

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

NATIONAL FIRE HOSE CORPORATION, ET AL.

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

Docket C-2935. Consent Order, Nov. 1, 1978—Set Aside Order, Jan. 6, 1987

The Federal Trade Commission has set aside a 1978 consent order with National Fire Hose Corp. (92 F.T.C. 660), thus removing restrictions on the company's relations with its distributors.

ORDER REOPENING AND SETTING ASIDE ORDER
ISSUED ON NOVEMBER 1, 1978

On September 5, 1986, respondents National Fire Hose Corporation, Raymond L. Pepp and Dudley H. Pepp ("National") filed their Petition To Reopen Proceeding and To Set Aside Consent Order ("Petition"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, requesting that the Commission set aside or modify the order in Docket No. C-2935, issued on November 1, 1978. The order, among other things, prohibits the respondents from restricting or limiting the territory in which a distributor may sell National's products. The Petition was placed on the public record for thirty days, pursuant to Section 2.51 of the Commission's Rules. One comment was received.

The complaint in this case alleged that National, the leading domestic manufacturer and seller of fire hose, had, by imposing territorial restrictions on its distributors of municipal fire hose, restricted competition among distributors of National's products and foreclosed the entry of new distributors into competition with National's distributors. The order prohibits National from restricting the territories in which its distributors may sell National products, from restricting the customers to which a distributor may sell and from communicating with any distributor about the establishment of new distributor-

ships.¹

In the Petition, National asserts that the prohibitions of the order hinder National from developing an effective and efficient distribution program and that, as a result, the order has placed National at a competitive disadvantage in the municipal fire hose market. National notes that none of its competitors is currently subject to the restrictions imposed on National by the order. National claims that setting aside the order would enable National to become a more effective interbrand competitor, because National would be able to foster the promotional and sales development efforts of its local distributors. National's local distributors presently are reluctant to undertake such efforts, because they risk losing business to distant National distributors who exploit the market created through the efforts of National's local distributors.

Based on the information provided by National and other available information, the Commission has concluded that National has failed to make a satisfactory showing of changed conditions of fact or law that require reopening. The Commission has determined, however, that the public interest warrants reopening the proceeding in Docket No. C-2935 and setting aside the order. National's inability under the order to impose otherwise lawful territorial restrictions on its fire hose distributors may impede National's ability to compete by lessening the efficiency of National's distribution system and by discouraging distributors from offering and promoting National's products. In addition, purchasers of National's municipal fire hose may have difficulty obtaining post-sale services and training from distributors that have lost sales due to "free riding" by other distributors and, therefore, may be exposed to increased risk of injury. As a result, National may be exposed to personal injury claims.

The impediments to effective competition resulting from the order outweigh any reasons to retain the order. There do not appear to be any significant impediments to entry into either the manufacture or distribution of fire hose, and, in fact, significant entry has occurred since the order in this case was entered. An absolute prohibition upon the use of territorial restrictions by National appears to be no longer necessary under the facts presented, because National's use of exclusive territorial arrangements with its distributors is unlikely to foreclose competitors from distributional outlets.

The legality of distributional restraints, such as territorial restrictions, standing alone or coupled with exclusive distribution arrangements, must be determined on a case by case basis under applicable legal standards. Under the particular circumstances of this case, the

¹ The order prohibits National from imposing territorial restrictions on its distributors. The order does not bar National from entering into exclusive distributorship agreements with its distributors.

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Set Aside Order

likely impediment to National's ability to compete outweighs any need to retain the order, and it is therefore in the public interest to set aside the order in this case.

Accordingly, *it is ordered* that the order of November 1, 1978, in this matter be, and it hereby is, set aside.

Commissioner Bailey was recorded as voting in the negative.

IN THE MATTER OF

GLEDINNING COMPANIES, INC.

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

Docket 8824. Consent Order, Oct. 26, 1976—Modifying Order, Jan. 13, 1987

The Federal Trade Commission has modified a 1976 consent order with respondent (88 F.T.C. 656) by lifting a prohibition against running skill contests that are not based on "matters of established provable fact." Provisions in the original consent order that required skill contests to be based on reference materials that are available in the typical public library and disclosure of the reference books containing the answers were replaced in the modified order with new provisions requiring that correct answers be ascertainable from "authoritative reference works" and that contestants be informed of that fact.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On September 15, 1986, Glendinning Associates, Inc. (Petitioner), successor to the respondent under the order, Glendinning Companies, Inc., filed a request to reopen and modify the consent order issued by the Commission on October 26, 1976, in Docket No. 8824. (88 F.T.C. 656.)

The request to reopen and modify the consent order was placed on the public record on October 9, 1986, and a press release concerning the petition was issued on the same date. A notice of 30-day period for public comments on the petition was published in the *Federal Register* on October 24, 1986 [51 FR 37741 (1986)]. The public comment period ended on November 10, 1986, and no comments were filed. The deadline for the Commission to rule on Petitioner's request was January 13, 1987.

Petitioner is engaged in the manufacture, promotion, sale, and distribution of promotional games used to induce the sale of consumer products. Paragraph 1 of the order relates to all promotional games, contests and sweepstakes in which a prize is offered. Paragraph 2 relates only to skill contests. Petitioner asserts that the public interest requires that the Commission replace Paragraph 2 with a new Paragraph 2.

Paragraph 2 now orders Petitioner to cease and desist from:

2. Engaging in, promoting the use of, or participating in the development or operation of any skill contest, unless:

Modifying Order

- a. The skill contest is based solely on matters of established, provable fact.
- b. The factual subject matter is obtainable from readily available reference materials, *e.g.*, those available in the typical public library.
- c. Contest materials and advertising disclose clearly and conspicuously that a substantial degree of skill is involved and also the specific reference works on which the answers are based (*e.g.*, a specific dictionary, encyclopedia, atlas, or historical work), and contest rules and directions clearly provide all necessary information for the contestant to participate successfully.
- d. Questions and answers with complete supporting data as outlined in Paragraphs (a) and (b) and complete judging procedures are filed with an independent organization prior to promotion implementation.
- e. The correct answers and a list of winners is made available to participants upon request and filed with an independent organization within 60 days of the close of judging of the competition.
- f. Respondent or its designee maintains for at least two years after the closing of each skill contest and the awarding of all prizes in connection therewith, in addition to the records required by Paragraph 1(c), all entry forms submitted by participants in such skill contests.

Petitioner argues that the unintended effect of the order is to preclude it from conducting any skill contest except those based on "established provable fact." Therefore, Petitioner contends that it is forbidden by the order from conducting other skill contests such as those involving "checker problems, chess problems, crossword puzzles, photography or drawing contests, poetry contests and contests awarding prizes for the best jingle, slogan, product name, letter, or essay."

Petitioner argues further that subparagraph b. of Paragraph 2 prevents it from conducting a current events or contemporary history quiz dealing with recent events because the answers to such quizzes may not be readily available in published reference materials in the typical public library. A trivia quiz may also be questionable, according to Petitioner, because the typical public library "may not have reference materials concerning sports data, motion picture lore, or data on operas, Broadway shows, radio and television shows, their stars and plots."

Petitioner asserts that the requirement in subparagraph c. of Paragraph 2 that contest materials and advertising disclose the specific reference works on which answers are based, "(*e.g.*, a specific dictionary, encyclopedia, atlas or historical work)," reduces a skill contest to a research project. Under such conditions, Petitioner argues, almost every contestant could become a winner by looking up the answers in the reference books. Therefore, according to Petitioner, large prizes could not be offered and there would be no incentive to participate if nominal prizes were offered.

Petitioner's proposed Paragraph 2 restructures order Paragraph 2 so that the requirements that apply to all skill contests are set forth

in new subparagraphs (a) and (b) and those requirements that apply only to skill contests based on fact are listed separately under new subparagraph (c). The Commission considers this modification to be in the public interest because it would permit Petitioner to conduct games of skill that are not based on fact, while preserving the essential requirements of the order. For games of skill based on fact, the modification would eliminate the requirement in subparagraph b. that the factual subject matter be "obtainable from readily available reference materials, e.g., those available in the typical public library." This modification is, in the view of the Commission, in the public interest as it would permit Petitioner to conduct skill contests based on recent events and trivia quizzes that may not be found in reference materials that are readily available in the typical public library. Furthermore, not all answers to a contest need come from a single reference source. However, the answers must be ascertainable from "authoritative reference works."

Petitioner's proposed Paragraph 2 would also eliminate the requirement in subparagraph c. that the specific reference works where answers may be found be disclosed. This modification serves the public interest as it would enable Petitioner to stimulate interest in its contests by offering large prizes. As Petitioner points out in its petition, anyone could win under the order by merely going to the stated reference books and looking up the answers. Therefore, large prizes could not be offered.

Petitioner has not demonstrated a change of law or fact to support its request that the order be reopened and modified as requested, in accordance with Section 5(b) of the Federal Trade Commission Act. However, the facts presented by Petitioner have persuaded the Commission that the public interest requires that the order be reopened and modified as requested.

It is therefore ordered, That the proceeding is hereby reopened and the Decision and Order issued on October 26, 1976, and modified on February 24, 1981, is hereby further modified to read as follows:

ORDER

It is ordered, That respondent Glendinning Companies, Inc., a corporation, its successors and assigns, officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Coca-Cola, Tab, or any food or other product, or in connection with the sale or distribution of "Big Name Bingo," or any other promotional game, contest, sweepstake or similar device which involves or offers the awarding of a prize or anything of value to participants therein,

by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Engaging in, promoting the use of, or participating in any such promotional game, contest, sweepstake or similar device, by means of any announcement, notice or advertisement, unless:

(a) All of the requirements, terms and conditions for participating therein and for entitlement of such prizes are clearly and conspicuously set forth in each advertisement or notice which purports to explain or illustrate the operation of, manner of participation in, or the basis for or prospects of becoming entitled to or receiving a prize in connection with, any such contest or promotional game.

(b) All such prizes are in fact awarded to all participants therein whose entries conform to the stated requirements, terms and conditions for entitlement to and receipt of such prizes.

(c) There are maintained by respondent or its designee for a period of at least two years after the closing of each such promotional game or contest and the awarding of all prizes in such connection therewith, full and adequate records which clearly disclose the operation of such promotional game or contest, the basis or method used to determine entitlement to prizes, and the facts as to the receipt of such prizes by participants entitled thereto; which said records and documents shall be open for inspection during normal business hours by each contest participant or his duly authorized representative.

2. Engaging in, promoting the use of, or participating in the development or operation of any skill contest, unless:

(a) Contest materials and advertising disclose clearly and conspicuously that a substantial degree of skill is involved and, contest rules and directions clearly provide all necessary information for the contestant to participate successfully.

(b) Respondent or its designee maintains for at least two years after the closing of each skill contest and the awarding of all prizes in connection therewith, in addition to the records required by Paragraph 1(c), all entry forms submitted by participants in such skill contests.

(c) In any skill contest based on fact: (1) each correct answer or solution is ascertainable from authoritative reference works; (2) the contest materials and advertising disclose, clearly and conspicuously in addition to the disclosures required by Paragraph 2(a), that the answers are ascertainable from authoritative reference works; (3) questions and answers with complete supporting data and complete judging procedures are filed with an independent organization prior to promotion implementation; and (4) the correct answers and a list

of winners is made available to participants upon request and filed with an independent organization within 60 days of the closing of judging of the competition.

For purposes of this order a *skill contest* is defined as any promotional contest or device in which the award of a prize or anything of value to the participants is determined on the basis of the winning answers or solutions submitted by participants through the exercise of a substantial degree of skill in determining the winning answers or solutions to the questions or problems which are the subject of the contest or device.

In the event that the Commission promulgates a final trade regulation rule concerned with skill contests, then such trade regulation rule shall completely supersede and replace Paragraph 2 and such trade regulation rule shall become part of this order.

It is further ordered, That the terms of this order shall not apply to a promotional game, contest or device conducted by or under the direction of a governmental instrumentality, or where the respondent neither knew nor had reason to know of failure to comply with the terms of this order.

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

It is further ordered, That respondent notify the Commission at least 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.

IN THE MATTER OF
INTERNATIONAL MASTERS PUBLISHERS INC.

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

Docket C-3205. Complaint, Jan. 14, 1987—Decision, Jan. 14, 1987

This consent order requires, among other things, a Los Angeles mail-order seller of recipe cards to honor cancellation and return requests in a timely manner and prohibits respondent from misrepresenting its return and cancellation policies.

Appearances

For the Commission: *Jerome M. Steiner, Jr.*

For the respondents: *Anne B. Roberts, O'Donnell & Gordon, Los Angeles, Calif.*

COMPLAINT

The Federal Trade Commission, having reason to believe that International Masters Publishers Inc., a corporation ("respondent"), has 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 International Masters Publishers Inc., is a California corporation. It has its principal office or place of business at 4929 Wilshire Blvd., Los Angeles, California.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed recipe cards directly to the public through a continuity sales program entitled "My Great Recipes."

PAR. 3. The acts or practices of respondent alleged in this complaint were in or affecting commerce.

PAR. 4. In the course and conduct of its business, and in order to induce the sale of its recipe cards, respondent disseminated directly to consumers certain promotional materials and advertisements, an example of which is attached hereto as Exhibit A.

