VI.

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

VII.

It is further ordered, That the individual respondent named herein shall for a period of 5 years from the date of service of this order, promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment whose activities include the manufacture, advertising, promotion, offering for sale, sale or distribution of passive exercise machines and of their affiliation with any new business or employment in which their own duties and responsibilities involve the manufacture, advertising, promotion, offering for sale, sale or distribution of passive exercise machines, with each such notice to include the respondents' new business address and a statement of the nature of the business or employment in which respondent is newly engaged, as well as a description of respondents' duties and responsibilities in connection with the business or employment.

VIII.

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

IN THE MATTER OF

EXHART ENVIRONMENTAL SYSTEMS, INC., ET AL.

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

Docket C-3384. Complaint, June 2, 1992--Decision, June 2, 1992

This consent order prohibits, among other things, a California-based company and its owners from representing that their electronic devices can eliminate, reduce the number of, or prevent the reentry of rodents unless they can substantiate such representations, and also prohibits them from stating that the devices are EPA-approved or waterproof, if that is not the case. In addition, the agreement requires the respondents to send a letter to all catalogue companies with which they have done business since January 1, 1990, informing them of the requirements of the order.

Appearances

For the Commission: *Eileen Harrington* and *David M. Torok.*

For the respondents: *Ronald Gold, Murphy & Gold*, Calabasas, CA.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Exhart Environmental Systems, Inc. ("Exhart"), a corporation, and Isaac Weiser and Margaret Weiser, individually and as officers of said corporation (hereinafter collectively 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 as follows:

PARAGRAPH 1. Respondent Exhart Environmental Systems, Inc. is a California corporation with its office and principal place of business at 21525 Strathern Street, Canoga Park, California.

PAR. 2. Respondents Isaac Weiser and Margaret Weiser are officers of Exhart. At all times relevant to this complaint, both Isaac Weiser and Margaret Weiser formulated, directed and controlled the business acts and practices of Exhart. Their business address is the same as that of respondent Exhart.

PAR. 3. Respondents are now and for some time in the past have been engaged in the promotion, manufacture, distribution, marketing, advertising and sale of various rodent control devices known as "Go'pher It," "Go'pher It II," "Molex" or "Gopher Buster" (hereinafter referred to as "products"). These products are purported to repel rodents from a specified area and prevent them from reappearing.

PAR. 4. In the course and conduct of their business, respondents cause, and in the past have caused, said products to be transported from their place of business for sale to purchasers located in various states and territories of the United States and the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 5. In the further course and conduct of their business, respondents have at all times mentioned herein made numerous statements in writing, in various product packaging materials, instruction sheets and promotional materials prepared and/or disseminated by respondents for use in selling respondents' products. Illustrative and typical, but not inclusive, of the statements employed as aforesaid are the following:

(a) "[A]n effective means to rid the yard and garden of Gophers, Ground Squirrels, Moles and other burrowing rodents."

(b) "When placed in the ground, the electronic stake vibrates and emits a noise in 15 second intervals causing underground dwellers within a 40-50 ft. diameter to flee."

(c) "Proven effective against burrowing rodents for up to a 50 foot diameter."

(d) "Not only expels existing population, but keeps new ones out."

(e) "Keep burrowing rodents out of your yard and garden forever."

(f) "Covers an area up to 100 feet in diameter."

PAR. 6. Through the use of the statements referred to in paragraph five, and others contained in product packaging and promotional materials, instruction sheets and advertisements not specifically set forth herein, respondents have represented, directly or by implication, that the products:

(a) Are an effective or proven means to eliminate, reduce the number of, or prevent the reentry of rodents generally;

(b) Are an effective or proven means to eliminate, reduce the number of, or prevent the reentry of rodents in a given area; and

(c) Are an effective or proven means to eliminate, reduce the number of, or prevent the reentry of rodents for a given time period.

PAR. 7. Through the use of the statements and representations referred to in paragraphs five and six, and others not expressly set out therein, respondents have represented, directly or by implication, that at the time they made the statements and representations in paragraphs five and six, they possessed and relied upon a reasonable basis for those statements and representations.

PAR. 8. In truth and in fact, at the time respondents made such statements and representations, they did not possess and rely upon a reasonable basis for them. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. In the further course and conduct of their business, respondents have, at all times mentioned herein, disseminated and caused to be disseminated advertisements and promotional materials for their products in which respondents have represented that their products were "E.P.A. approved" and "waterproof."

PAR. 10. In truth and in fact, respondents' products were not E.P.A. approved and were not waterproof. Therefore, the representations set forth in paragraph nine were, and are, false and misleading.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their 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 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 Exhart Environmental Systems, Inc. is a California corporation with its office and principal place of business located at 21525 Strathern Street, in the City of Canoga Park, State of California.

2. Respondents Isaac Weiser and Margaret Weiser are officers of Exhart Environmental Systems, Inc. Both Isaac Weiser and Margaret Weiser formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

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

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

"*Rodent control device*" means the "Go'pher It," "Go'pher It II," "Molex," "Gopher Buster" or any other substantially similar device or implement intended to repel, mitigate, control, or eliminate rodents.

I.

It is ordered, That respondents Exhart Environmental Systems Inc., a corporation, its successors and assigns and its officers: Isaac Weiser and Margaret Weiser, individually and as officers of said corporation; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, marketing, offering for sale, sale or distribution of any rodent control device in or affecting commerce, as commerce is defined in Section 4 of the Federal Trade Commission Act, as amended, do forthwith cease and desist from making any representation, directly or by implication, that any such rodent control device:

(1) Is an effective or proven means to eliminate, reduce the number of, or prevent the reentry of rodents generally;

(2) Is an effective or proven means to eliminate, reduce the number of, or prevent the reentry of rodents in a given area; or

(3) Is an effective or proven means to eliminate, reduce the number of, or prevent the reentry of rodents for a given time period,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, for any

experiment, analysis, research, study, survey, or other evidence to be deemed "competent and reliable," it shall be conducted and evaluated in an objective manner by persons recognized according to professional standards as being qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

II.

It is further ordered, That respondents Exhart Environmental Systems, Inc., a corporation, its successors and assigns and its officers: Isaac Weiser and Margaret Weiser, individually and as officers of said corporation; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, marketing, offering for sale, sale or distribution of any rodent control device in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, that any such rodent control device (1) is waterproof; or (2) is approved by the Environmental Protection Agency.

III.

It is further ordered, That respondents Exhart Environmental Systems, Inc., a corporation, its successors and assigns and its officers; Isaac Weiser and Margaret Weiser, individually and as officers of said corporation; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, marketing, offering for sale, sale or distribution of any rodent control device or any other pest control device in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, do forthwith cease and desist from representing in any manner, directly or by implication, any performance characteristic relating to the ability of such product to eliminate, reduce the number of, or prevent the reentry of rodents or any other pests unless, at the time of making such representation, respondents possess and

rely upon competent and reliable evidence that substantiates the representation. For purposes of this order, for any experiment, analysis, research, study, survey, or other evidence to be deemed "competent and reliable," it shall be conducted and evaluated in an objective manner by persons recognized according to professional standards as being qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

IV.

It is further ordered, That respondents Exhart Environmental Systems, Inc., Isaac Weiser and Margaret Weiser shall distribute a copy of this order to each present and future officer, agent, representative and employee having sales, advertising or policy making responsibilities for any rodent control device, and shall secure from each such individual a signed statement acknowledging receipt of this order.

V.

It is further ordered, That respondents Exhart Environmental Systems, Inc., Isaac Weiser and Margaret Weiser shall, within seven days after the date of service of this order, send to each catalogue company with which they have done business since January 1, 1990, a copy of Appendix A to this order.

VI.

It is further ordered, That respondents Exhart Environmental Systems, Inc., its successors and assigns, Isaac Weiser, and Margaret Weiser shall maintain for three (3) years following the date of the last dissemination of each representation, and upon request shall make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this order; and

B. All experiment results, test reports, studies, surveys or other evidence in their possession or control that contradict, qualify or call into question such representation or the basis upon which respondents relied for such representation.

VII.

It is further ordered, That respondents Exhart Environmental Systems, Inc., its successors and assigns, Isaac Weiser, and Margaret Weiser shall maintain for three (3) years after the date this order becomes final, and upon request shall make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of Part V of this order including, but not limited to, copies of all notices sent to catalogue companies.

VIII.

It is further ordered, That respondents Isaac Weiser and Margaret Weiser shall, for a period of ten (10) years after the date this order becomes final, promptly notify the Commission of any discontinuance of their present business or employment and of their affiliation with any new business or employment whose activities or responsibilities include the advertising, marketing, offering for sale, sale or distribution of rodent control devices or pest control devices. Such notice shall include their new business address and a statement of the nature of the business or employment in which they are newly engaged as well as a description of their duties and responsibilities in connection with that business or employment.

IX.

It is further ordered, That respondents Exhart Environmental Systems, Inc., its successors and assigns, Isaac Weiser, and Margaret Weiser shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change

in the corporation which may affect compliance obligations arising out of the order.

X.

It is further ordered, That respondents Exhart Environmental Systems, Inc., Isaac Weiser, and Margaret Weiser shall, within ninety (90) days after the date this order becomes final, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

APPENDIX A

[To Be Printed on Exhart Letterhead]

Dear [name of catalogue company]:

Exhart Environmental Systems, Inc. ("Exhart") has entered into a consent agreement with the Federal Trade Commission ("FTC") to stop making certain representations about the effectiveness of the Go'pher It and similar rodent control devices unless at the time of making such representation we have competent and reliable scientific evidence that substantiates the representation. According to the FTC complaint, Exhart does not possess substantiating evidence for the following representations:

(1) That the Go'pher It, Go'pher It II, Molex or Gopher Buster (hereinafter referred to as "devices") are an effective or proven means to eliminate, reduce the number of, or prevent the reentry of rodents generally;

(2) That these devices are an effective or proven means to eliminate, reduce the number of, or prevent the reentry of rodents in a given area;

(3) That these devices are an effective or proven means to eliminate, reduce the number of, or prevent the reentry of rodents for a given time period.

The FTC also has alleged that representations that these devices are waterproof or are approved by the Environmental Protection Agency are false and misleading.

The devices covered by this agreement include the Go'pher It, Go'pher It II, Molex or Gopher Buster. Exhart previously has supplied you with promotional materials or advertising copy that make the above representations. You should cease using or relying on these materials as the basis for your own advertising unless and until we have provided you with substantiation or have provided new materials or advertising copy that comply with the consent agreement. You should also be aware that the FTC has taken the position that these representations are deceptive and misleading and that their continued dissemination may be a violation of the FTC Act.

Sincerely,

Isaac Weiser, President
Exhart Environmental Systems, Inc.

IN THE MATTER OF

HAROLD A. HONICKMAN, ET AL.

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

Docket 9233. Consent Order, July 25, 1991--Amending Order, July 20, 1992

This order reopens the proceeding and amends the Commission's consent order issued on July 25, 1991, (114 FTC 427) by deleting the ninety-day reporting requirement in the first clause of paragraph V(A), and by correcting the syntax of paragraph III(A)(2).

ORDER AMENDING CONSENT ORDER ISSUED ON JULY 25, 1991

On July 25, 1991, the Commission issued its consent order in Docket No. 9233. The order became final on August 5, 1991. 16 CFR 2.41(c) (1992).

Paragraph II of the order sets forth a ten-year prior approval requirement for certain proposed acquisitions of bottling operations by respondents.[1] Paragraph V(A) of the order now requires, among other things, that respondents file reports of compliance every ninety days until they comply with the provisions of paragraph II. However, in addition, paragraph V(B) of the order, consistent with the Commission's general practice respecting prior approval provisions in Commission orders, requires that respondents file annual reports concerning their compliance with paragraph II. The Commission believes that its interests in monitoring the respondents' compliance with paragraph II of the order are adequately protected by the annual report requirement in paragraph V(B) of the order, and that it is

[1] Respondents may make a bottling operation acquisition under certain circumstances without invoking the paragraph II prior approval requirement if they satisfy the conditions of paragraph III of the order. That paragraph requires the respondents to notify the Commission at least thirty days prior to the acquisition and then to divest any existing Honickman bottling operation in a specific geographic area.

unnecessary to require that respondents file compliance reports every ninety days. The Commission therefore believes that it would be in the public interest to delete the ninety-day reporting requirement in paragraph V(A).

In addition, the first sentence of paragraph III(A)(2) of the order uses a singular pronoun and verb to refer to the plural "respondents," stating that respondents shall "[d]ivest . . . its business of bottling . . . that it then conducts . . ." (emphasis added). Although paragraph III(A) thus clearly requires the respondents to divest their business of bottling, distributing and selling CSDs and non-carbonated drinks, except for carbonated and non-carbonated waters, that they then conduct, the Commission has determined to correct the syntax of paragraph III(A)(2).

By letter dated November 1, 1991, the respondents consented to the changes contemplated by this order. Accordingly,

It is ordered, That the proceeding be, and it hereby is, reopened; and

It is further ordered, That the consent order in Docket No. 9233 be, and it hereby is, amended by

(1) Deleting the first clause of paragraph V(A) mandating ninety-day reports for the paragraph II prior approval requirement and beginning paragraph V(A) with the word "If;" and

(2) Changing the first sentence of paragraph III(A)(2) to state as follows:

Divest, absolutely and in good faith within six (6) months after the date of any such acquisition, their business of bottling, distributing and selling CSDs and non-carbonated drinks, except for carbonated and non-carbonated waters, that they then conduct through any Existing Honickman Bottling Operation in those counties in the New York Metropolitan Area in which such newly-acquired Bottling Operation also operates (such Existing Honickman Bottling Operation is hereinafter referred to as "Paragraph III Operation.").

Commissioner Azcuenaga and Commissioner Starek recused.

IN THE MATTER OF

SANDOZ PHARMACEUTICALS CORPORATION

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

Docket C-3385. Complaint, July 28, 1992--Decision, July 28, 1992

This consent order prohibits, among other things, a New Jersey-based company from requiring any purchaser of clozapine, a schizophrenia drug, or a patient taking clozapine sold by Sandoz, to buy other goods or services from the respondent or anyone designated by the respondent. In addition, the consent order requires that, if any company needs information about patients who have had adverse reactions to clozapine, the respondent must provide that information on reasonable terms.

Appearances

For the Commission: *Karen E. Berg* and *Jonathan Banks.*

For the respondent: *Daniel R. Shulman* and *Quentin Wittrock, Gray, Plant, Mooty, Mooty & Bennett*, Minneapolis, MN.

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 Sandoz Pharmaceuticals Corporation has violated and is violating 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

PARAGRAPH 1. Sandoz Pharmaceuticals Corporation ("Sandoz") is a Delaware corporation with its mailing address and principal office located at 59 Route 10, East Hanover, New Jersey. Sandoz

derives substantial revenues from the manufacture and sale of pharmaceutical products in the United States.

PAR. 2. Sandoz developed, obtained regulatory approval for, and sells clozapine in the United States.

JURISDICTION

PAR. 3. Sandoz is, and has been at all times relevant to this complaint, a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 4. The business and activities of Sandoz, and the acts and practices described below, are in or affect commerce as "commerce" is defined in the Federal Trade Commission Act.

RELEVANT PRODUCTS AND SERVICES

PAR. 5. Schizophrenia is a psychiatric disorder that causes a wide variety of symptoms including paranoia, delusions, hallucinations, thinking disturbances, apathy, lack of motivation, and withdrawal. There are approximately 2.5 million patients who suffer from schizophrenia in the United States, about 1 percent of the total population. Patients suffering from schizophrenia occupy a significant percentage of the nation's hospital beds.

PAR. 6. About 200,000 of the schizophrenic patients in the United States are refractory, *i.e.*, they fail to respond adequately to standard antipsychotic drug treatment, either because of insufficient effectiveness or intolerable adverse effects of the drugs.

PAR. 7. Clozapine is the first new drug for the treatment of schizophrenia in more than 20 years. It has been approved by the Food and Drug Administration for use in the treatment of schizophrenia in refractory patients.

PAR. 8. Clozapine is the only antipsychotic drug approved by the Food and Drug Administration for the treatment of refractory schizophrenic patients. For these patients, there is no substitute for clozapine. Approximately 95 percent of these patients are eligible for state or federal financial assistance to purchase clozapine.

PAR. 9. Clozapine causes agranulocytosis, a blood disorder characterized by a decrease in the number of white blood cells, in a

small percentage of patients. If undetected, patients with agranulocytosis may become seriously, and in some cases fatally, ill from infections.

PAR. 10. Under the Food Drug and Cosmetic Act, Sandoz has the exclusive right to market clozapine in the United States until September 26, 1994. Because of this exclusive right, Sandoz is the only source of clozapine in the United States. Sandoz markets clozapine in the United States under the trade name Clozaril.

PAR. 11. The sale of clozapine in the United States is a relevant market. Sandoz has market power in the market for clozapine.

PAR. 12. Pharmacy services are those services involved in the dispensing of prescription drugs and are generally provided by a licensed pharmacist in a licensed pharmacy.

PAR. 13. Distribution and delivery services are those services involved in the delivery of prescription drugs to the patient or patient's custodian.