PAR. 5. Statements contained in said promotional materials included:

A. We'll also send you 72 additional cards for free examination. If you are not satisfied with these additional cards, simply return them. There is no obligation whatsoever.

B. [A]bout every 3 to 4 weeks, we'll send you an additional 3 packages of 24 recipe cards each, at \$2.25 per package, plus a small charge for postage and handling. You are never under any obligation to accept a package of recipe cards. *And*, you may discontinue receiving recipes at any time. The free gifts are yours to keep regardless.

I.

Alleging violations of Section 5(a) of the Federal Trade Commission Act, the allegations of Paragraphs One through Five are incorporated herein by reference.

PAR. 6. Through the use of the statements referred to in Paragraph Five, and others not specifically set forth therein, respondent represented, directly or by implication, that respondent would honor enrollment cancellation requests within a reasonable period of time.

PAR. 7. In truth and in fact, respondent did not honor enrollment cancellation requests within a reasonable period of time. In many instances, consumers who refused to pay for cancelled enrollments were billed and dunned by respondent for nonpayment, and had their accounts referred to collection agencies. Therefore, the representations set forth in Paragraph Six were, and are false and misleading, and the acts and practices described in this paragraph were, and are, unfair.

PAR. 8. The representations, acts, and practices set forth above were likely to induce consumers to order respondent's recipe cards and to receive and pay for recipe cards after cancellation. Respondent's representations, acts, and practices thus caused substantial consumer injury that was not outweighed by countervailing benefits to consumers or competition and was not reasonably avoidable by consumers. Therefore, dissemination of respondent's representations, and respondent's acts and practices constituted and constitute unfair and deceptive acts and practices in violation of Section 5(a) of the Federal Trade Commission Act.

II.

Alleging violations of Section 5(a) of the Federal Trade Commission Act, the allegations of Paragraphs One through Five are incorporated herein by reference.

PAR. 9. Through the use of the statements referred to in Paragraph Five, and others not specifically set forth therein, respondent represented, directly or by implication, that respondent would honor returns of recipe cards within a reasonable period of time.

PAR. 10. In truth and in fact, respondent did not honor returns of recipes cards within a reasonable period of time. In many instances, consumers who refused to pay for returned merchandise were billed

and dunned, and had their accounts referred to collection agencies. Therefore, the representations set forth in Paragraph Nine were, and are, false and misleading, and the acts and practices described in this paragraph were, and are, unfair.

PAR. 11. The representations, acts, and practices set forth above were likely to induce consumers to order respondent's recipe cards and to pay for recipe cards returned to respondent. Respondent's representations, acts, and practices thus caused substantial consumer injury that was not outweighed by countervailing benefits to consumers or competition and was not reasonably avoidable by consumers. Therefore, the dissemination of respondent's representations, and respondent's acts and practices constituted and constitute unfair and deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

III.

Alleging violations of Section 5(a) of the Federal Trade Commission Act, the allegations of Paragraphs One through Four are incorporated herein by reference.

PAR. 12. In the course and conduct of its business and for the purpose of collecting debts allegedly resulting from consumer purchases of recipe cards, respondent disseminated various collection and dunning notices to consumers. Examples of said notices are attached hereto as Exhibits B and C.

PAR. 13. Statements contained in such materials included:

A. Unless payment is received within ten days of this notice, your account will be forwarded to a national credit bureau which maintains a national delinquent account file. This alone may result in severe restrictions on your future credit transactions.

B. Moreover, I will be compelled to forward your name to a national credit bureau which maintains a national delinquent account file. This could seriously impair your valued credit rating and restrict future credit dealings of all kinds until this matter is settled.

PAR. 14. Through the use of the statements set forth in Paragraph Thirteen, and others not specifically set forth therein, respondent represented, directly or by implication, that referral of a consumer's name to the credit reporting agency with which respondent deals may adversely affect the consumer's ability to obtain credit for typical consumer transactions.

PAR. 15. In truth and in fact, referral of a consumer's name to the credit reporting agency with which respondent deals would not adversely affect the consumer's ability to obtain credit for typical con-

sumer transactions. Therefore, the representation set forth in Paragraph Fourteen was, and is, false and misleading.

PAR. 16. The representations set forth above were likely to mislead consumers into the erroneous belief that the representations were true and to induce the payment of alleged debts by virtue of said erroneous belief. Therefore, respondent's representations constituted and constitute deceptive acts and practices in violation of Section 5(a) of the Federal Trade Commission Act.

PAR. 17. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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Complaint

EXHIBIT A



**U.S. COURT ORDERS FREE RECIPES
SENT TO SUBSCRIBERS OF
GREAT RECIPES OF THE WORLD**

As a paid subscriber to Great Recipes of the World, you are entitled to all of the following by returning your enclosed rebate check:

72 Recipe Cards	- \$8.95 - FREE!
33 Divider Cards	- \$1.00 - FREE!
12 Blank Cards	- \$1.00 - FREE!
1 Recipe File Box	- \$9.95 - FREE!
Total:	\$18.95 - FREE!

We'll also send you 72 additional cards for free examination. If you are not satisfied with these additional cards, simply return them. There is no obligation whatsoever. And the other free gifts are yours to keep regardless.

You must return the enclosed rebate check in order to receive your free gifts. The rebate check is not transferable — it is made out to you, and can only be used by you alone. We can ship only to the name on the check (address corrections are acceptable.)

These free gifts are offered in exchange for the balance of the "Great Recipes of the World" issues owed to you. "Great Recipes of the World" will no longer be publishing their magazine.

My Great Recipes, a company well established in the recipe card business, is making this offer as a way of introducing our recipes to you. However, by sending in the rebate check, you are not obligated to buy anything whatsoever!

Once you send in your rebate check, we will send you all the items mentioned earlier. Then, about every 3 to 4 weeks, we'll send you an additional 3 packages of 24 recipe cards each, at \$2.25 per package, plus a small charge for postage and handling. You are never under any obligation to accept a package of recipe cards. And, you may discontinue receiving recipes at any time. The free gifts are yours to keep regardless.

Our recipes are quick and easy. Each recipe is beautifully photographed and protected with a special laminated coating. All recipes are stain-proof, waterproof, and chip-proof. If you should ever lose one, we'll replace it free of charge.

EXHIBIT A
P. 1 OF 4

(over please)

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FEDERAL TRADE COMMISSION DECISIONS

Complaint

109 F.T.C.

Send in your rebate check today. The free gifts are yours to keep, by order of the U.S. Court. But you must send in your rebate check to receive them!

Hurry, this offer expires May 31, 1985. Send in your rebate check today.

Sincerely,

Mary Masters

Mary Masters

P.S. — Remember, sending in your rebate check does not obligate you to buy anything. We can only ship you your free gifts after we've received your rebate check. The reply envelope enclosed requires no postage.

EXHIBIT A
P. 2 OF 4

Mary Masters, My Great Recipes

My Great Recipes

4929 Wilshire Blvd.
Los Angeles, CA 90010

The U.S. Court has given you the opportunity to exchange what is now basically a worthless subscription, for valuable products.

There's no obligation or hidden catch of any kind.

My Great Recipes[®] is doing this because we know you'll be so pleased with our quick and easy recipes, you'll want to buy more. By sending in your rebate check, you'll get a "taste" of our recipes. And we're so sure you'll hunger for more, we're willing to give you \$18.95 worth of free gifts.

Even though the balance of the issues owed you is less than \$18.95, our policy is to make sure you're satisfied. We do that by giving you quick and easy recipes, better quality, top-notch service, and value. Our thousands of satisfied customers know this to be true.

All you have to do to receive your free gift is to check "yes" on your enclosed rebate check, and return in the enclosed postage-paid envelope.

Do it now, while you have this in your hand. There's no obligation to buy anything.

Sincerely,

Eric A. Miller

Eric Miller
Vice President
My Great Recipes

P.S. - The time limit on this offer makes it important for you to send back the rebate check today.

Z136

EXHIBIT A
P. 3 OF 4

C149

NON - NEGOTIABLE

GREAT RECIPES OF THE WORLD

My Great Recipes®

P.O. Box 76926
4829 Wilshire Blvd.
Los Angeles, CA 90070

1876

YES! I want to exchange the balance of the "Great Recipes of the World" issues owed to me for the offer outlined in this letter. I understand the free gifts are mine to keep with no obligation, by order of the U.S. court.

NO. Do not exchange the balance of the "Great Recipes of the World" issues owed to me for the offer outlined in this letter. I understand that no additional issues of "Great Recipes of the World" magazine will be sent to me. I also am aware that the Court has made no provision for subscribers other than the free gifts as outlined in this letter.
Check one box only, and return in the enclosed postage paid envelope.

EIGHTEEN AND NINETY FIVE/100

DOLLARS

\$18.95

PAY TO THE ORDER OF

**ZELMA G HANKHEY
16720 191ST PL NE
WOODINVILLE, WA 98072**

Memo: The rebate check, if received by May 31, 1989 may be used in exchange for the offer outlined in the enclosed letter.

PHYS:CM

Non-transferable

190699

EXHIBIT TENB
File No. 88 L 3262

Eric A. Miller

EXHIBIT A
P. 4 of 4

Complaint

EXHIBIT B



4929 Wilshire Boulevard, Suite 800, Los Angeles, CA 90010 (213) 835-9127

Dear Member:

By now you have received several sets of my great tasting recipes, but I was surprised to see you have not paid for any of them yet.

Please take a moment to review the enclosed statement of your account, and if there are any problems let me know right away. The amount due reflects a total of all shipments sent to you thus far, however, you may not as yet received the last shipment.

Unless payment is received within ten days of this notice, your account will be forwarded to a national credit bureau which maintains a national delinquent account file. This alone may result in severe restrictions on your future credit transactions.

In order to avoid such a drastic measure please mail your check today using the enclosed envelope.

Cordially,

Mary Masters

MAKE CHECK OR MONEY ORDER PAYABLE TO:

My Great Recipes ©

4929 WILSHIRE BLVD., LOS ANGELES, CA 90010

KEEP THIS STUB

ACCOUNT NUMBER

23-15187297

PLEASE! Return this portion with your payment to insure proper credit to your account.

AMOUNT
42.16

SHIP DATE	SET NO.	AMOUNT
04/21/84	20,21,22	8.45
03/31/84	32,33,34	8.45
03/10/84	35,36,37	5.42
02/20/84	29,30,31	8.42
01/30/84	47,48,49	8.42

Write your account No. on check and envelope

YOUR ACCOUNT NUMBER	DATE
23-15187297	S9 04/24/84

MISS LORI APGAR
200 LONE-TREE RD
MOLLISTER CA 95023

010323151872970004216015

RETURN THIS PORTION

PAYABLE UPON RECEIPT

AMOUNT
42.16

enclosed

EXHIBIT B

Complaint

109 F.T.C.

EXHIBIT C

My Great Recipes

4225 Wilshire Boulevard, Suite 620, Los Angeles, CA 90048 (773) 628-9127

Dear Member:

Your account is now seriously past due. You have failed to live up to the terms of your membership agreement.

And, you have failed to advise us of any problems as we patiently asked. So, we can only assume you are using and enjoying the recipes we have sent you thus far, in good faith.

I have been forced to halt any further shipments, a step we always take with greatest regrets. Your 10-day evaluation period has expired. You cannot return the recipes we sent under terms of our agreement. However, this in no way cancels your outstanding balance owed.

Moreover, I will be compelled to forward your name to a national credit bureau which maintains a national delinquent account file. This could seriously impair your valued credit rating and restrict future credit dealings of all kinds until this matter is settled.

This is a drastic measure. I would much rather receive your check within the next ten days and avoid such action.

Eric Gordon,



Credit and Collection Manager

EXHIBIT C

DECISION AND ORDER

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

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

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

1. Respondent International Masters Publishers Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its offices and principal place of business located at 4929 Wilshire Blvd., Los Angeles, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

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

A. *Continuity sales plan* means a sales plan requiring the consumer to receive periodic installments of merchandise or services on approval.

B. *Billing cycle* means that period of time between the sending of one scheduled invoice or billing document (whether accompanying a

shipment of goods or not) and the sending of the following scheduled invoice or billing document.

C. *Return* means any item returned under the provisions of a continuity sales plan, as defined above.

D. *Received by respondent* or *receipt by respondent* includes material received at any mail drop respondent has established.

I.

It is ordered, That respondent International Masters Publishers Inc. ("IMP"), its successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of recipe cards or any other product or service by means of a continuity sales plan in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, any term or condition for cancellation of enrollment or return of merchandise, or misrepresenting, in any manner, directly or by implication, any right granted to, or any duty or obligation imposed on, any consumer.

B. Failing, by the end of the first billing cycle following the billing cycle in which a consumer's request for cancellation of enrollment is received by respondent, to cancel that consumer's enrollment, and, if thereafter the consumer is contacted in connection with any obligation arising out of the enrollment, to notify that consumer in writing that the enrollment has been cancelled.

C. Sending a consumer more than one additional installment of merchandise following receipt by respondent of an enrollment cancellation request.

D. Failing, by the end of the first billing cycle following the billing cycle in which a consumer's return of merchandise or goods is received by respondent, to credit that consumer's account for the return, and, if thereafter the consumer is contacted in connection with any obligation arising out of the enrollment, to notify the consumer in writing that the account has been credited for the return; *provided, however*, that such written notification may be made in a scheduled billing document or in a separately mailed document.