PAR. 14. Blood drawing or phlebotomy services are those services involved in taking a blood sample from a patient under controlled conditions for subsequent analysis. Blood drawing services are generally provided by a phlebotomist or nurse.

PAR. 15. Patient tracking services are those services involved in the generation, maintenance, and review of health care records in general or in regard to specific events. These services are usually provided by physicians, nurses, pharmacists, and other health care personnel in connection with medical treatment.

PAR. 16. Clinical laboratory services are those services involved in analyzing the composition of blood specimens and reporting the results of such analysis. These services are generally provided by commercial laboratories, hospitals, health maintenance organizations, and physicians' offices.

PAR. 17. Pharmacy, distribution and delivery, blood drawing, patient tracking, and clinical laboratory services are available, individually or in combination, from many providers in competitive markets. These markets are separate and distinct from the market for clozapine in the United States.

THE CLOZARIL PATIENT MANAGEMENT SYSTEM

PAR. 18. The Clozaril Patient Management System ("CPMS") was Sandoz's program for the sale of clozapine. It consisted of a package that included the sale of clozapine together with pharmacy, distribution and delivery, blood drawing, patient tracking, and clinical laboratory services. Sandoz required all purchasers of clozapine to purchase its product as part of the CPMS.

PAR. 19. In order to obtain certain services that were part of the CPMS, Sandoz entered into an exclusive fifteen-year contract with Caremark, Inc. Under this contract, Caremark provided various services for Sandoz, including pharmacy, distribution and delivery, blood drawing, and patient tracking for patients receiving clozapine. Under its contract with Sandoz, Caremark was also responsible for billing patients or third-party payers, for collecting payments on behalf of patients participating in the CPMS, and for submitting all payments received to Sandoz. The contract further provided that, for the term of the agreement, Caremark would not sell or distribute any product containing clozapine other than Clozaril, and that for 7 ½ years from the date of the agreement, Caremark would not perform services in connection with any antipsychotic drug that could compete with Clozaril.

PAR. 20. In order to obtain certain additional services that were part of the CPMS, Sandoz entered into an exclusive ten-year contract with Roche Biomedical Laboratories, Inc., ("Roche"). Under this contract, Roche provided various services for Sandoz, including clinical laboratory services for patients receiving clozapine. The contract further provided that during the contract's term Roche would not provide clinical laboratory services for manufacturers or patients utilizing any form of clozapine not sold by Sandoz.

PAR. 21. Sandoz received a direct economic benefit from its requirement that clozapine purchasers also purchase pharmacy, distribution and delivery, blood drawing, patient tracking, and clinical laboratory services through the CPMS.

PAR. 22. Sandoz set the retail price of CPMS. Sandoz's retail price for CPMS was $172.00 per week per patient. Sandoz charged each patient the same price without regard to the actual dose of clozapine the patient required.

PAR. 23. Sandoz intended the requirement that clozapine purchasers also purchase pharmacy, distribution and delivery, blood drawing, patient tracking, and clinical laboratory services through the CPMS to increase its profits and to deter generic pharmaceutical manufacturers from entering the market after Sandoz's period of exclusivity expired.

ANTICOMPETITIVE CONDUCT

PAR. 24. Sandoz exercised its market power in the clozapine market by requiring purchasers of clozapine also to purchase pharmacy, distribution and delivery, blood drawing, patient tracking, and clinical laboratory services through the CPMS.

PAR. 25. Sandoz's actions described above have foreclosed competition in a substantial volume of commerce in the markets for pharmacy, distribution and delivery, blood drawing, patient tracking, and clinical laboratory services.

PAR. 26. The purpose, effect, tendency, or capacity of Sandoz's conduct described above, has been to restrain trade unreasonably, and injure purchasers of clozapine in the United States in the following ways, among others:

(a) By forcing purchasers of clozapine to purchase pharmacy, distribution and delivery, blood drawing, patient tracking, and clinical laboratory services only through the CPMS under terms and conditions set by Sandoz;

(b) By preventing federal, state, and local government agencies and private health care providers from providing their own pharmacy, distribution and delivery, blood drawing, patient tracking, and clinical laboratory services in connection with the use of clozapine;

(c) By restraining competition on the merits in the provision of pharmacy, distribution and delivery, blood drawing, patient tracking, and clinical laboratory services to purchasers and users of clozapine; and

(d) By raising the cost of clozapine treatment.

PAR. 27. The acts and practices alleged herein constitute an unfair method of competition in violation of Section 5 of the Federal

Trade Commission Act, as amended, 15 U.S.C. 45. These acts or practices, or the effects thereof, are continuing and will continue or recur 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 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 respondent had violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, and having duly considered the recommendations of its staff to modify the consent agreement pursuant to the comments received and the supplemental letter agreement executed by the respondent's counsel, 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 Sandoz Pharmaceuticals Corporation is a corporation organized, existing and doing business under and by virtue of

the laws of the State of Delaware, with its office and principal place of business located at 59 Route 10, in the City of East Hanover, State of New Jersey.

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

A. "*Respondent*" means Sandoz Pharmaceuticals Corporation ("Sandoz"), a Delaware corporation, its directors, officers, employees, agents, and representatives, its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Sandoz, its successors and assigns, and their respective directors, officers, employees and representatives, and their respective successors and assigns.

B. "*Clozapine*" is an antipsychotic prescription drug manufactured or sold by Sandoz Pharmaceuticals Corporation under the trade name "Clozaril" for the treatment of schizophrenia.

C. "*Monitoring services*" means pharmacy, distribution and delivery, blood drawing, patient tracking, and clinical laboratory services, or other diagnostic techniques used to detect agranulocytosis, either individually or in any combination of such services.

D. "*Purchasers*" means persons who purchase or attempt to purchase clozapine from Sandoz or from a wholesaler approved by Sandoz, including, but not limited to, third-party payers or providers such as federal, state, and local government agencies, community mental health providers, managed health care providers, pharmacies, and physicians.

II.

It is further ordered, That respondent, in connection with the sale of clozapine in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from, directly or indirectly, or through any corporation or other device:

A. Requiring any purchaser of clozapine or patient taking clozapine sold by Sandoz to purchase or obtain other goods or services from Sandoz or from any person designated by Sandoz.

B. *Provided, however*, that nothing in this order shall prevent Sandoz from requiring clozapine purchasers to provide monitoring services for patients in order to obtain clozapine. Pursuant to this proviso, Sandoz may refuse to allow purchasers to obtain clozapine for failure to agree to provide patient monitoring services, only if:

1. Sandoz determines (a) within thirty (30) days of Sandoz's receipt of the purchaser's request that Sandoz supply clozapine, that the purchaser has not undertaken to provide monitoring services that adequately identify patients who may develop agranulocytosis, or (b) that the purchaser has, after having been supplied with clozapine, failed to provide monitoring services that adequately identify patients who may develop agranulocytosis;

2. Within seven (7) days of making its determination that it will not supply or will stop supplying clozapine, Sandoz notifies the purchaser in writing of its determination, specifically identifies all bases for that determination, provides a description of acceptable methods for providing clozapine to patients, and provides a copy of this order and the accompanying complaint;

3. Sandoz's determination is based solely on standards that are (a) publicly available or available on request from Sandoz, (b) objective, and (c) under medical standards or regulatory requirements current at the time Sandoz makes its determination, reasonably necessary to protect patients against agranulocytosis; and

4. Sandoz notifies the Commission of its implementation of any standards under this proviso, and of any changes to any such standards, on or before the day those standards or changes take effect.

III.

It is further ordered, That:

A. If, in order for a person other than Sandoz to market clozapine in the United States, it is necessary to have access to information about patients who have suffered adverse reactions to clozapine, Sandoz shall provide that information upon request, to the extent it is maintained by Sandoz, on reasonable non-price terms and at a price not to exceed ten (10) dollars and that reflects only the cost of receiving, processing, and responding to each such request as such costs are stated under generally accepted accounting principles for public reporting purposes, and Sandoz shall not realize any profit on such transactions; and

B. For a period of eight (8) years after the date this order becomes final, Sandoz shall not unreasonably withhold information about clozapine patients from scientists and researchers who request such information in order to examine medical aspects of clozapine use, and Sandoz shall not charge for providing such information.

IV.

It is further ordered, That respondent shall:

A. Retain all records and documentation related to the review and approval of purchasers of clozapine for five (5) years from the date of approval;

B. Retain all records and documentation related to the consideration of its disapproval of any clozapine purchaser or discontinuance of sales of clozapine to any purchaser for five (5) years from the date of disapproval or discontinuance;

C. Distribute a copy of this order and the accompanying complaint, by first class mail within thirty (30) days after this order becomes final, to each person that has at any time been a purchaser of clozapine;

D. File a written report with the Commission within sixty (60) days after this order becomes final, and annually for ten (10) years on the anniversary of the date this order becomes final, and at any other

time the Commission, by written notice, may require, setting forth in detail the manner and form in which it has complied and is complying with this order, and including a list of the names, addresses and phone numbers of purchasers that were disapproved or discontinued during the period covered by the report; and

E. For a period of ten (10) years after the date this order becomes final, maintain and make available to 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 Parts II and III of this order.

V.

It is further ordered, That respondent shall:

A. Require, as a condition precedent to closing the sale or entering into any agreement, contract, or license for the transfer or other disposition of any right, title, or interest in clozapine or New Drug Application (NDA) 19-758, that the acquiring party file with the Commission, prior to closing such sale, or entering into any such agreement, contract, or license, a written agreement to be bound by the provisions of this order; and

B. For a period of ten (10) years after the date this order becomes final, notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

Because the consent order in this matter may remedy a real competitive problem, I have voted to accept it, but I find the revisions to order paragraph III troubling. Paragraph III, part A, is highly regulatory. It specifies not only that access to information about patients who have suffered adverse reactions to clozapine be provided by Sandoz to potential entrants at a price equal to cost, but

also places an absolute limit on what that price may be, regardless of cost. It is rare, if not unprecedented, that a Commission consent involves itself so directly, and rigidly, in pricing policies, and I view any movement in that direction as unnecessary and unwelcome. Paragraph III, part B, provides access to Sandoz's information about clozapine patients to researchers, again at cost, for a period of eight years. The relationship between this requirement and any anticompetitive theory articulated in the complaint is tenuous at best. I would have preferred to leave paragraph III as originally drafted and placed on the public record for comment.

IN THE MATTER OF

PYRAPONIC INDUSTRIES II, INC., ET AL.

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

Docket C-3386. Complaint, July 30, 1992--Decision, July 30, 1992

This consent order prohibits, among other things, a San Diego-based company and its owner from making false or unsubstantiated representations that the Phototron indoor greenhouse, or any air cleaning device, removes or reduces indoor air contaminants.

Appearances

For the Commission: *Linda Badger, Matthew Gold, Jeffrey Klurfeld* and *Barry Cutler.*

For the respondents: *Richard Circuit, Circuit, McKellogg, Kinney & Ross,* La Jolla, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Pyraponic Industries II, Inc., a corporation, and Jeffery Julian DeMarco, individually and as an officer of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Pyraponic Industries II, Inc. is an Illinois corporation. It has its principal office and place of business at 15090 Avenue of Science, P.O. Box 27809, Carmel Mountain Ranch, San Diego, CA.

(b) Jeffery Julian DeMarco is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices

alleged in this complaint. His principal office and place of business is the same as that of the corporate respondent.

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

PAR. 2. Respondents have engaged in the manufacture, promotion, offering for sale, sale, and distribution to the public of a plastic growth chamber or greenhouse for plants, known as the "Phototron," as well as planting materials and other products designed to assist in plant growth (hereinafter collectively referred to as "the Phototron").

PAR. 3. In the course and conduct of their business, respondents have disseminated and caused the dissemination of advertising and promotional materials, including, but not limited to, the advertising and promotional materials referred to herein, to promote the sale of the Phototron.

PAR. 4. Respondents operate in various states of the United States and in the District of Columbia. Respondents' manufacturing, labeling, packaging, offering for sale, promoting, advertising, sale and distribution of the Phototron constitute the maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, respondents have disseminated and caused the dissemination of advertisements and promotional materials for the Phototron by various means in or affecting commerce, including, *inter alia*, the placement of advertisements in magazines distributed through the mail and across state lines. Such advertisements and promotional materials were for the purpose of inducing, and were likely to induce, directly or indirectly, the purchase by the public of the Phototron.

PAR. 6. Respondents' advertisements and promotional materials include, but are not necessarily limited to, the advertisements and promotional materials attached hereto as Exhibits A through F. Specifically, these advertisements and promotional materials have contained the following statements:

(a) "Let's Clear The Air Together ... In the Phototron the natural respiration of plants breathe in all of the in house pollution completely filtering in the air you breathe ... [Y]ou can take action for the health and well being of your family for

only $39.95 down, with 0% interest and payments over 90 days ... With the Phototron III, you can help save the planet naturally, painlessly, and inexpensively, as over 100,000 people have already realized." (Exhibit A)

(b) "THE NATURAL HOME AIR PURIFIER ... Also, as they breathe in all of the CO2 the plants also breathe in all of the house pollution, completely purifying the air you breathe." (Exhibit B)

(c) THE PERFECT PRESCRIPTION FOR SICK BUILDING SYNDROME ... The only natural home air purification and fragrance system - The Phototron is designed to vacuum 1,000 cubic ft. of air, 33 times every 24 hours, past fragrant plants such as roses, accelerating and optimizing the plant's natural ability to ... breathe in all of the homes sealed-in air pollutants." (Exhibit C)

(d) "One Phototron can circulate the area (sic) in a 1000 sq. ft. (sic) room 33 times in 24 hours while removing known pollutants that have been proven to exist in the enclosed environments in which we live." (Exhibit D)

(e) "At the same time, your system will replenish oxygen 33 times, along with the fresh scent of the plants of your choice. In addition, the Phototron III will remove other various toxic gases ranging from carbon monoxide to sulfur to hydrocarbons." (Exhibit E)

(f) "Removes: radon, formaldehyde, pet odors, kitchen & bathroom smells, cigarette smoke." (Exhibit F)

(g) "Old day archaic air filtering systems looked, acted and sounded like this, adding much more pollution to the air than they ever reduced ... The natural air purification of one Phototron will replace and surpass all of the artificial mechanisms of yesteryear....Other pollutants, such as pet odors, kitchen smells, cigarette smoke, bathroom odors are all absorbed by the plant material before you do." (Promotional Video)

(h) "What if a lamp could: give light, deionize the air purify the air, ventilate the air, fragrance the air, and grow dozens of roses, all at the same time? How much do you think that would cost? Well, the only lamp that can do all of that is the Phototron." (Program-length Commercial)

(i) "You only need one Phototron to filter and clean 1,000 cubic feet of air in your home for $399.95, or 10 6-foot fichus trees at $199.95 each, equaling nearly $2,000." (Program-length Commercial)

PAR. 7. Through the use of the statements set forth in paragraph six, and other statements contained in advertisements and promotional materials not specifically set forth therein, respondents have represented, directly or by implication, that the Phototron removes all indoor air contaminants.

PAR. 8. In truth and in fact, the Phototron does not remove all indoor air contaminants. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statements set forth in paragraph six, and other statements contained in advertisements and promotional materials not specifically set forth therein, respondents have represented, directly or by implication, that:

(a) The Phototron is effective in removing one or more individual indoor air contaminants;

(b) The Phototron is a viable substitute for, and is superior to, conventional air purification or filtration methods or products; and

(c) The Phototron is effective in removing or reducing the concentration of indoor air contaminants in a 1,000 cubic foot area.

PAR. 10. Through the use of the statements set forth in paragraph six, and other statements contained in advertisements and promotional materials not specifically set forth herein, respondents have represented, directly or by implication, that at the time of making the representations set forth in paragraph nine, they possessed and relied upon a reasonable basis for those representations.