E. Failing to include in the first communication from respondent to each consumer following enrollment in any of respondent's continuity sales programs the statement attached hereto as Attachment A, or a statement similar thereto, explaining return and cancellation poli-

cies; *provided, however*, that should respondent represent to consumers that cancellations of enrollment, credits for returns of merchandise, or the sending of written confirmations thereof will be accomplished in a shorter time than required under Paragraphs I. B or I. D of this order, respondent, its successors and assigns, shall amend Attachment A to conform with such representation.

II.

It is further ordered, That respondent International Masters Publishers Inc., its successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any recipe card or other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any consumer's credit rating will or may be adversely affected, or representing, in any manner, directly or by implication, that there will or may be any adverse consequence to failing to pay any amount claimed to be delinquent, unless there is a reasonable likelihood such rating will be so affected or such consequence will occur.

III.

It is further ordered, That for five (5) years after the date of service of this order respondent, its successors and assigns shall maintain, and upon written request make available to the Federal Trade Commission for inspection and copying the following records:

A. For a period of two (2) years from the date of receipt, all documents containing, reflecting, or referring to each consumer complaint relating to cancellation of enrollment in a continuity sales plans, return of merchandise, alleged billing error, or collection effort, as well as such documents or records as will disclose any response thereto.

B. For a period of one year from the date of receipt, copies of each written request for cancellation of enrollment received during the week starting with the third Monday of each month.

C. For a period of one year from the date of preparation, records sufficient to show the date on which each return of merchandise and request for cancellation was made effective.

D. For a period of two years from the date of their last use, specimen copies of all form communications, promotional materials, and adver-

tisements as well as documents sufficient to show the period of time when such documents or materials were in use.

IV.

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

V.

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

ATTACHMENT A

IMPORTANT INFORMATION: PLEASE RETAIN FOR YOUR RECORDS

RETURNING MERCHANDISE

To return merchandise to us at no cost to you, simply place the goods in the original package, reseal it, and deposit it in a mailbox. Please allow up to two billing cycles [number of days in two billing cycles] for us to process the return. If you receive an invoice or other request for payment for the merchandise returned, you do not need to pay it.

CANCELLATION INFORMATION

You may cancel your enrollment in our program by calling, [number] or by writing to us at [address]. Please allow up to two billing cycles [number of days in two billing cycles] for us to process the cancellation.

In some circumstances, because of unforeseen delays, you may receive one additional shipment from us. If so, merely return the merchandise and any enclosed invoice to us. You will not be charged for that shipment.

IN THE MATTER OF
SOLAR AGE INDUSTRIES, INC.

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

Docket C-3206. Complaint, Jan. 28, 1987—Decision, Jan. 28, 1987

This consent order prohibits, among other things, an Albuquerque, N.M. manufacturer and seller of solar energy heaters from misrepresenting the efficacy and performance of its solar space heaters or any other kind of solar energy equipment, unless it can substantiate its claims. Additionally, respondent is prohibited from using the phrase "up to" in energy-related claims, unless the upper limit of potential savings indicated in the claim can be achieved by an appreciable number of consumers.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondent: *Robert N. Singer, Singer, Smith & Powell, Albuquerque N.M.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Solar Age Industries, Inc. ("Solar Age"), a corporation, has 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. Solar Age Industries, Inc. is a Nevada corporation with its principal office or place of business at 6400 Uptown Boulevard, Northeast, Albuquerque, New Mexico.

PAR. 2. Respondent manufactures, advertises, offers for sale, sells and distributes solar energy equipment including, *inter alia*, a "solar space heater" which consists of one or more rooftop collectors, one hot and one cold air duct and one small inlet fan, and which is designed to collect, but not store, the sun's rays for supplemental heating of individual residences or other small buildings.

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

PAR. 4. In advertisements and through the use of consumer testimonials contained therein, and through promotional materials disseminated to respondent's distributors, respondent has made various statements about the energy savings capability and area heating

capability of its solar space heater sold under the brand name "Solar Age Model 37," or sometimes referred to as "Solar Age Manufacturing Hot Air Collector Kit." Typical and illustrative of these statements, but not all-inclusive thereof, are the following from the advertisements attached hereto as Exhibits A, B and C:

Cut your heating bills up to 40%.

* * * * *
 . . . with a Solar Age Manufacturing Hot Air Collector Kit you can cut [heating] costs almost in half.

* * * * *
 Our Solar Age system has reduced our gas bills by over 30%.

* * * * *
 Enough [BTUS] to heat 600-800 sq. ft.!

* * * * *
 Our Solar Age heating system heats our whole house, even the garage!

* * * * *
 Solar Age Mfg. Collector Kits have an average 4 year pay back period.

* * * * *
 Solar Age Manufacturing collectors have been given a higher BTU output rating per square foot than any other in the country.

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

1. Use of the Hot Air Collector Kit will save an appreciable number of consumers 40% or close to 40%, and possibly as much as 50%, on their heating bills under reasonably foreseen circumstances.

2. Advertised savings of over 30% on the heating bills of one consumer reflect savings that other consumers will obtain with the use of the Hot Air Collector Kit under reasonably foreseen circumstances.

3. The Hot Air Collector Kit will provide enough heat to heat 600-800 square feet of space in residences or other small buildings under reasonably foreseen circumstances.

4. Advertised whole-house heating of one consumer's residence with the use of the Hot Air Collector Kit reflects the heating performance that other consumers will obtain under reasonably foreseen circumstances.

5. It will take an average of 4 years for consumers to save enough money on their heating bills by using the Hot Air Collector Kit to recoup the retail cost of the Hot Air Collector Kit.

6. Solar Age collectors are the highest BTU-rated collectors, per square foot, in the country.

PAR. 6. In truth and in fact:

1. Few, if any, consumers will save 40% or close to 40%, on their heating bills as a result of using the Hot Air Collector Kit under reasonably foreseen circumstances.

2. Advertised savings of over 30% on the heating bills of one consumer do not reflect savings that other consumers will obtain with the use of the Hot Air Collector Kit under reasonably foreseen circumstances.

3. The Hot Air Collector Kit will almost never be able to provide enough heat to heat 600-800 square feet of space in residences or other small buildings under reasonably foreseen circumstances.

4. Advertised whole-house heating of one consumer's residence with the use of the Hot Air Collector Kit does not reflect the heating performance that other consumers will obtain under reasonably foreseen circumstances.

5. Few, if any, consumers will save enough money on their home heating bills by using the Hot Air Collector Kit to recoup the retail cost of the Hot Air Collector Kit within an average of 4 years.

6. Solar Age collectors are not the highest BTU-rated collectors, per square foot, in the country.

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

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

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

PAR. 9. The acts or practices of respondent as alleged in this complaint, and respondent's placement in the hands of its distributors of the means and instrumentalities by and through which others may have used the aforesaid false, misleading and deceptive representations, constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

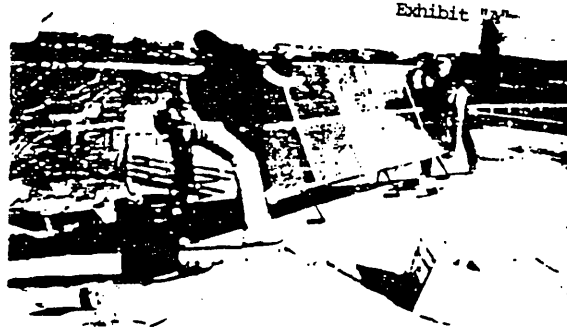
Complaint

109 F.T.C.

EXHIBIT A

Exhibit A

You can start saving today no matter where you live because now there's a solar hot air system that's good enough and simple enough to install yourself.



Cut your heating bills up to 40%. Really.

No one has to tell you how expensive it is to heat your home. But with a Solar Age Manufacturing Hot Air Collector Kit you can cut those costs almost in half.

You can do-it-yourself.

Our collector kit really is easy to install. There's only 3 moving parts. You just mount it, duct it, and plug it in.

Our collector is cost effective.

Solar Age Manufacturing collectors have been given a higher BTU output rating per square foot than any other in the country. You can expect an efficiency of as much as 34,000 BTUs per day. Enough to heat 600-800 sq. ft.

Safe insulation.

Solar Age Mfg. does not use Polystyrene in its insulation. There's no chance of our system giving off harmful gases.

It's inexpensive.

We know that's a relative statement but once the collector is installed the sunshine is free. Solar Age Mfg. Collector Kits have an average 4 year pay back period. In addition the federal government will pay 40% in tax credits for your new heating system. With individual state credits the percentage could go even higher.

A reputation to maintain.

Solar Age Mfg. is the nation's largest solar air manufacturer. Nationally certified by the Solar Rating & Certification Corporation (SRCC) and the Air Conditioning and Refrigeration Institute (ARI) you can buy confidently knowing your system bears the high standards of industry excellence.

- Yes! I've enclosed \$4 for all the information on all three Solar Age Mfg. systems. I understand for that I will receive a cassette tape and tax credit information that pertains to my state.

Name _____
Address _____
City _____ State _____ Zip _____



SOLAR AGE MFG. INC.

Send to: Solar Age Manufacturing Inc.
Dept. 300
9001 Central N.E.
Albuquerque, NM 87123



SOLAR AGE

SOLAR HEAT/HOT WATER
SYSTEMS EVERYONE CAN AFFORD

Mr. George J. Spaulding Says:

"Our Solar Age system has reduced our gas bills by over 30%. Before we had the solar installed, our house was cold and our furnace ran continuously. It is maintenance-free, quiet operating and really circulates the heat in our house."



**SHOULDN'T YOU INVEST
IN A SOLAR AGE SYSTEM?**

- While the tax credits are still available
 - While the 100% financing is still available
- CALL TODAY FOR A FREE ESTIMATE!**

UPTOWN 881-3315 6400 Uptown Blvd NE 457-W	RIO RANCHO 892-9589 1453 Rio Rancho Dr Suite E	DOWNTOWN 242-2867 117 Marquette NW #228	JUAN TABO 292-6092 2705 Juan Tabo N Bldg. A Suite 1
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**ASK ABOUT OUR NEW SOLAR
SUNSCREEN — SAVING YOU
MONEY "YEAR ROUND"**

CENTRAL AVE.
298-3258
9001 Central NE



SOLAR AGE

SOLAR HEAT/HOT WATER
SYSTEMS EVERYONE CAN AFFORD



*Mr. Arthur
Moreland Says:*

"Our Solar Age heating system heats our whole house, even the garage! It has no maintenance and quiet operation."

SHOULDN'T YOU INVEST IN A SOLAR AGE SYSTEM?

- While the tax credits are still available
- While the 100% financing is still available

CALL TODAY FOR A FREE ESTIMATE!

CENTRAL AVE. 296-3256 9001 Central NE	RIO RANCHO 892-9589 1453 Rio Rancho Dr. Suite E	DOWNTOWN 242-2867 117 Marquette NW #228	JUAN TABO 292-5092 2705 Juan Tabo NE Bldg. A Suite 1
			UPTOWN 883-3215 6400 Uptown Blvd NE 457-W

ASK ABOUT OUR NEW SOLAR
SUNSCREEN SAVING YOU
MONEY "YEAR ROUND"

DECISION AND ORDER

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

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

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

1. Respondent Solar Age Industries, Inc., is a corporation with its office and principal place of business located at 6400 Uptown Boulevard, Northeast, Albuquerque, New Mexico.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

Definitions

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

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

A competent and reliable test means any scientific, engineering,

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

A *solar space heater* is a particular type of solar energy equipment. Specifically, it is equipment which typically consists of one or more rooftop collector panels, one hot and one cold air duct and a small inlet fan, and which is designed to collect, but not store, the sun's rays for supplemental heating of individual residences or other, small buildings. The term describes, *inter alia*, respondent's "Solar Age Model 37," also referred to by respondent as its "Hot Air Collector Kit."

PART I

It is ordered, That respondent Solar Age Industries, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any solar space heater or any other solar energy equipment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, in any manner that:

(1) More than a few consumers may be able to reduce their heating bills by 40%, or close to 40%, by using the Hot Air Collector Kit or any other such solar space heater, as defined herein.

(2) Any one consumer's experience with respondent's solar space heater reflects what other consumers will experience under circumstances they can reasonably foresee, unless such is the case.

(3) The Hot Air Collector Kit or any other such solar space heater will provide more than a few consumers enough heat by itself to heat 600–800 square feet of space in residences or small buildings.

(4) More than a few consumers may be able to save enough money on their heating bills by using the Hot Air Collector Kit by itself to recoup the retail cost of the Hot Air Collector Kit or any other such solar space heater which ranges in cost from \$1,095 to \$3,595, within an average of 4 years.

(5) Its solar collector is the highest Btu-rated solar collector per square foot, in the country, unless such is the case.

B. Making any energy-related claim for any solar space heater, or any other solar energy equipment, unless at the time that the claim

is made, respondent possesses and relies upon a competent and reliable test or other objective material which substantiates the claim.

C. Making any energy-related claim which uses the phrase "up to" or words of similar import unless the maximum level of savings or performance can be achieved by an appreciable number of consumers; and, further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the maximum level of savings or performance, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the maximum level of savings or performance.