PAR. 11. In truth and in fact, at the time of making the representations set forth in paragraph nine, respondents did not possess and rely upon a reasonable basis for making the representations. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. The aforesaid acts or practices of respondents were and are to the prejudice and injury of the public and constituted and now constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Exhibit A

EXHIBIT A

Exhibit B

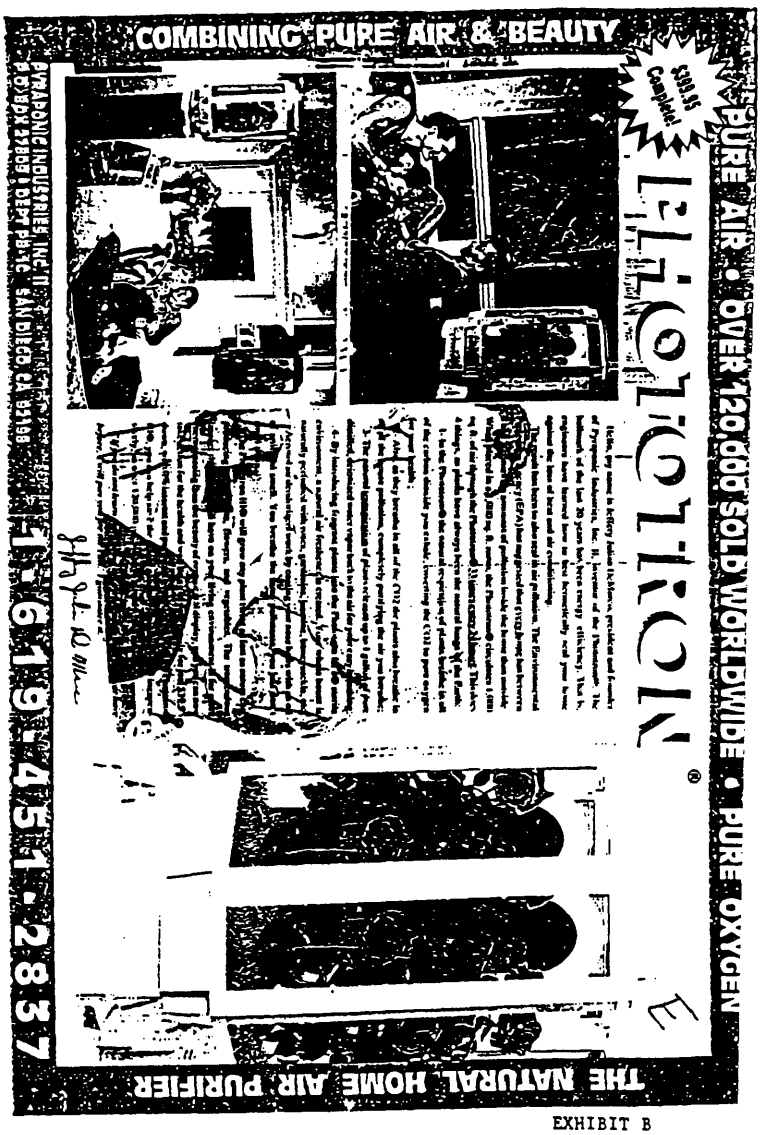


EXHIBIT B

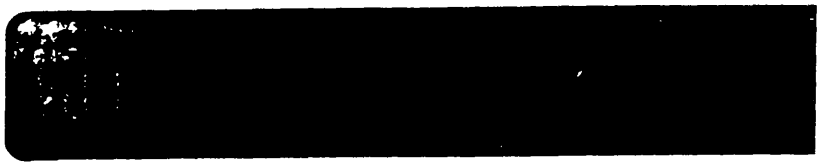
Exhibit C

digital color

EXHIBIT C
CURRENT JUNE

Exhibit D

PYRAPONIC



As I waited in the lobby of Pyraponic Industries, Inc. II in preparation to do this feature, I admit to many levels of curiosity. I'd read through the significant amounts of information provided by Pyraponic and other media accounts, but frankly knew little more than when I started. I claim to have a green thumb (although I've killed my share of ferns), but how could this concept vault a company into *INC.* Magazine's Top 100 fastest growing private companies (the only company in San Diego to do so)?

I was about to find out, for it was then that I was introduced to founder, president, one-hundred percent shareholder and multi-talented Jeffery Julian DeMarco. Within five minutes of meeting Jeff, I knew that this was certainly not an ordinary company and its president was certainly not an ordinary chief executive.

I first asked Jeffery to explain to me, in fern-killing laymen's terms, how the technology worked and what its applications were. This was obviously a task that DeMarco relishes, since the Phototron® is his invention with "fourteen patents in seven countries."

The neatest aspect of the Phototron® is that the concept is simple, and its the thought process behind it that gets the credit. "Basically, the Phototron® is a laboratory-grade unit that is designed to surround the plants inside with an evenly distributed source of 2000 foot-candles of light, which is the maximum a plant can utilize for the photosynthetic process."

Through a process of "vacuum metalization," the plexi-glass walls of the unit reflect 90% of the light back within the growing chamber so as to maximize the growth efficiency, but not totally disrupt the living area of humans around it with intensely bright and hot lights. The unit actually gives off a very soothing glow, but when you lift one of the removable glass panels, the difference from the inside is easy to see. Pyraponics was the first company in the world to use this process on plastic to produce optical clarity.

In addition, 21 different elements are closely controlled and monitored to allow a plant to grow at substantially increased rates. These elements are:

Environmental Controls

1. Light
   a) Spectrum of Light
   b) Foot-Candle Radiation of Light
   c) Lumen Output
2. Light Wave and Particle Reflectivity
3. Wind Velocity
4. Carbon Dioxide Flow
5. Relative Humidity
6. Root Zone and Air Temperature
7. Water Transpiration and Evaporation

Chemical Controls

1. Nitrogen
2. Phosphorus
3. Potassium
4. Calcium
5. Magnesium
6. Sodium
7. Chloride
8. Sulphur
9. Iron
10. Maganese
11. Boron
12. Molybdenum
13. Total Soluble Salts
14. pH

The key, Jeff told me, is to "create a totally compatible environment for the specific type of plant and the environmental differences" (which those of us who are originally from the Midwest know all too well). The Phototron® has been through years of research to determine the most effective "linear formulation" of nutrients which, through computer enhancements and modeling, have produced what Jeff described as "ten lifetimes worth of work identifying the *four billion* possible permutations of these elements."

But what does this mean to you an
Simply put, by having a Phototron® in
home or office, we are able to grow any plan
a minimum of 2-3 times its normal rate, p
duce flowering plants indoors, and do it in
aesthetically pleasing environment. "T
process adds four vitally important ingr
ents to our environment," Jeff explained. "(
viously, there is an increased level of oxyge
One Phototron® can circulate the area in a 1
sq. ft. room 33 times in 24 hours while remov
known pollutants that have been proven
exist in the enclosed environments in which
live. Plus, it is a fact that relative humic
between 30-50 greatly impedes the growth

EXHIBIT D

Exhibit E

EXHIBIT E

PYRAPONIC INDUSTRIES II, INC., ET AL.

Complaint

Exhibit F

636

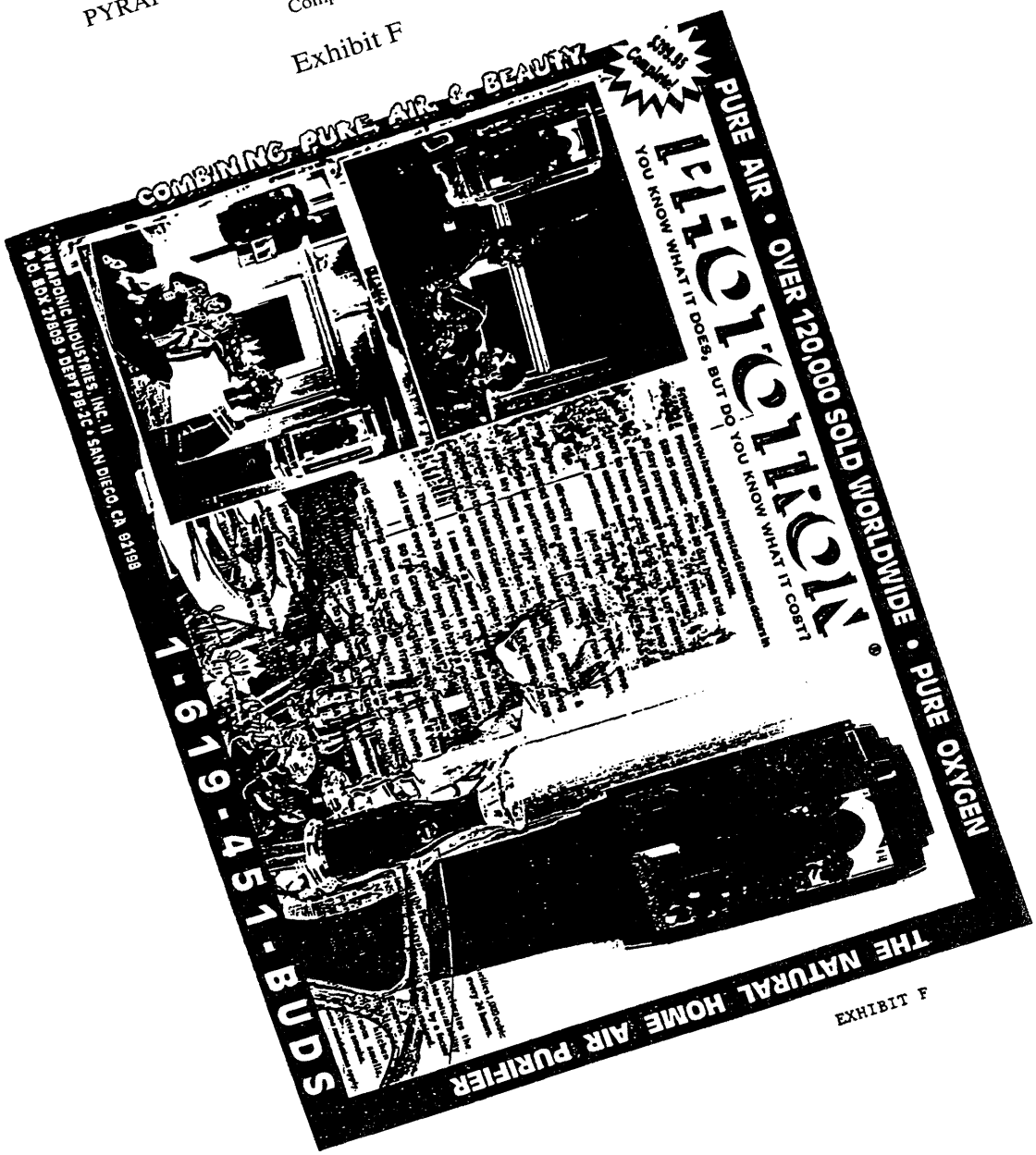


EXHIBIT F

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 San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its compliant, makes the following jurisdictional findings and enters the following order:

1. Respondent Pyraponic Industries II, 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 15090 Avenue of Science, P.O. Box 27809, Carmel Mountain Ranch, San Diego, California.

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

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

ORDER

DEFINITIONS

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

A. The term "*air cleaning product*" means any product, equipment or appliance designed or advertised to remove, treat or reduce the level of any contaminant(s) in the air.

B. The terms "*indoor air contaminant(s)*" or "*contaminant(s)*" mean one or more of the following: radon, cigarette smoke, formaldehyde, carbon monoxide, sulfur, hydrocarbons, pet odors, kitchen & bathroom smells or any other gaseous or particulate matter found in indoor air.

C. The term "*substantially similar product*" means any plant growth chamber that does not also include a charcoal filter or other mechanism for removing or reducing the concentration of one or more indoor air contaminants.

I.

It is ordered, That respondent Pyraponic Industries II, Inc., a corporation, its successors and assigns, and its officers, and respondent Jeffery Julian DeMarco, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the Phototron, or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that such product, or any component of such product, removes all indoor air contaminants.

II.

It is further ordered, That respondent Pyraponic Industries II, Inc., a corporation, its successors and assigns, and its officers, and respondent Jeffery Julian DeMarco, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the Phototron, or any other air cleaning product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that such product, or any component of such product:

A. Removes one or more indoor air contaminant(s);

B. Reduces the concentration of one or more indoor air contaminant(s);

C. Is a viable substitute for, or is superior to, any other product or method with respect to its ability to remove or reduce the concentration of one or more indoor air contaminant(s); or

D. Is effective, within any stated area, in removing or reducing the concentration of one or more indoor air contaminant(s);

unless at the time of making the representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

It is further ordered, That respondent Pyraponic Industries II, Inc., a corporation, its successors and assigns, and its officers, and respondent Jeffery Julian DeMarco, individually and as an officer of said corporation, and respondents' representatives, agents and em-

ployees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the Phototron, or any other air cleaning product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, any performance characteristic of any such product unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation. To the extent such evidence consists of 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.

IV.

It is further ordered, That for three (3) years from the date that the respondents make any representation covered by this order, respondents shall maintain and upon written request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements, promotional materials, documents, or other materials relating to the offer for sale or sale of any product covered by this order that make any representation covered by this order;

B. All materials relied upon by respondents to substantiate any representation covered by this order;

C. All tests, reports, studies, experiments, analyses, research, surveys, demonstrations, or other materials in the possession or control of respondents that contradict, qualify, or call into question any representation covered by this order or the basis on which respondents relied for such representation; and

D. All materials that demonstrate respondents' compliance with this order.

V.

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

VI.

It is further ordered, That the individual respondent shall, for a period of five (5) years after the date of service of this order upon him, promptly notify the Commission, in writing, of his discontinuance of his present business or employment and of his affiliation with a new business or employment. For each such new affiliation, the notice shall include the name and address of the new business or employment, a statement of the nature of the new business or employment, and a description of respondent's duties and responsibilities in connection with the new business or employment.

VII.

It is further ordered, That the corporate respondent shall distribute a copy of this order to each of its operating divisions and to each of its managerial employees. The corporate respondent shall also distribute a copy of this order to each of its officers, agents, representatives or employees who either: (1) is engaged in the preparation or placement of advertising or other sales materials covered by this order; or (2) communicates directly with customers or prospective customers regarding the efficacy of any product covered by this order. The corporate respondent shall secure a signed statement acknowledging receipt of the order from each person to whom the order is distributed pursuant to this paragraph.

VIII.

It is ordered, That respondents shall, within sixty (60) days from the date of service of this order upon them, and at such other times as the Commission may require, 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

ROHM AND HAAS COMPANY, ET AL.

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

Docket C-3387. Complaint, July 31, 1992--Decision, July 31, 1992

This consent order permits, among other things, Rohm and Haas, a Pennsylvania-based company, to acquire the Union Oil Company's emulsion polymer assets, as long as it divests Union Oil's straight acrylics business to Union Carbide, or another FTC-approved buyer, within 180 days. If divestiture is not effected within that period, Rohm and Haas is required to consent to the appointment of a trustee. In addition, the consent agreement requires the respondents to assist the buyer in making the transition to full production and, for 10 years, requires the respondents to obtain FTC approval before acquiring any entity that produces straight acrylics for exterior house paint.

Appearances

For the Commission: *Marc G. Schildkraut* and *Joseph S. Brownman.*

For the respondents: *Stephen A. Stack, Jr., Dechert, Price & Rhoads*, Philadelphia, PA. *Harold E. Zahner*, in-house counsel, for respondent Union Oil Company of CA., Los Angeles, CA.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Rohm and Haas Company ("Rohm and Haas"), a corporation, and Union Oil Company of California ("Union Oil"), a corporation, have entered into an agreement that violates Section 5 of the Federal Trade Commission Act, and that, if consummated, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, and it appearing to the Commission that a proceeding in respect

thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

I. RESPONDENT ROHM AND HAAS COMPANY

PARAGRAPH 1. Respondent Rohm and Haas is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at Independence Mall West, Philadelphia, Pennsylvania.

PAR. 2. Respondent Rohm and Haas had over $2.8 billion in sales in 1990, with assets valued at over $2.8 billion. Respondent's 1990 sales of all types of emulsion polymers, resins, and monomers were about $1.2 billion.

PAR. 3. Respondent Rohm and Haas produces a full line of emulsion polymers in seven United States plants located at Bristol, Pennsylvania; Chicago Heights, Illinois; Illiopolis, Illinois; Knoxville, Tennessee; Hayward, California; Carson, California; and Louisville, Kentucky.

PAR. 4. At all times relevant herein, Respondent Rohm and Haas has been engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

II. RESPONDENT UNION OIL COMPANY OF CALIFORNIA

PAR. 5. Union Oil is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 1201 West Fifth Street, Los Angeles, California.

PAR. 6. Union Oil is the nation's fifth largest producer of emulsion polymers. Respondent Union Oil produces a full line of emulsion polymers in six manufacturing facilities, located at La Mirada, California; Newark, California; Lemont, Illinois; Kankakee, Illinois; Mallard Creek, North Carolina; and Orr Road, North Carolina. The company's 1990 sales of all types of emulsion polymers were about $162 million.

PAR. 7. At all times relevant herein, respondent Union Oil has been engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

III. THE ACQUISITION

PAR. 8. On or about November 18, 1991, Rohm and Haas and Union Oil executed a letter of intent in which Rohm and Haas agreed to acquire substantially all of Union Oil's emulsion polymers business for $175 million. The assets to be acquired consist of Union Oil's six emulsion polymer manufacturing facilities, a technical service center, inventory, intellectual property, and accounts receivable.

IV. THE RELEVANT PRODUCT MARKET

PAR. 9. The relevant line of commerce in which to evaluate the effects of the acquisition is acrylic emulsion polymers for exterior architectural coatings. Architectural coatings are house paint.

V. THE RELEVANT GEOGRAPHIC MARKET

PAR. 10. The relevant geographic market is the United States as a whole.

VI. NATURE OF TRADE AND COMMERCE

PAR. 11. In 1991, total United States sales of acrylic emulsion polymers for exterior house paint were approximately $160 million.

PAR. 12. Emulsion polymers are water-based, long-chained chemical compounds having binding and adhesion properties. Acrylic emulsion polymers are derived from the esters of acrylic acid (acrylates) and/or methacrylic acid (methacrylates).