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

PART II

It is further ordered, That respondent Solar Age Industries, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, or distribution of any solar space heater or any other solar energy equipment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, for at least three years from the date of the last dissemination of energy-related claims, maintain and upon request make available to Federal Trade Commission staff for inspection and copying, copies of:

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

PART III

It is further ordered, That respondent shall:

A. Within thirty (30) days after the date of service of this order, send the following material via first class mail to every person or firm that is a current distributor of respondent's solar energy equipment and thereafter to every person or firm that becomes a distributor during the first year from the date of service of this order:

1. a copy of this order, and
2. a copy of the cover letter attached to this order as Attachment A, incorporated herein by reference.

B. Distribute a copy of this order to each of respondent's operating divisions, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements or other sales materials.

C. Supply to the Federal Trade Commission upon request the names and addresses of those parties to whom respondent distributed the material required by Paragraphs A and B of Part III of this order.

PART IV

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

PART V

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

ATTACHMENT A

[Solar Age Letterhead]

[Solar Age Distributors]

Re: Advertising Claims and Practices

Dear Solar Age Distributors:

As a result of a Federal Trade Commission investigation of advertising claims for our Solar Age Model 37 Solar Space Heater (the Hot Air Collector Kit), we have entered into the enclosed Consent Order Agreement. The agreement is for settlement purposes only and does not constitute an admission that Solar Age or its distributors have violated the law. At issue in the investigation were a number of energy cost savings, performance and payback claims.

We agree to conform our future advertising practices to the standards set forth in this agreement, and to refrain from the use of all promotional material that may contain contrary claims. In order to insure that such claims will no longer be made, we request that you refrain from making them, either orally or in writing, and to advise your dealers to do so as well. Please forward to us any remaining literature relating to our products which may be in your possession or that of your dealers and which does not conform to the enclosed agreement.

Thank you very much for your assistance in this regard.

Sincerely,
SOLAR AGE INDUSTRIES, INC.

By: _____
Alan D. Schwanke, President

IN THE MATTER OF

AQUANAUTICS CORPORATION

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

Docket C-3207. Complaint, Feb. 17, 1987—Decision, Feb. 17, 1987

This consent order requires, among other things, a San Francisco manufacturer of marine survival suits to notify owners and users of its suits of a safety defect that is potentially life-threatening and send a repair kit to all users and purchasers it can identify to correct the product defect.

Appearances

For the Commission: *Theodore H. Hoppock.*

For the respondents: *Theodore C. Whitehouse, Willkie, Farr & Gallagher, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Aquanautics Corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 4560 Horton Street, Building Q, #111, Emeryville, CA.

PAR. 2. Respondent owns and controls a wholly-owned subsidiary, Bremerton Asset Corporation, formerly called Imperial Manufacturing Corporation ("Imperial"). Prior to the sale of part of Imperial's assets on or about March 1985, Imperial was engaged in the manufacturing, advertising, marketing, distributing, and selling to the public of exposure suits—one-piece, hooded, jump suit-like garments made of flexible, buoyant material—which are designed for emergency use to increase the chance of survival in cold water.

PAR. 3. Prior to April 1980, a predecessor to respondent's wholly-owned subsidiary Imperial, called Imperial Manufacturing Company,

manufactured exposure suits equipped with an inflatable bladder called a high rider ring which is intended to be inflated after the exposure suit has been put on by means of an inflator tube glued to the elbow of the high rider ring (hereinafter "the Imperial exposure suit"). In the course and conduct of the business of the predecessor to respondent's wholly-owned subsidiary Imperial, the Imperial exposure suit was offered for sale and sold to purchasers located in various States of the United States and the District of Columbia. Respondent's wholly-owned subsidiary Imperial and its predecessor, at all times mentioned herein, maintained a substantial course of trade in exposure suits in or affecting commerce, as "commerce" is defined by the Federal Trade Commission Act, as amended.

PAR. 4. In the further course and conduct of its aforesaid business, respondent's wholly-owned subsidiary Imperial and its predecessor at all times mentioned herein made numerous statements in various advertisements and promotional materials prepared and disseminated for use in selling the Imperial exposure suit. Illustrative and typical, but not inclusive of the statements employed as aforesaid, are the following:

1. Imperial Survival Suits combine the best thermal protection available with indestructable flotation.
2. Our suit gives you the thermal protection and buoyancy needed to stay alive for hours. . . .
3. A revolutionary advancement in life-saving devices, the Imperial Survival Suit gives you the flotation and warmth needed to survive the rigors of the cold, unforgiving ocean.
4. High Rider Ring—A flotation ring that may be attached to the suit for added support to the head and shoulders.

PAR. 5. Respondent's wholly-owned subsidiary Imperial and its predecessor through the use of the aforesaid statements, and by the offering of the Imperial exposure suit for sale by said predecessor of Imperial as a product fit for improving the chance of survival in ocean waters have represented, directly or by implication, that the Imperial exposure suit will consistently and safely provide the necessary flotation and head and shoulder support for the user to float safely in cold ocean water for lengthy periods of time, thereby substantially diminishing the likelihood of drowning.

PAR. 6. In truth and in fact, due to the design of the inflator tube and the high rider ring, the high rider ring on the Imperial exposure suit, which is intended to provide the support of the head and shoulders, would not consistently inflate or remain inflated in actual use. Therefore, the Imperial exposure suit will not consistently and safely provide the necessary flotation and head and shoulder support for the

user to float safely in cold ocean water for lengthy periods of time, thereby substantially diminishing the likelihood of drowning.

Therefore the representation set forth in Paragraph Five was false and misleading.

PAR. 7. The acts and practices of respondent, herein alleged, were all to the prejudice and injury of the public and constituted unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Aquanautics 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 One Maritime Plaza, Suite 1750, in the City of San Francisco, State of California.

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

ORDER

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

1. *The Imperial exposure suit* means an exposure suit manufactured by Imperial Manufacturing Corporation before April 1980 for sale in the United States or for use on vessels documented or numbered pursuant to 46 U.S.C. 12101-12122 or on mobile offshore drilling units subject to Coast Guard regulation pursuant to 43 U.S.C. 1333, equipped with an inflatable bladder, called a high rider ring, which includes an inflator tube which is glued, but not clamped, to the elbow of the high rider ring.

2. *Imperial Manufacturing* means the company which manufactured and sold the Imperial exposure suit.

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

4. *Distributor* means any person who purchased or received on consignment the Imperial exposure suit for resale.

5. *Retailer* means any person, other than a distributor, who sold the Imperial exposure suit to the public.

6. *Owner* means any person who purchased the Imperial exposure suit from Imperial Manufacturing, a distributor, or a retailer.

7. *User* means any person who uses or has available for use the Imperial exposure suit irrespective of the ownership of that suit.

8. *Panduit strap* means the plastic strap of the type used to secure the inflator tube to the high rider rings used on exposure suits manufactured by Imperial Manufacturing after April 1980.

9. *The modification contemplated by this order* means the installation of two Panduit straps to reinforce the attachment of the inflator tube to the elbow of the high rider ring and installation of two additional Panduit straps to reinforce the attachment of the inflator nozzle to the inflator tube.

10. *United States* means the fifty states, the District of Columbia and all commonwealths, territories and possessions.

I.

It is ordered, That respondent Aquanautics Corporation, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Imperial exposure suit or any other exposure suit 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 any such exposure suit provides the necessary flotation and head and shoulder support for the user to float safely in cold or rough water or diminishes the likelihood of drowning, unless such is the case.

II.

It is further ordered, That respondent do forthwith cease and desist from failing to:

A. Not later than twenty (20) days after the date of service of this order, send, by first-class mail in an envelope clearly marked on the front with the words "Contains Exposure Suit Safety Information And New Safety Straps", to each owner or user of the Imperial exposure suit for whom respondent possesses, controls, or has access to a mailing address the following:

1. A copy of Attachment A(1) to this order. The "Customer Response Card" depicted in Attachment A(1) shall be provided with prepaid postage sufficient to allow it to be mailed first class to the address contained thereon without the need of any additional postage;

2. A sufficient number of Panduit straps to effect the modification contemplated by this order on each of the Imperial exposure suits respondent's records show that the owner or user has;

3. A copy of Attachment B to this order.

B. Respondent shall not be obliged to send the materials listed in subparagraphs 1 through 3 of Paragraph A herein to the owner or user of the Imperial exposure suit if respondent has records which show that:

1. The owner or user of the Imperial exposure suit previously has received the modification contemplated by this order; or

2. The Imperial exposure suit was purchased for use on vessels or structures on which the United States Coast Guard requires the carriage of Coast Guard approved exposure suits pursuant to the following regulations:

- a. 46 CFR 33.37;
- b. 46 CFR 94.41;
- c. 46 CFR 108.513; or
- d. 46 CFR 192.41.

C. Not later than twenty (20) days after the service of this order, place and cause to be disseminated the advertisements attached as Attachments E(1) and E(2) to this order in two consecutive issues of

the following publications beginning in the earliest possible issue of each such publication:

1. *National Fisherman*;
2. *The Fisherman's News*;
3. *The Fisherman*;
4. *Alaska Fisherman's Journal*;
5. *The Fish Boat*;
6. *Pacific Fishing*; and
7. *Commercial Fisheries News*.

The first such advertisement in each publication shall be full page in size and be in the form of Attachment E(1); the second shall be one-half page in size and be in the form of Attachment E(1) or Attachment E(2).

D. Not later than (30) days after the service of this order, send, by first-class mail, to each of the approximately 8,000 current holders of "Fisheries Entry Permits" issued by the State of Alaska, at the address shown on the list of holders of such permits available from the State of Alaska, a copy of Attachments A(2) and B to this order and a sufficient number of Panduit straps to effect the modification contemplated by this order on one (1) Imperial exposure suit.

III.

It is further ordered, That:

A. Not later than fifteen (15) days after the date of service of this order, respondent shall contact the following distributors of the Imperial exposure suit and obtain from each distributor, or from the distributor's available records, the names and addresses of all persons, including retailers, to whom the Imperial exposure suit was sold by such distributors to the extent that the distributors have such information:

1. Atlantic Survival Company;
2. King Neptune Company;
3. Nordby Company;
4. Seattle Marine and Fishing Supply Co.;
5. Shelikoff Net Company;
6. Eagle Enterprises, Inc.;
7. Englund Marine Supply Company, Inc.; and
8. Harry's Plumbing and Heating.

B. Not later than fifteen (15) days after the date of service of this order, respondent shall send, by first class mail, to all retailers (a) known to it to have sold the Imperial exposure suit or (b) which

become known to it to have sold the Imperial exposure suit as a consequence of the efforts described in Paragraph III.A, above, the following:

1. A letter in the form of Attachment C(1) to this order;
2. A copy of a display poster, at least 24 inches by 36 inches, with the form and content of Attachment D to this order; and
3. A minimum of sixty (60) Panduit straps which the retailer shall be requested to distribute free of charge to any person who requests them to effect the modification contemplated by this order. Thereafter, respondent shall furnish additional Panduit straps free of charge to any distributor or retailer who requests them for application to the Imperial exposure suit to effect the modification contemplated by this order.

Respondent shall, within forty-five (45) days after the date of service of this order, obtain from each such retailer, or from the available records of each such retailer, the names and addresses of all persons known or reasonably believed to be owners or users of the Imperial exposure suit to the extent that: (a) the retailers have such information and (b) the retailers are willing or able to make such information available to respondents.

C. Not later than thirty (30) days after the service of this order, respondent shall send to each distributor of the Imperial exposure suit from which respondent obtained, pursuant to Paragraph III.A above, (a) the names and addresses of all persons to whom the Imperial exposure suit was sold by that distributor or (b) the response that the distributor had no records of the names and addresses of any owners or users of the Imperial exposure suit, the following:

1. A letter in the form of Attachment C(2) to this order;
2. A copy of a display poster, at least 24 inches by 36 inches, with the form and content of Attachment D to this order; and
3. A minimum of sixty (60) Panduit straps which the distributor shall be requested to distribute free of charge to any person who requests them to effect the modification contemplated by this order. Thereafter, respondent shall furnish additional Panduit straps free of charge to any distributor who requests them for application to the Imperial exposure suit to effect the modification contemplated by this order.

D. Not later than forty-five (45) days after service of this order, respondent shall send, by first class mail, to all distributors and retailers of the Imperial exposure suit, except for those distributors and retailers from which respondent obtained, (a) the names and addresses of all persons known or reasonably believed to be owners or

users of the Imperial exposure suit or (b) the response that the distributor or retailer had no records of the names and addresses of any owners or users of the Imperial exposure suit, the following:

1. A letter in the form of Attachment C(3) to this order;
2. A copy of a display poster, at least 24 inches by 36 inches, with the form and content of Attachment D to this order; and
3. A minimum of sixty (60) Panduit straps which the distributor or retailer shall be requested to distribute free of charge to any person who requests them to effect the modification contemplated by this order. Thereafter, respondent shall furnish additional Panduit straps free of charge to any distributor or retailer who requests them for application to the Imperial exposure suit to effect the modification contemplated by this order.

E. Respondent shall pay, to each retailer or distributor to whom it is required to send Attachment C(3), the sum of ten (10) dollars for each name and address of an owner or user of the Imperial exposure suit such retailer or distributor provides to respondent. Respondent shall pay the ten (10) dollars even if the address provided is not a current address. Said payment must be made within thirty (30) days of respondent's receipt of such names and addresses.

Provided, however, That respondent shall not be required to pay for any name and address provided to it pursuant to this provision if:

1. respondent determines and documents that the named person(s) never owned or used the Imperial exposure suit; or
2. respondent previously had obtained the name and address from any retailer or distributor prior to the date Attachment C(3) was sent to such retailer or distributor; or
3. the name and address is not contained or reflected in the regularly kept business records of such distributor or retailer.

IV.

It is further ordered That:

A. Respondent shall send, by first-class mail, to each person reported to respondent to be or who claims to respondent to be an owner or user of the Imperial exposure suit, within twenty (20) days of respondent's receipt of said report or claim, Attachments A(1) and B and four (4) Panduit straps for each of the Imperial exposure suits reported or claimed to be owned or used by that person.

B. Respondent shall within ten (10) days of the return of any mailing made pursuant to Section II.A, Sections III.B, C, or D, or Section IV.A of this order marked by the Post Office as undeliverable, make

a reasonable search for the current address of the addressee of each returned mailing. For mailings made pursuant to Sections II.A or IV.A, this search shall include the use of the pertinent telephone directory, contacting the relevant ship registries and listings and contacting fishermen's unions.

C. Respondent shall, within ten (10) days of locating a new address through the search required by Section IV.B, send, by first-class mail, the same Attachment(s) and number of Panduit straps sent to the original address to each person for whom a new address is found.

V.

It is further ordered, That:

A. Respondent keep and maintain for three years from the date of service of this order the following records:

1. The names, addresses and dates of mailing of all notices or Panduit straps required by this order;

2. For each contact respondent makes pursuant to the requirements of Section III.A, the name and address of each distributor contacted; the name of the representative or employee of respondent who made the contact; and a record of the response the distributor made to the contact, including, but not limited to, the following information: (a) did the distributor state that it had records of the names and addresses of owners or users of the Imperial exposure suit which it agreed to provide to respondent; (b) did the distributor state that it had records of the names and addresses of owners or users of the Imperial exposure suit which, for any reason, it would not agree to provide to respondent; (c) did the distributor state that it had no records of the names and addresses of owners or users of the Imperial exposure suit; and (d) any other response the distributor made regarding respondent's efforts to obtain from it the names and addresses of owners or users of the Imperial exposure suit;

3. Each response page attached to Attachment C(1) and C(2) of this order returned to respondent by a distributor or retailer of the Imperial exposure suit;

4. The names, addresses, date of receipt and source of the report of all persons reported to respondent to be owners or users of the Imperial exposure suit;

5. The amount of payment, the date of payment and the name and address of the recipient of all payments made pursuant to Section III.E of this order; and

6. The total number of Panduit straps disseminated by respondent pursuant to the provisions of this order.

B. Respondent shall, upon request, make the records specified in Section V.A available to the Federal Trade Commission for inspection and copying.

VI.

It is further ordered, That respondent 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.

VII.

It is further ordered, That respondent shall, within one hundred twenty (120) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail, the manner and form in which it has complied with this order.

ATTACHMENT A(1)

[COMPANY LETTERHEAD]

URGENT NOTICE Re:
Your Personal Safety

Dear Imperial Survival Suit Owner:

This letter is to inform you of the need to make *immediate modifications* on your Imperial Model 1409 exposure suit equipped with a high rider ring because you may be in danger during an emergency if you use it without modifying it.

The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in Imperial Model 1409 exposure suits equipped with high rider rings manufactured before April 1980.

According to our records, you have purchased an Imperial Model 1409 exposure suit equipped with a high rider ring made between 1975 and April 1980. As part of an agreement we have reached with the Federal Trade Commission, we are sending you this important safety warning and modification kit for your Imperial exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider ring, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide you with the added head and shoulder support ("freeboard") intended, and your chance of survival in an emergency situation may be reduced.

We have developed a *free*, simple modification kit to fix this problem and eliminate the safety hazard. We have enclosed this modification kit and the instructions for its use in this mailing. You can complete the modification in just a few minutes time. Once

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modified, your Imperial exposure suit will afford you all of the protection intended when it was manufactured. The modification kit meets Coast Guard Standards.

If you should have any additional Model 1409 Imperial exposure suits manufactured prior to April 1980, or know of anyone else who has one, please be sure to fill out and mail the enclosed card. We will send anyone mailing us this card additional *free*, easy-to-use kits for modifying the inflator tube.

Sincerely,

AQUANAUTICS CORPORATION

Enclosures

Customer Response Card

Please send me additional free modification kit(s) for my Imperial Model 1409 exposure suit(s) to the address below.

Name _____

Address _____

of Kits needed _____

Postage Paid

Aquanautics Corporation
 FTC Compliance
 4560 Horton Street
 Building Q, # 111
 Emeryville, CA 94608

ATTACHMENT A(2)

[COMPANY LETTERHEAD]

URGENT NOTICE Re:
 Your Personal Safety

Dear Fisheries Entry Permit Holder:

This letter is to inform you of the need to make *immediate modifications* on any Imperial Model 1409 exposure suit equipped with a high rider ring in your possession because you may be in danger during an emergency if you use it without modifying it.

The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in Imperial Model 1409 exposure suits equipped with high rider rings manufactured before April 1980. You can determine if an Imperial Model 1409 exposure suit was manufactured before April 1980 by checking the high rider ring. If there are no plastic tie-down straps on the inflator tube, it was manufactured before April 1980 and needs modification.

Because of your occupation, you may have purchased an Imperial Model 1409 exposure suit equipped with a high rider ring made between 1975 and April 1980. As part

of an agreement we have reached with the Federal Trade Commission, we are sending you this important safety warning and modification kit for such an Imperial exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider ring, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide you with the added head and shoulder support ("freeboard") intended, and your chance of survival in an emergency situation may be reduced.

We have developed a free, simple modification kit to fix this problem and eliminate the safety hazard. We have enclosed this modification kit and the instructions for its use in this mailing. You can complete the modification in just a few minutes time. Once modified, the Imperial exposure suit will afford you all the protection intended when it was manufactured. The modification kit meets Coast Guard standards.

If you should have any additional Model 1409 Imperial exposure suits manufactured prior to April 1980, or know of anyone else who has one, please be sure to fill out and mail the enclosed card. We will send anyone mailing us this card additional free, easy-to-use kits for modifying the inflator tube.

Sincerely,

AQUANAUTICS CORPORATION

Enclosures

Customer Response Card

Please send me additional free modification kit(s) for my Imperial Model 1409 exposure suit(s) to the address below.

Name _____

Address _____

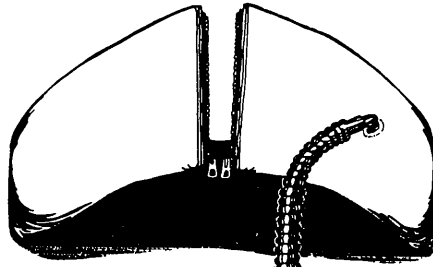
of Kits needed _____

Postage Paid

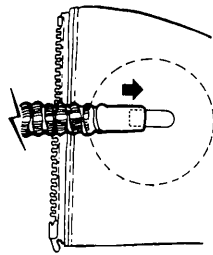
Aquanautics Corporation
FTC Compliance
4560 Horton Street
Building Q, # 111
Emeryville, CA 94608

ATTACHMENT B

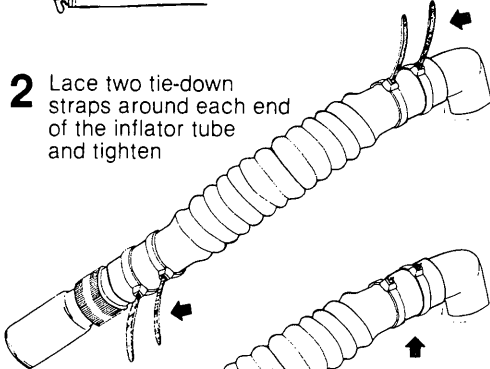
Tie-Down Strap Installation Instructions for the Imperial Exposure Suit



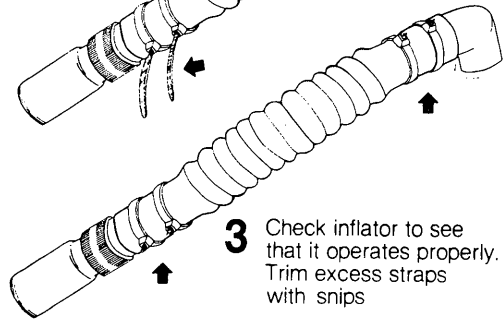
High Rider Ring
(Model 1409)



1 If hose has detached or loosened, push firmly all the way onto elbow



2 Lace two tie-down straps around each end of the inflator tube and tighten



3 Check inflator to see that it operates properly. Trim excess straps with snips

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ATTACHMENT C(1)

[COMPANY LETTERHEAD]

URGENT NOTICE Re:
The Safety of Your CustomersDear (*Name of retailer*):

Imperial Manufacturing manufactured and sold an exposure suit equipped with a high rider ring (Model 1409) between 1975 and April 1980. The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in this model exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide the added head and shoulder support ("freeboard") intended and may reduce the chance of survival.

We have reached an agreement with the Federal Trade Commission to attempt to 1) notify by mail as many owners and users of Imperial survival suit Model 1409 as we can find of the hazard inherent in their suit and 2) provide them, free of charge, the necessary Panduit (tie-down) straps to eliminate the hazard.

We need your help in locating the names and addresses of purchasers or users of Model 1409 exposure suits equipped with a high rider ring manufactured prior to April 1980. Accordingly, we are making an urgent request that you check your records for, and provide us with, the names and addresses of any purchaser or user of an Imperial Model 1409 exposure suit equipped with a high rider ring manufactured prior to April 1980 sold by your firm. Moreover, if you know the name and address of any other owner or user of these suits, please provide them to us also.

We [have enclosed] or [will be sending] a poster which explains to your customers the hazard and how to get a free modification kit to remedy the hazard. Please put this poster in a highly visible location in your place of business so that your customers may be informed of the hazard and spread the word to their colleagues.

We [have also enclosed] or [will also send] a supply of 60 Panduit straps and instructions for their use. As the instructions explain, the simple installation of four of these straps on the inflator tube assembly of Imperial survival suit Model 1409 will eliminate this safety hazard. Please make these Panduit straps and instructions available free of charge to anyone who owns or uses a Model 1409 exposure suit. If you should need more of these straps, please call Nik Salmela collect at 206-692-5601, and we will rush more to you as quickly as possible.

Please fill out the attached response page and return it to our attention at your earliest convenience. Thank you for your valuable assistance in our effort to eliminate this safety hazard.

Sincerely,

AQUANAUTICS CORPORATION

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[company letterhead]

[ADDRESSEE]

PLEASE CHECK THE APPROPRIATE BOXES:

- We do not have records of the owners and users of Imperial Model 1409 Survival Suits equipped with a high rider ring manufactured before April 1980.
- We do have records of the owners and users of Imperial Model 1409 Survival Suits equipped with a high rider ring manufactured before April 1980.
- We will make these names and addresses available to Aquanautics Corporation.
- We will not make these names and addresses available to Aquanautics Corporation.

Signature of authorized agent _____

Title _____ Date _____

ATTACHMENT C(2)

[COMPANY LETTERHEAD]

URGENT NOTICE Re:
The Safety of Your *Customers*

Dear (Name of distributor):

[OPTIONAL INTRODUCTORY PHRASE: As explained in his earlier contact with you], Imperial Manufacturing manufactured and sold an exposure suit equipped with a high rider ring (Model 1409) between 1975 and April 1980. The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in this model exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide the added head and shoulder support ("freeboard") intended and may reduce the chance of survival.

We have reached an agreement with the Federal Trade Commission to attempt to 1) notify by mail as many owners and users of Imperial survival suit Model 1409 as we can find of the hazard inherent in their suit and 2) provide them, free of charge, the necessary Panduit (tie-down) straps to eliminate the hazard. You already have assisted us in this effort by providing us with any names and addresses of owners and users of this Imperial Survival suit which you have.

We [have enclosed] or [will be sending] a poster which explains to your customers the hazard and how to get a free modification kit to remedy the hazard. Please put this poster in a highly visible location in your place of business so that your customers may be informed of the hazard and spread the word to their colleagues.

We [have also enclosed] or [will also send] a supply of 60 Panduit straps and instructions for their use. As the instructions explain, the simple installation of four of these straps on the inflator tube assembly of Imperial survival suit Model 1409 will eliminate this safety hazard. Please make these Panduit straps and instructions available free of charge to anyone who owns or uses a Model 1409 exposure suit. If you should need more of these straps, please call Nik Salmela collect at 206-692-5601, and we will rush more to you as quickly as possible.

Please fill out the attached response page and return it to our attention at your

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earliest convenience. Thank you for your valuable assistance in our effort to eliminate this safety hazard.