PAR. 13. Acrylic emulsion polymers are used, among other things, as binders in the manufacture of exterior latex house paint. Binders are employed in house paint to adhere to the pigment, and upon drying, produce a film that adheres to the painted substrate. Some of the properties of acrylic emulsion polymers that make it

desirable for use in exterior house paint are flexibility, allowing wood or other surfaces to change with temperature conditions without causing the paint to crack, and durability, which allows the paint to hold up better under adverse weather conditions and UV rays.

VII. MARKET STRUCTURE

PAR. 14. The relevant market is very highly concentrated, whether measured by the Herfindahl-Hirschmann index ("HHI") or by two-firm and four-firm concentration ratios. Rohm and Haas is the leading firm in the market with about an 82% share of sales. Union Oil has about a 1% share of sales.

VIII. CONDITIONS OF ENTRY

PAR. 15. Entry into the relevant market is difficult and time-consuming. An entrant would need to spend years developing a product, and testing, monitoring, and collecting satisfactory results from test-fence data. Additional years would be required for paint company customers to qualify the product of a new entrant.

IX. EFFECTS OF THE ACQUISITION

PAR. 16. The acquisition would increase concentration substantially. The HHI would increase by more than 100 points.

PAR. 17. The acquisition may substantially lessen competition or tend to create a monopoly in the production and sale of acrylic emulsion polymers for exterior house paint, in the following ways, among others:

1. Substantial actual competition between Rohm and Haas and Union Oil will be eliminated;
2. The market power of Rohm and Haas, and its ability to exercise market power unilaterally, will increase;
3. Prices to paint companies and to consumers of paint are likely to increase; and
4. Services to paint companies and to consumers are likely to decrease.

X. VIOLATION CHARGED

The acquisition agreement between Rohm and Haas and Union Oil for Rohm and Haas to acquire the emulsion polymers business of Union Oil constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and would, if consummated, constitute a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. 18.

DECISION AND ORDER

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition by Rohm and Haas Company ("Rohm and Haas") of certain assets of Union Oil Company of California ("Union Oil"), and Rohm and Haas and Union Oil having been furnished with a copy of a draft complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Rohm and Haas and Union Oil with violations of the Federal Trade Commission Act and the Clayton Act; and

Respondents Rohm and Haas and Union Oil, their attorneys, and counsel for the Commission, having thereafter executed an agreement containing consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the draft 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 violated the said Acts, 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:

A. Respondent Rohm and Haas Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its offices and principal place of business located at Independence Mall West, Philadelphia, Pennsylvania.

B. Respondent Union Oil is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 1201 West Fifth Street, Los Angeles, California.

C. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondents Rohm and Haas and Union Oil, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, for purposes of this order, the following definitions apply:

1. "*Rohm and Haas*" means Rohm and Haas Company, its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Rohm and Haas, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

2. "*Union Oil*" means Union Oil Company of California, its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Union Oil, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

3. "*Union Carbide*" means Union Carbide Chemicals and Plastics Company, Inc., a New York Corporation, and any subsidiary or division thereof.

4. "*Acquirer*" means the firm or firms that acquire the Union Oil Architectural Acrylic Assets pursuant to paragraph II of this order.

5. "*Architectural Acrylic Emulsion Polymers*" means emulsion polymers that are derived solely from or consist of at least 90% by weight of the esters of acrylic acid (acrylates) and/or methacrylic acid (methacrylates) and are used, in whole or in part, in the manufacture

of exterior paints to be applied to residential, commercial, or industrial buildings.

6. "*Union Oil Architectural Acrylic Assets*" means all product inventories, product technology (including product recipes, application know-how, reports, and any and all process know-how licenses), customer information, technical information, licenses to applicable patents, copyrights, trademarks, and test fences, necessary for the Acquirer to manufacture and sell the following Union Oil products: RES 60605, RES 6510, RES 6004, and RES 6034.

7. The "*Divested Products*" means RES 60605, RES 6510, RES 6004, and RES 6034.

8. "*Commission*" means the Federal Trade Commission.

9. "*Viability and Competitiveness*" of the Union Oil Architectural Acrylic Assets means that such assets when used in conjunction with the assets of the Acquirer are capable of producing and selling the Divested Products at the same rate as currently (at competitive prices) and are capable of functioning independently and competitively in the Architectural Acrylic Emulsion Polymers business.

II.

It is further ordered, That:

(A) No later than one hundred eighty (180) days after the date this order becomes final Rohm and Haas shall, directly or through assignment by Union Oil, in good faith (a) divest all of the Union Oil Architectural Acrylic Assets to Union Carbide pursuant to the terms of the Assignment and Assumption Agreement between Rohm and Haas and Union Carbide dated May 4, 1992 (the "Carbide Agreement") or (b) absolutely divest all of the Union Oil Architectural Acrylic Assets and also shall divest such additional ancillary assets and businesses and effect such arrangements that are necessary to assure the Viability and Competitiveness of the Union Oil Architectural Acrylic Assets, including manufacturing facilities if necessary, to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

(B) If the divestiture is accomplished pursuant to paragraph II.(A)(b) of this order, Rohm and Haas shall demonstrate the Viability and Competitiveness of the Union Oil Architectural Acrylic Assets in its application for approval of a proposed divestiture. The purpose of the divestiture of the Union Oil Architectural Acrylic Assets is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture and sale of Architectural Acrylic Emulsion Polymers and to remedy any lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

(C) Until the completion of the divestiture required by paragraph II. (A) of this order, Rohm and Haas and Union Oil shall take such action as is necessary to maintain the viability, competitiveness and marketability of the Union Oil Architectural Acrylic Assets and shall not cause or permit the destruction, removal or impairment of these Assets.

III.

It is further ordered, That, as part of the divestiture pursuant to paragraph II. (A) of this order,

(A) If the divestiture is accomplished pursuant to paragraph II. (A) (a) of this order, Rohm and Haas shall, for a period of one (1) year from the date of the divestiture pursuant to this order, or for such shorter period as Union Carbide shall determine,

1. Make available, at no cost to Union Carbide, such technical assistance and know-how as Union Carbide shall require to enable Union Carbide to manufacture the Divested Products according to their current product specifications and performance characteristics; and

2. Produce and ship for Union Carbide at prices set forth in the Carbide Agreement from one or more of the manufacturing facilities that had been producing the Divested Products for Union Oil, such quantities of Divested Products as Union Carbide shall require.

(B) If the divestiture is accomplished pursuant to paragraph II. (A) (b) of this order,

1. Rohm and Haas shall enter into an agreement with the Acquirer for a period of one (1) year from the date of the divestiture pursuant to this order, or for such shorter period as the Acquirer shall determine and the Commission shall approve, which shall effect such good faith arrangements as may be necessary to assure the continued Viability And Competitiveness of the Union Oil Architectural Acrylic Assets in the hands of the Acquirer. These arrangements shall include:

a. Making available, at no cost to the Acquirer, such technical assistance and know-how as the Acquirer may require to enable the Acquirer to manufacture the Divested Products according to their current product specifications and performance characteristics;

b. Producing and shipping for the Acquirer at a price as close to Rohm and Haas' manufacturing and shipping cost as may reasonably be determined, from one or more of the manufacturing facilities that had been producing the Divested Products for Union Oil, such quantities of Divested Products as the Acquirer shall require;

c. Performing such other arrangements as may be necessary to assure the continued Viability and Competitiveness of the Union Oil Architectural Acrylic Assets in the hands of the Acquirer; and

2. Such agreement shall receive the prior approval of the Commission and shall be effected only in a manner that receives the prior approval of the Commission. In its application for approval of a proposed divestiture, Rohm and Haas shall demonstrate how the agreement in conjunction with the divestiture maintains the Viability and Competitiveness of the Union Oil Architectural Acrylic Assets and how it is consistent with the purpose of the divestiture as set out in paragraph II. (B) of this order.

IV.

It is further ordered, That, for a period of one (1) year from the date of the divestiture pursuant to this order, Union Oil shall make

available, at no cost to the Acquirer, such technical assistance and know-how in its possession, in order to assist the Acquirer in the manufacture and sale of the Divested Products according to their current product specifications and performance characteristics.

V.

It is further ordered, That Rohm and Haas shall comply with all terms of the Preservation Agreement, attached to this order and made a part hereof as Appendix I. Said Agreement shall continue in effect until the Union Oil Architectural Acrylic Assets have been divested or until such other time as the Preservation Agreement provides.

VI.

It is further ordered, That:

(A) If Rohm and Haas does not divest the Union Oil Architectural Acrylic Assets to an Acquirer pursuant to paragraph II. (A) of this order one hundred eighty (180) days after the date this order becomes final, Rohm and Haas shall consent to the appointment of a trustee by the Commission to effectuate the obligations set out in paragraph II. (A) of this order. In the event the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Rohm and Haas shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Rohm and Haas to comply with this order.