Sincerely,

AQUANAUTICS CORPORATION

[company letterhead]

[ADDRESSEE]

PLEASE CHECK THE APPROPRIATE BOXES:

- [] We do not have records of the owners and users of Imperial Model 1409 Survival Suits equipped with a high rider ring manufactured before April 1980.
- [] We do have records of the owners and users of Imperial Model 1409 Survival Suits equipped with a high rider ring manufactured before April 1980.
- [] We will make these names and addresses available to Aquanautics Corporation.
- [] We will not make these names and addresses available to Aquanautics Corporation.

Signature of authorized agent _____
 Title _____ Date _____

ATTACHMENT C(3)

[COMPANY LETTERHEAD]

URGENT NOTICE Re:
The Safety of Your Customers

This is so important that we will pay you to help us.

Dear (Name of distributor or retailer):

As we explained in our earlier contact with you, we urgently need your help in locating your customers who purchased an Imperial exposure suit (Model 1409) and we will pay you to help us. *Your efforts might save the life of one of your customers or neighbors.*

Between 1975 and April 1980, Imperial Manufacturing manufactured and sold an exposure suit equipped with a high rider ring (Model 1409). The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in this model exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide the added head and shoulder support ("freeboard") intended and may reduce the chance of survival.

We have reached an agreement with the Federal Trade Commission to attempt to 1) notify by mail as many owners and users of Imperial survival suit Model 1409 manufactured prior to April 1980 as we can find of the hazard inherent in their suit and 2) provide them, free of charge, the necessary Panduit (tie-down) straps to eliminate the hazard.

We need your help in locating the names and addresses of purchasers or users of Model

1409 exposure suits equipped with a high rider ring manufactured prior to April 1980. Accordingly, we are making an urgent request that you check your records for, and provide us with, the names and addresses of any purchaser or user of an Imperial Model 1409 exposure suit equipped with a high rider ring manufactured prior to April 1980 sold by your firm. Moreover, if you know the name and address of any other owner or user of these suits, please provide them to us also.

We understand that such a records check is not without cost to you. In an attempt to help defray the cost of searching for and providing us with the requested names and addresses, *we will pay you ten dollars (\$10.00) for each name and address of a purchaser or user of an Imperial Model 1409 survival suit you send us.* You will receive your payment even if you do not have the most current address for the purchaser or user. You will receive this payment within 30 days of our receipt of your *bona fide* list of names and addresses.

In addition, we have [enclosed] or [already sent you] a poster which explains to your customers the hazard and how to get a free modification kit to remedy the hazard. Please put this poster in a highly visible location in your place of business so that your customers may be informed of the hazard and spread the word to their colleagues.

We have also [enclosed] or [already sent you] a supply of 60 Panduit straps and instructions for their use. As the instructions explain, the simple installation of four of these straps on the inflator tube assembly of Imperial survival suit Model 1409 will eliminate this safety hazard. Please make these Panduit straps and instructions available free of charge to anyone who owns or uses an Imperial Model 1409 exposure suit equipped with a high rider ring manufactured before April 1980. If you should need more of these straps, please call Nik Salmela collect at 206-692-5601, and we will rush more to you as quickly as possible.

We're counting on you to make your best effort to locate the names and addresses of owners and users of this exposure suit. Thank you for your valuable assistance in our effort to eliminate this safety hazard.

Sincerely,

AQUANAUTICS CORPORATION

IMPORTANT SAFETY NOTICE

For Imperial Exposure Suit users
with High Rider Ring

SAFETY MODIFICATION NEEDED

Ask your Dealer for the FREE Safety Modification Kit

WHO: If you own an Imperial Survival Suit equipped with a High Rider Ring (Model 1409) manufactured before April 1980 - contact your nearest Imperial Dealer immediately.

To determine when your suit was made, look for the manufacturing date stamp inside the back of the neck of the suit. If there is NO date stamp, the suit was manufactured prior to 1981. Then check your High Rider Ring. If there are no plastic tie-down straps on the inflator tube, it was manufactured before April 1980 & needs modification.

WHY: A defect may exist causing the inflator assembly on the High Rider Ring to separate, preventing its proper inflation. Proper inflation of this ring is important because it holds the body in a more upright position - increasing your chance of survival.

The only modification needed is to the High Rider Ring accessory. The suit itself is in no other way affected.

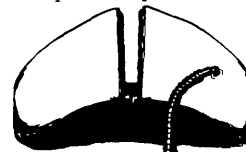
FREE FIX: The modification required is easy and quick. And there's no need to bring in the suit for this modification. Just ask your dealer for the FREE Safety Modification Kit.

This do-it-yourself kit contains four simple-to-install tie-down straps. These will ensure a secure connection to keep the High Rider Ring inflated when in use (see illustrations at right). Though this modification is quick and easy, it's important that it be made for your assured safety. The kit meets Coast Guard standards. If your dealer is out of the kit simply write us for a free kit at:

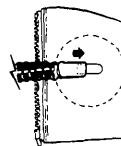
AQUANAUTICS
CORPORATION

One Maritime Plaza, Suite 1760
San Francisco, CA 94111

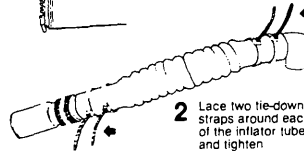
Tie-Down Strap Installation Instructions for the Imperial Exposure Suit



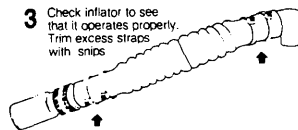
High Rider Ring
(Model 1409)



1 If hose has detached or loosened, push firmly all the way onto elbow



2 Lace two tie-down straps around each end of the inflator tube and tighten



3 Check inflator to see that it operates properly. Trim excess straps with snips

ATTACHMENT E(1)

IMPORTANT SAFETY NOTICE

For Imperial Exposure Suit users
with High Rider Ring

SAFETY MODIFICATION NEEDED

Send or call for a FREE Safety Modification Kit

WHO: If you own an Imperial Survival Suit equipped with a High Rider Ring (Model 1409) manufactured before April 1980-contact Aquanautics Corporation for a FREE safety modification kit.

To determine when your suit was made, look for the manufacturing date stamp inside the back of the neck of the suit. If there is NO date stamp, the suit was manufactured prior to 1981. Then check your High Rider Ring. If there are no plastic tie-down straps on the inflator tube, it was manufactured before April 1980 & needs modification.

WHY: A defect may exist causing the inflator assembly on the High Rider Ring to separate, preventing its proper inflation. Proper inflation of this ring is important because it holds the body in a more upright position - increasing your chance of survival.

The only modification needed is to the High Rider Ring accessory. The suit itself is in no other way affected.

FREE FIX: The modification required is easy and quick. And there's no need to bring in the suit for this modification. We will send you a FREE safety modification kit to correct this problem.

This do-it-yourself kit contains four simple-to-install tie-down straps. These will ensure a secure connection to keep the High Rider Ring inflated when in use (see illustrations at right). Though this modification is quick and easy, it's important that it be made for your assured safety. The kit meets Coast Guard standards.

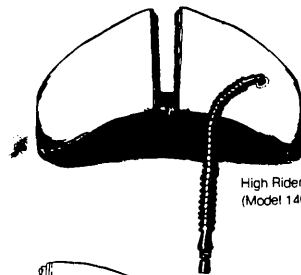
For your FREE modification kit,
simply write to:

AQUANAUTICS
CORPORATION

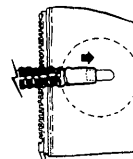
One Maritime Plaza, Suite 1750
San Francisco, CA 94111

or call us collect at (415) 658-6629

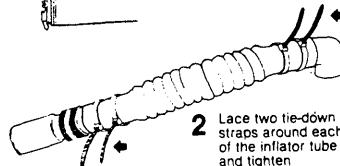
Tie-Down Strap Installation Instructions for the Imperial Exposure Suit



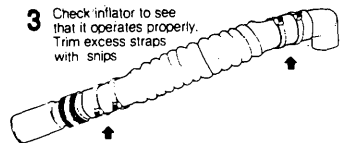
High Rider Ring
(Model 1409)



1 If hose has detached or loosened, push firmly all the way onto elbow



2 Lace two tie-down straps around each end of the inflator tube and tighten



3 Check inflator to see that it operates properly. Trim excess straps with snips

IMPORTANT SAFETY NOTICE

For Imperial Exposure Suit with High Rider Ring

SAFETY MODIFICATION NEEDED

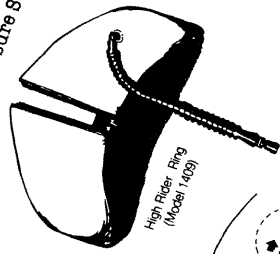
WHO: If you own an Imperial Exposure Suit equipped with a High Rider Ring (Model 1409) manufactured before April 1980 - contact Aquanautics Corporation for a FREE safety modification kit. To determine when your suit was made, look for the manufacturing date stamp inside the back of the neck of the suit. If there is NO date stamp, the suit was manufactured prior to 1981. Then check your High Rider Ring. If there are no plastic tie-down straps on the inflator tube, it was manufactured before April 1980 & needs modification.

WHY: A defect may exist causing the inflator assembly on the High Rider Ring to separate, preventing its proper inflation. Proper inflation of this ring is important to bring in the suit in a more upright position - increasing your chance of survival. The only modification needed is to the High Rider Ring accessory. The suit itself is in no other way affected.

FREE FIX: The modification required is easy and quick. And there's no need to bring in the suit for this modification. We will send you a FREE safety modification kit to correct this problem. This do-it-yourself kit contains four simple-to-install tie-down straps. These will ensure a secure connection to keep the High Rider Ring inflated when in use (see illustrations at right). Though this modification is quick and easy, it's important that it be made for your assured safety. The kit meets Coast Guard standards.

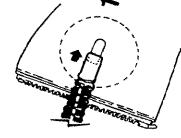
For your FREE modification kit, simply write to:
AQUANAUTICS CORPORATION
 One Maritime Plaza, Suite 1750 • San Francisco, CA 94111
 or call us collect at (415) 865-8829

Tie-Down Strap
 Installation Instructions
 for the
 Imperial Exposure Suit

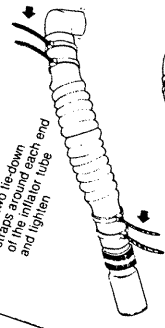


High Rider Ring
 (Model 1409)

1 If hose has detached or loosened, push firmly all the way onto elbow.



2 Lace two tie-down straps around each end of the inflator tube and tighten.



3 Check inflator to see that it operates properly. Trim excess straps with snips.



AQUANAUTICS CORP.
 Decision and Order
 ATTACHMENT E(2)

Complaint

109 F.T.C.

IN THE MATTER OF

J.C. PENNEY COMPANY, INC.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3208. Complaint, Feb. 20, 1987—Decision, Feb. 20, 1987*

This consent order prohibits, among other things, a New York City-based retailer from bringing any debt-collection cases in judicial districts other than those in which a customer lives or signed the disputed sales contract. Further, respondent is required to either transfer to a closer court, or dismiss entirely, all pending cases brought in "distant forums."

Appearances

For the Commission: *Rachelle V. Brown.*

For the respondents: *Raymond A. Messina and Mallory Duncan,*
in-house counsel, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that J. C. Penney Company, Inc., a corporation, ("respondent") has violated Section 5(a) 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. J.C. Penney Company, Inc., is a Delaware corporation, with its principal office and place of business located at 1301 Avenue of the Americas, New York, New York.

PAR. 2. Respondent is a general merchandise and catalog sales retailer, engaged in the advertising, offering for sale, sale, and distribution of clothing, household goods, and various other articles of merchandise.

PAR. 3. The acts and practices of respondent, as 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 its business, respondent regularly extends credit (hereinafter referred to as "consumer credit accounts") for the purpose of facilitating consumers' purchases of respondent's products.

PAR. 5. In the course and conduct of attempting to collect allegedly delinquent consumer credit accounts in Virginia, respondent,

through local attorneys recommended by its collection agencies, regularly sued consumers. In numerous instances, consumers were sued in judicial districts other than where those consumers reside or where they signed the contract sued upon. These suits could have been brought in courts located in the judicial district where defendants reside or where they signed the contracts sued upon. The distance, cost, and inconvenience of defending against such suits effectively deprived many of those defendants of a reasonable opportunity to appear, answer, and defend. Therefore, respondent's use of such distant or inconvenient forums was, and is, unfair.

PAR. 6. The acts and practices of respondent as alleged in this complaint were and are to the prejudice and injury of the public and constituted and now constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act. Respondent may continue to employ these acts or practices in the absence of the relief requested.

DECISION AND ORDER

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

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

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

1. Respondent J.C. Penney Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 1301 Avenue of the Americas, in the City of New York, State of New York.

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

ORDER

I.

It is ordered, That respondent J.C. Penney Company, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the collection, or attempted collection, of any consumer credit account, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from bringing or authorizing the bringing of, or proceeding with or authorizing the proceeding with, any action to recover any allegedly delinquent consumer credit account (other than an action to enforce an interest in real property) in any judicial district or similar legal entity that is not the one in which the consumer resides at the commencement of the action or the one in which the consumer signed the contract sued upon (hereinafter "distant forum suit"); *provided, however,* that this paragraph shall not preempt any rule of law that further limits choice of forum or that requires, in actions involving real property or fixtures attached to real property, that suit be brought in a particular county, judicial district, or similar legal entity. For purposes of this order, in open end credit transactions (for example, "revolving charge accounts"), the "contract sued upon" is either the account agreement or the document (commonly called "sales slip" or "purchase order") evidencing the actual credit sale.

II.

It is further ordered, That within thirty (30) days of the date of service of this order, respondent shall terminate or cause to be terminated any distant forum suit which is pending on the date of service of this order; *provided, however,* that, respondent may terminate or cause to be terminated such suit by having the complaint either dismissed or transferred to a judicial district or similar legal entity in

which the consumer resides or signed the contract sued upon, but in the latter instance only if respondent gives the defendant a clear written notice of such action, in substantially the same form as set forth in Appendix A of this order, and the opportunity to defend equivalent to that which defendant would receive if a new suit were being brought.

III.

It is further ordered, That whenever a suit is dismissed pursuant to Paragraph II respondent shall give, within thirty (30) days thereafter, in substantially the same form as set forth in Appendix B, clear, written notice of such dismissal to the defendant to such suit, to each "consumer reporting agency," as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a), that respondent knows or has reason to know has recorded the suit in its files, and to any other person or organization whom the consumer defendant has requested be given it.

IV.

It is further ordered, That respondent shall not be deemed to have violated this order for failure to comply with Paragraph I when such failure directly concerns:

1. a distant forum suit brought on behalf of respondent and reduced to judgment prior to the date of service of this order;
2. a distant forum suit brought in the judicial district or similar legal entity appearing from respondent's business records to be defendant's last known address unless respondent otherwise knows of a more current address;
3. a distant forum suit brought in the name of a third party to recover on a consumer credit account originated by respondent but legally assigned to the third party and with respect to which respondent, prior to the bringing of the distant forum suit, has relinquished, in fact, any and all actual or beneficial ownership and control; or
4. a distant forum suit brought in the name of a third party to recover on a consumer credit account originated by a third party but referred to respondent, prior to default, for collection, provided that the third party, in fact, retains all actual and beneficial ownership and control of the account and of the bringing of the suit.

V.

It is further ordered, That respondent shall maintain and upon request make available to the Federal Trade Commission:

1. Up-to-date documentation of all suits brought during the two (2) year period immediately following the date of service of this order in connection with the collection of any consumer credit account, which documentation shall contain: (a) the name of each defendant; (b) the defendant's address; (c) the judicial district(s) or similar legal entity where the defendant resides and, if relied upon for purposes of suit, the judicial district or similar legal entity where the contract, if any, was signed; (d) the judicial district or similar legal entity where suit was filed; (e) the date filed; (f) the docket number; (g) name of plaintiff (if a collection agency or other entity suing on behalf of respondent); (h) amount claimed; (i) disposition; and (j) an explanation for the choice of forum if the suit was brought in a judicial district other than where the defendant resides or signed the contract sued upon; and

2. A written summary of suits brought in the Commonwealth of Virginia by respondent's collection counsel for the one (1) year period immediately prior to the date of service of this order, with information limited to items (a), (c), (d), and (g) in subparagraph 1 above, and a notation of whether any such suit was terminated pursuant to Paragraph II.

VI.

It is further ordered, That respondent shall distribute a copy of this order to each of its subsidiaries and operating divisions dealing with consumer credit, to each collection agency or counsel with whom respondent currently places its retail credit accounts for collection, and to any other collection agency or counsel prior to referral of respondent's retail credit accounts for collection and shall secure from each such collection agency or counsel a signed and dated statement acknowledging receipt of the order and willingness to comply with it.

VII.

It is further ordered, That respondent 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, or any other change in the

corporation, including the creation or dissolution of subsidiaries, which may affect compliance obligations arising out of the order.

VIII.

It is further ordered, That respondent shall maintain and upon request make available to the Federal Trade Commission all records that will demonstrate compliance with the requirements of this order including, but not limited to, copies of any notices provided to consumers pursuant to any provision of this order and copies of all statements secured from respondent's collection agencies or counsel acknowledging receipt of this order.

IX.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, signed by the respondent and setting forth in detail the manner and form of its compliance with this order.

Commissioner Azcuenaga was recorded as voting in the negative.

APPENDIX A

Consumer's Name
and address or,
if applicable, Consumer's
Attorney's Name and Address

RE: [Case Name and Docket No.]

Dear [Addressee]:

On [], J.C. Penney Company, Inc., through its attorney, [attorney's name], filed suit against ["you" or, if applicable "your client, consumer's name"]. The suit was brought in [name of court], [name of county, judicial district or similar legal entity, whichever applicable].

J.C. Penney, Inc., has agreed with the Federal Trade Commission to abide by the Commission's "fair venue standard." That standard provides that if a creditor sues a consumer for a delinquent account, the creditor may sue the consumer only in the judicial district in which the consumer resides at the beginning of the action or signed the contract sued upon.

J.C. Penney, Inc., has also agreed to dismiss or transfer any suit pending on [date of service of order] that was not brought in the proper judicial district under the Commission's standard.

Our records show, that under our agreement with the Federal Trade Commission, we should have brought suit against you [or your client] in [name of applicable county or judicial district] and not in [name of "distant forum"]. For this reason, we are seeking the court's permission to transfer the suit to [name of county or judicial district].

You should receive, from our attorney or the court, copies of all legal papers relating to our request to transfer this suit.

Decision and Order

109 F.T.C.

Sincerely,

[J.C. Penney Company, Inc., Signatory]

APPENDIX B

[Addressee's Name and Address]

RE: [Case Name and Docket No.]

Dear [Addressee]:

On [], J.C. Penney Company, Inc., caused its suit against [consumer's name] to be dismissed.

Please modify your records to reflect this additional information.

[If applicable: (S)uch suit was refiled on (date) at (place suit filed).]

Sincerely,

[J.C. Penney Company, Inc., Signatory]

cc: [Consumer's Name and Address]

IN THE MATTER OF
PHYSICIANS OF MEADVILLE, ET AL.

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

Docket C-3209. Complaint, March 2, 1987—Decision, March 2, 1987

This consent order prohibits, among other things, 61 doctors in Meadville, Pennsylvania from entering into any agreement to refuse to deal with any physician, group of physicians, or hospital, or from refusing to refer patients, for the purpose of restricting or lessening competition.

Appearances

For the Commission: *L. Barry Costilo, Garry R. Gibbs and George R. Bellack.*

For the respondents: *Barbara A. Blackmond, Horty, Springer & Mattern*, Pittsburgh, Pa., for respondent Robert N. Moyers, M.D. *Pro se* for all remaining respondents.

COMPLAINT

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

PARAGRAPH 1. The respondents are physicians practicing in Crawford County, Pennsylvania, in or near the city of Meadville, Pennsylvania. The respondents are engaged in the business of providing health care services to patients for a fee.

PAR. 2. Except to the extent that competition has been restrained as alleged herein, respondents have been and are now in competition among themselves or with other physicians.

PAR. 3. Respondents constitute approximately eighty percent of all physicians on the active medical staffs at Meadville City Hospital and Spencer Hospital, the two hospitals in the Meadville area.

PAR. 4. Respondents' fees are often paid directly or indirectly from outside of Pennsylvania by third-party payors. Respondents purchase and use drugs, supplies, and equipment manufactured outside of

Pennsylvania. Respondents refer patients to physicians located outside of Pennsylvania, and treat patients who are not Pennsylvania residents. Respondents' general business practices, and the conduct described below, affect the interstate flow of funds, the interstate purchase of medical supplies and products, and the interstate movement and billing of patients. Respondents' general business practices, and the acts and practices described below, are in or affect commerce within the meaning of Section 5 (a)(1) of the Federal Trade Commission Act, 15 U.S.C. Section 45 (a)(1).

PAR. 5. Early in 1985, a group of physician specialists on the medical staff of St. Vincent Health Center, an Erie, Pennsylvania, hospital, formulated plans to establish a multispecialty medical office in or near Meadville, approximately 35 miles south of Erie. This group (hereinafter "Erie Group") planned the new office so that members of the Erie Group who already treated patients from Meadville, and areas more distant from Erie, could provide treatment in a location more convenient to those patients, and so that members of the Erie Group could compete more effectively for referrals of patients from Meadville and other nearby areas.

PAR. 6. Since at least April 1985, each of the respondents has combined or conspired with at least some of the other respondents in restraint of trade to prevent or delay the establishment of the Erie Group medical office in the Meadville area.

PAR. 7. In furtherance of the above combination or conspiracy, respondents, among other actions, exerted coercive pressure both directly and indirectly against the Erie Group by jointly threatening to cease referring, or to not refer, patients to Erie Group physicians or any other specialists practicing at St. Vincent Health Center if the Erie Group established a Meadville office. Respondents made this threat by letter dated April 30, 1985 (attached hereto), which was sent to the administrator, members of the Board of Corporators, and members of the medical staff of St. Vincent Health Center, including the members of the Erie Group, and to the President of the Erie County Medical Society. After the threat, the Erie Group suspended its plans to establish a medical office in the Meadville area.

PAR. 8. The purposes or effects or the tendency and capacity of the combination or conspiracy and conduct described in paragraphs six and seven are or have been to restrain trade unreasonably, hinder competition in the provision of health care services in the area of Meadville, Pennsylvania, and deprive consumers of the benefits of competition, in the following ways, among others:

A. The Erie Group has been deterred from providing health care services in the Meadville, Pennsylvania, area, thereby limiting com-

petition among physicians for patients on the basis of price, service, and quality;

B. Other health care providers and provider groups from outside the Meadville area are or may be deterred from establishing offices or facilities that compete with Meadville area physicians;

C. Patients' options in selecting a physician may be limited; and

D. Some patients may be required to travel greater distances, at additional expense and inconvenience, to obtain their preferred health care services.

PAR. 9. The combination or conspiracy and the conduct described above constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. Section 45. The violation, or the effects thereof, is continuing and will continue in the absence of the relief requested.

Complaint

109 F.T.C.

ATTACHMENT

April 30, 1985

We, the undersigned Meadville area physicians, wish to send the following message to the administration, the medical staff, and the board of corporators of Saint Vincent Health Center.

The Meadville area physicians have historically supported both tertiary hospitals in Erie. A group of Saint Vincent specialists now proposes to open an office in Meadville. A distinction has been drawn between this group and the institution itself. We do not recognize the distinction.

We regard this uninvited extension of services as unwarranted and inconsistent with the good will which we have heretofore shown Saint Vincent. Such an action may jeopardize our relationship with all Saint Vincent consultants — not just the satellite specialists.

Larry S. ... M.D.
Signed, *Mary B. Hagaman, M.D.*

Christopher W. Thomas, M.D.

Charles A. Johnson, D.O.

James M. White, M.D.

Henry A. ... M.D.

A. ... M.D.

Paul A. Kelly, M.D.

...

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Bernard R. ... M.D.

J. ... M.D.

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cc: Sister Margaret Ann Hardner, Administrator,
Members of Saint Vincent Medical Staff,
Members of Saint Vincent Board of Corporators,
President, Erie County Medical Society

SIGNATURES - PAGE 1.

Azhar Aslam M.D.	M. Moakeh M.D.
Mary B. Hagamen M.D.	Curt H. Laub M.D.
Christopher W. Thomas M.D.	R.M. Vrablik M.D.
Ovunda A. Lawson D.O.	R. J. Bridge M.D.
Thomas M. Watson M.D.	Tariq Qureshi M.D.
Stacey A. Robertson M.D.	Danilo L. Guanzon M.D.
W.J. Morris M.D.	Lucy Kirchner M.D.
A.G. Deininger M.D.	Aiman N. Daghestani
Ronald A. Kellogg M.D.	W.T. Holland, Jr. M.D.
William K. Petrella D.O.	Robert A. Driscoll M.D.
J.T. Arno M.D.	Barry B. Bittman M.D.
Robert Moyers M.D.	Joseph G. Piroch M.D.
Randy S. Zelen M.D.	Fred W. Strickland, Jr. M.D.
David Dunn M.D.	T. Downing M.D.
James H. Larson M.D.	M. Bruce Dratler M.D.
Vernon E. Dean	A. O. Hibbard M.D.
J. Henry Burkholder M.D.	S.E. Moutsos M.D.
B. McIntosh M.D.	J.O. Taylor M.D.
R.L. Kirkpatrick M.D.	W. Sullivan M.D.
Gerald M. Brooks M.D.	Rebecca F. Morris M.D.
J.B. Nesbitt M.D.	

SIGNATURES - PAGE 2.

Nicholas J. Fedorka D.M.D.	C.T. Cortes, Jr. M.D.
Lawson C. Smart M.D.	J. Zinamosca D.O.
Donald LaVay M.D.	D. Saavedra M.D.
Vic Farrah D.O.	David D. Kirkpatrick, Jr. M.D.
Renato P. Ramirez M.D.	V.R. Ordinario, Jr. M.D.
Kwang Choi M.D.	P.T. Poux M.D.
Robert Santora	L. Pagniello M.D.
Robert Concilus M.D.	Edward M. Fine M.D.
Luis P. Gomez	Mark R. Foster M.D.
Seung C. Lee M.D.	James R. McLamb
E.J. Owens D.O.	G. Kwitka M.D.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition

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

The respondents, their 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 procedures prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondents are physicians licensed and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with their offices and principal places of business located at the addresses listed in the Appendix attached hereto.