(B) If a trustee is appointed by the Commission or a court pursuant to paragraph VI. (A) of this order, Rohm and Haas shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

(a) The Commission shall select the trustee subject to Rohm and Haas' consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(b) The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to effectuate the agreements required by paragraph III of this order and to divest the Union Oil Architectural Acrylic Assets and such other properties acquired by Rohm and Haas from Union Oil or such other properties of Union Oil as may be reasonably necessary to assure the continued Viability and Competitiveness of the Union Oil Architectural Acrylic Assets in the hands of a third party.

(c) The trustee shall have one year from the date the trust agreement is executed to accomplish the divestiture. If, however, at the end of one year the trustee has submitted a plan of divestiture or believes that divestiture may be accomplished within a reasonable period, the divestiture period may be extended by the Commission.

(d) The trustee may, subject to a determination by the Commission that it would be necessary to accomplish the required divestiture, add such other assets of Rohm and Haas acquired from Union Oil or other assets of Union Oil as may be required to effectuate the remedial purposes of this order.

(e) Subject to an appropriate confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records, and facilities regarding the Union Oil Architectural Acrylic Assets, and Rohm and Haas shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Rohm and Haas shall cooperate with the trustee, and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Rohm and Haas shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

(f) Subject to Rohm and Haas' absolute and unconditional obligation to divest at no minimum price, and the purpose of the divestiture as required by this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms for the

Union Oil Architectural Acrylic Assets and other assets that may need to be divested.

(g) The trustee shall serve without bond or other security at the cost and expense of Rohm and Haas on such reasonable and customary terms and conditions as the Commission or a court for a court-appointed trustee may set. The trustee shall have authority to employ at the cost and expense of Rohm and Haas such consultants, accountants, attorneys, business brokers, appraisers, and other representatives and assistants (all of whom shall be subject to appropriate confidentiality agreements) as are reasonably necessary to assist in the divestiture. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission or court, as the case may be, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Rohm and Haas and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent upon the trustee's divesting the Union Oil Architectural Acrylic Assets and any other assets to be divested in accordance with this order.

(h) Except in the case of reckless disregard of his or her duties or intentional wrongdoing, Rohm and Haas shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order.

(i) Within thirty (30) days of the appointment of the trustee, Rohm and Haas shall, subject to the approval of the Commission, and of the court for a court-appointed trustee, and consistent with the provisions of this order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture and enter into the agreements required by paragraph III of this order.

(j) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner under the same conditions as required by this order.

(k) The Commission, and in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

(l) The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

(m) The trustee shall report in writing to the Commission, and to Rohm and Haas, every sixty (60) days from the date the trust agreement is executed, regarding the trustee's efforts to accomplish the divestiture required under this order.

VII.

It is further ordered, That:

(A) For a period commencing on the date this order becomes final and continuing for ten (10) years, Rohm and Haas shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, assets located in the United States, used for or, within one (1) year of the date of the agreement to acquire, that had been used for the production of Architectural Acrylic Emulsion Polymers. For a period commencing on the date this order becomes final and continuing for ten (10) years, Rohm and Haas also shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock or share capital of, or any equity or other interest in, any entity that owns or operates assets located in the United States that are engaged in or, within one (1) year of the date of the agreement to acquire, have been engaged in, the production of Architectural Acrylic Emulsion Polymers. *Provided, however*, these prohibitions shall not relate to:

1. The construction of new facilities or the acquisition of new assets for use in existing facilities;

2. The acquisition of any used equipment for an acquisition price less than $250,000;

3. The acquisition, for investment purposes only, of the stock or share capital of an entity if as a result of such acquisition, Rohm and Haas would own less than one (1) percent of each class of securities of such entity; and

4. The acquisition of a non-exclusive license.

(B) One year after the date this order becomes final, and annually thereafter for nine (9) more years, Rohm and Haas shall file with the Commission a verified written report of its compliance with the provisions of this order.

VIII.

It is further ordered, That Rohm and Haas and Union Oil shall each file with the Commission a verified report in writing thirty (30) days after the date this order becomes final, and every sixty (60) days thereafter until the obligations of paragraphs II and III of this order have been fully satisfied, setting forth in detail the manner and form in which each has complied, is complying, or intends to comply with the terms of this order.

IX.

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

(A) Access, during office hours and in the presence of counsel, to inspect and designate for copying all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Rohm and Haas or of Union Oil, as applicable, relating to any matters contained in this order; and

(B) Upon five days notice to Rohm and Haas or to Union Oil as applicable, and without restraint or interference from Rohm and Haas or Union Oil, to interview officers or employees of Rohm and Haas and Union Oil, who may have counsel present, regarding such matters.

X.

It is further ordered, That Rohm and Haas and Union Oil shall each notify the Commission at least thirty (30) days prior to any proposed change in their respective structures, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, assignment or sale of substantially all of its assets, or any other change, that may affect compliance obligations arising out of the order or that may affect the company's Architectural Acrylic Emulsion Polymers business.

APPENDIX I

PRESERVATION AGREEMENT

This Preservation Agreement is by and between Rohm and Haas Company, a corporation organized under the laws of the State of Delaware, with its principal offices located at Independence Mall West, Philadelphia, Pennsylvania, and the Federal Trade Commission, an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

PREMISES FOR AGREEMENT

Whereas, Rohm and Haas, pursuant to an agreement dated November 18, 1991, agreed to purchase substantially all of the emulsion polymers business of Union Oil Company of California; and

Whereas, the Commission is now investigating the proposed acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, the Commission has reason to believe that the agreement would violate Section 5 of the Federal Trade Commission Act, and that, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, statutes enforced by the Commission; and

Whereas, if the parties accept the attached Agreement Containing Consent Order to Divest, the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the assets during the period prior to their divestiture, when those assets will be in the hands of Rohm and Haas, that any divestiture resulting from any administrative proceeding challenging the legality of the acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the Commission is concerned that prior to divestiture to the acquirer, it may be necessary to preserve the continued viability and competitiveness of the Union Oil Architectural Acrylic Assets; and

Whereas, the purpose of this agreement and of the consent order is to preserve the Union Oil Architectural Acrylic Assets pending the divestiture to the acquirer approved by the Federal Trade Commission under the terms of the order, in order to remedy any anti-competitive effects of the acquisition; and

Whereas, Rohm and Haas' entering into this agreement shall in no way be construed as an admission by Rohm and Haas that the acquisition is illegal; and

Whereas, no act or transaction contemplated by this agreement shall be deemed immune or exempt from the provisions of the antitrust laws, or the Federal Trade Commission Act by reason of anything contained in this agreement;

Now, therefore, in consideration of the Commission's agreement that, unless the Commission determines to reject the consent order, it will not seek further relief from the parties with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this agreement and the consent order annexed hereto and made a part thereof, and, in the event the required divestiture is not accomplished, to seek the divestiture of such assets as may be required to maintain the viability and competitiveness of the assets required to be preserved pursuant to this Agreement, and other relief the parties agree as follows:

TERMS OF AGREEMENT

1. Rohm and Haas agrees to execute, and upon its issuance to be bound by, the attached consent order.

2. Unless the Commission brings an action to seek to enjoin the proposed acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed acquisition, Rohm and Haas will be free to close the acquisition with Union Oil after 11:59 a.m., May 13, 1992.

3. Rohm and Haas agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 3.a - 3.b it will comply with the provisions of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the consent order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. On the day the divestiture set out in the consent order has been completed.

4. From the time Rohm and Haas acquires Union Oil Architectural Acrylic Assets until the divestiture set out in the Consent Order has been completed, Rohm and Haas shall maintain the viability, competitiveness and marketability of the Union Oil Architectural Acrylic Assets, and shall not cause the wasting or deterioration of the assets, nor shall it sell, transfer, encumber or otherwise impair their marketability or viability.

5. Should the Federal Trade Commission seek in any proceeding to compel Rohm and Haas to divest itself of the Union Oil Architectural Acrylic Assets or to seek any other injunctive or equitable relief, Rohm and Haas shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the acquisition. Rohm and Haas also waives all rights to contest the validity of this Agreement.

6. For the purpose of determining or securing compliance with this agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Rohm and Haas made to its principal offices, Rohm and Haas shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Rohm and Haas, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Rohm and Haas relating to compliance with this agreement; and

b. Upon five (5) days' notice to Rohm and Haas and without restraint or interference from them, to interview officers or employees of Rohm and Haas, who may have counsel present, regarding any such matters.

7. This agreement shall not be binding until approved by the Commission.