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

ORDER

I.

It is ordered, That each respondent, directly or indirectly or through any device, shall cease and desist from entering into, maintaining or continuing, or attempting to enter into, maintain or continue, any agreement or understanding, either express or implied, to refuse to deal with or to withhold patient referrals from any physician, group of physicians, or other health care provider, or to refuse to deal with or to withhold patient admissions from any hospital.

Provided, however, that this Section shall not be construed to prohibit any respondent from participating in hospital medical staff credentialing recommendations, hospital medical staff credentialing decisions in his or her capacity as a hospital board member, hospital

utilization review, hospital peer review, hospital quality assurance, or hospital policy making, where such conduct by the respondent neither constitutes nor is part of any agreement, combination or conspiracy whose purpose, effect or likely effect is to impede competition unreasonably.

II.

It is further ordered, That each respondent shall cease and desist from directly or indirectly, or through any device:

A. For a period of five years following the effective date of this order, making any threat, express or implied, including but not limited to any threat to refuse to deal with or to withhold patient referrals from any physician, group of physicians, or other health care provider, or to refuse to deal with or to withhold patient admissions from any hospital, for the purpose of restricting or lessening competition; or

B. Inducing or attempting to induce any person to refuse to deal with or to withhold patient referrals from any physician, group of physicians, or other health care provider, or to refuse to deal with or to withhold patient admissions from any hospital, for the purpose of restricting or lessening competition.

III.

A. *It is further ordered,* That within thirty (30) days after service of this order, the respondents shall mail a copy of this order and the accompanying complaint to the Administrator, Board of Corporators, and each member of the medical staff of St. Vincent Health Center, Erie, Pennsylvania, and to the President of the Erie County Medical Society.

B. *It is further ordered,* That each respondent shall, within sixty (60) days after service of this order, and at any time the Commission, by written notice, may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which the respondent has complied with this order.

C. *It is further ordered,* That each respondent shall promptly notify the Commission of any change in respondent's business address set forth in the Appendix to this order.

APPENDIX

J. Thomas Arno, M.D.: 149 North Main Street, Meadville, Pennsylvania 16335;

Azhar Aslam, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Barry B. Bittman, M.D.: 149 North Main Street, Meadville, Pennsylvania 16335;

Raymond J. Bridge, M.D.: R.D. #2, Box 96, Conneaut Lake, Pennsylvania 16316;

Gerald M. Brooks, M.D.: 403 Euclid Avenue, Saegertown, Pennsylvania 16433;

J. Henry Burkholder, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Kwang Y. Choi, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Candido T. Cortes, Jr., M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Aiman N. Daghestani, M.D.: 773 North Main Street, Meadville, Pennsylvania 16335;

Arthur G. Deininger, M.D.: 390 Park Avenue, Meadville, Pennsylvania 16335;

Timothy Downing, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

M. Bruce Dratler, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Robert A. Driscoll, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;

David W. Dunn, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Victor B. Farrah, D.O.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Nicholas J. Fedorka, D.M.D.: 226 Park Avenue, Meadville, Pennsylvania 16335;

Edward M. Fine, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Mark R. Foster, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;

Luis C. Gomez, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Danilo L. Guanzon, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Mary B. Hagamen, M.D.: 432 Main Street, Saegertown, Pennsylvania 16433;

Alanson O. Hibbard, M.D.: 838 Park Avenue, Meadville, Pennsylvania 16335;

William T. Holland, Jr., M.D.: 899 Grove Street, Meadville, Pennsylvania 16335;

Ronald A. Kellogg, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Lucille Kirchner, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;

David D. Kirkpatrick, Jr., M.D.: 279 Walnut Street, Meadville, Pennsylvania 16335;

Robert L. Kirkpatrick, M.D.: 1058 South Main Street, Meadville, Pennsylvania 16335;

George Kwitka, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;

James H. Larson, M.D.: 491 Jackson Park Drive, Meadville, Pennsylvania 16335;

Curtis H. Laub, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;

Donald E. LaVay, M.D.: Spencer Hospital, 1034 Grove Street, Meadville, Pennsylvania 16335;

Ovunda A. Lawson, D.O.: 217 North Street, Meadville, Pennsylvania 16335;

Seung C. Lee, M.D.: Spencer Hospital, 1034 Grove Street, Meadville, Pennsylvania 16335;

Brian F. McIntosh, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;

James R. McLamb, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;

Mohamed Moakeh, M.D.: 773 North Main Street, Meadville, Pennsylvania 16335;

Rebecca F. Morris, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

William J. Morris, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Spero E. Moutsos, M.D.: 370 Chestnut Street, Meadville, Pennsylvania 16335;

Robert N. Moyers, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

John B. Nesbitt, M.D.: 279 Walnut Street, Meadville, Pennsylvania 16335;

Vincente R. Ordinario, Jr., M.D.: Third Street, Conneaut Lake, Pennsylvania 16316;

Edward J. Owens, D.O.: 118 Railroad Street, Cambridge Springs, Pennsylvania 16403;

Lucia Pagniello, M.D.: 508 North Main Street Ext., Meadville, Pennsylvania 16335;

William K. Petrella, D.O.: 823 Chestnut Street, Meadville, Pennsylvania 16335;

Joseph G. Piroch, M.D.: 7 Lakeside Square, Conneaut Lake, Pennsylvania 16316;

Paul T. Poux, M.D.: P.O. Box 127, Guys Mills, Pennsylvania 16327;

Tariq Qureshi, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;

Renato P. Ramirez, M.D.: Linesville Medical Center, West Erie Street, Linesville, Pennsylvania 16424;

Stacey A. Robertson, D.O.: 402 Main Street, Saegertown, Pennsylvania 16433;

Diogenes A. Saavedra, M.D.: 664 Highland Avenue, Meadville, Pennsylvania 16335;

Robert A. Santora, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Lawson C. Smart, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;

Fred W. Strickland, Jr., M.D.: 495 Pine Street, Meadville, Pennsylvania 16335;

William D. Sullivan, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;

John O. Taylor, M.D.: 843 Park Avenue, Meadville, Pennsylvania 16335;

Christopher W. Thomas, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Ronald M. Vrablik, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Thomas M. Watson, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Randy S. Zelen, M.D.: 149 North Main Street, Meadville, Pennsylvania 16335; and

John B. Zinamosca, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335.

Complaint

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IN THE MATTER OF

C & D ELECTRONICS, INC., ET AL.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3212. Complaint, March 6, 1987—Decision, March 6, 1987*

This consent order prohibits, among other things, a Jenison, Mich. manufacturer and marketer of cable television decoders from selling or distributing the decoders to any unauthorized purchasers and requires respondents to cease representing that: (1) consumers can lawfully own or use decoders; (2) the use of decoders is legal without authorization from a cable company; or (3) ownership or use of a cable decoder is similar to the ownership or use of a telephone. The consent order also requires respondents to make an affirmative disclosure with the sale of any of their cable television decoders.

*Appearances*For the Commission: *Alan E. Krause.*For the respondents: *G.R. McIneney*, Grand Rapids, MI.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents C&D Electronics, Inc., a corporation, and David Barwacz and Larry Bostelaar, individually and as officers of the corporation, have violated the provisions of Section 5(a) 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 its complaint and alleges that:

PARAGRAPH 1. Respondent C&D Electronics, Inc., is a Michigan Corporation with its principal place of business located at 2026 Chicago Avenue, Jenison, Michigan 49428.

PAR. 2. Respondent Larry Bostelaar is an individual residing at 7920 Ronson, Jenison, Michigan 49428. He is a stockholder, officer and director of C&D Electronics, Inc. Individually or in concert with others, he formulated, directed and controlled the acts and practices of respondent C&D Electronics, Inc., including the acts and practices alleged in this complaint.

PAR. 3. Respondent David Barwacz is an individual residing at 2532 Northborough Court, NE, Grand Rapids, Michigan 49505. He is a stockholder, officer and director of C&D Electronics, Inc. Individually

or in concert with others, he formulated, directed and controlled the acts and practices of respondent C&D Electronics, Inc., including the acts and practices alleged in this complaint. [2]

PAR. 4. Respondents at the times mentioned in this complaint maintained a substantial course of business, including the acts or practices hereinafter set forth, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondents have been engaged in the manufacturing, advertising, distributing and selling of cable television decoders, descramblers, converter-decoders, and converter-descramblers which were capable of decoding or descrambling certain television signals transmitted by cable to subscribers of various cable television systems throughout the United States.

PAR. 6. Cable system operators provide decoders, descramblers, converter-decoders or converter-descramblers to their subscribers as part of the cable delivery system in order to determine and charge for the level of programming service used.

PAR. 7. Cable system operators routinely prohibit subscribers from attaching to their cable system any decoder, descrambler, converter-decoder, or converter-descrambler other than one provided by the cable system operator.

PAR. 8. Cable television decoders, descramblers, converter-decoders and converter-descramblers sold by respondents were designed and have been used to allow the unauthorized viewing of certain signals transmitted by cable television systems operating throughout the United States.

PAR. 9. The sales of respondents' cable television decoders, descramblers, converter-decoders and converter-descramblers have resulted in the loss to cable companies of potential or present cable service subscription revenues. As a result, legitimate cable subscribers pay higher prices for cable service or receive reduced services from the cable companies. In addition, municipalities granting the franchises to provide cable television service receive reduced franchise fees from the cable companies to the detriment of all consumers in the municipalities.

PAR. 10. Respondents' actions as described above have thus caused substantial and ongoing injury that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. [3]

PAR. 11. The acts and practices as herein alleged are to the prejudice and injury of the public and constituted unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Azcuenaga was recorded as dissenting.

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 attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and [2]

The Commission having thereafter considered the matter and having determined that it has 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 C&D Electronics, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 2026 Chicago Avenue, Jenison, Michigan 49428.

Respondents David Barwacz and Larry Bostelaar are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their 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

For purposes of this order, the following definitions are applicable:

"Authorized person(s)" shall mean any person that is a cable operator or a cable system operator, operating a cable system, as defined

herein, pursuant to a franchise issued by a cable franchising authority, or any person manufacturing or distributing cable television decoders, descramblers converter-decoders, or converter-descramblers pursuant to a contract, agreement, license or other arrangement with a cable operator or a cable system operator to provide, furnish or supply such products to a cable system.

"*Cable operator*" or "*cable system operator*" shall mean any person, partnership, or corporation that provides cable service over a cable system or that, directly or through one or more affiliates, owns a significant interest in any cable system or who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system. [3]

"*Cable system*" shall mean a facility or combination of facilities, constructed or operated pursuant to a franchise, that consists of a set of closed transmission paths and associated signal generation, reception and control equipment and that is designed to provide cable service to multiple subscribers within a community or a satellite master antenna system (SMATV), that serves subscribers in one or more multiple unit dwellings under common ownership, control or management.

"*Franchise*" shall mean an initial authorization or renewal thereof, issued by a franchising authority, whether designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of facilities designed to provide cable service.

"*Franchising authority*" shall mean any state, political subdivision, or agency thereof, or any governmental entity empowered by Federal, State or local law to grant a franchise.

I.

It is ordered, That respondents C&D Electronics, Inc., a corporation, its successors and assigns, and its officers, and David Barwacz and Larry Bostelaar, individually and as officers of the corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of any cable television decoder, descrambler, converter-decoder or converter-descrambler that may be used for the decoding, descrambling, and/or intercepting in any manner whatsoever of all or any part of any cable television transmission do forthwith cease and desist from selling or distributing, any such product to any person that is not an authorized person hereunder.

II.

It is further ordered, That respondents C&D Electronics, Inc., its successors and assigns, and its officers, and David Barwacz and Larry Bostelaar, individually and as officers of the corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, [4] division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of any cable television decoder, descrambler, converter-decoder or converter-descrambler that may be used for the decoding, descrambling, and/or intercepting in any manner whatsoever of all or any part of any cable television transmission, do forthwith cease and desist from representing, directly or by implication that:

1. Any consumer may lawfully own or use such a product.
2. The ownership and use of any such product is the same as or similar to the ownership or use of telephone equipment.
3. Any consumer may lawfully use any such product without first obtaining authorization from a cable company and paying the required fees.

III.

It is further ordered, That respondents shall, for a period of five years after the date this order becomes final, maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of:

1. All sales invoices showing sales of any cable television decoder, descrambler, converter-decoder or converter-descrambler with the invoices showing the name of the person or persons, to whom the sale was made, along with their address(es) and the quantity of such products sold to such person(s).
2. Documents verifying that for each such sale the buyer was an authorized person hereunder. [5]

IV.

It is further ordered, That respondents shall, in connection with the sale of any cable television decoder, descrambler, converter-decoder or converter-descrambler that may be used for the decoding, descrambling, and/or intercepting in any manner whatsoever of all or any

part of any cable television transmission, disclose clearly and conspicuously in writing to the buyer the following statement:

"The possession and use of cable TV equipment on any cable TV system without specific authorization from a cable company and the payment of required fees is strictly prohibited in most states. C&D sells its products only to authorized persons."

V.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of its agents, representatives and employees having advertising, marketing, sales or corporate policy responsibilities with respect to the subject matter of this order and secure from each such person a signed statement acknowledging receipt of a copy of the order.

VI.

It is further ordered, That respondents 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.

VII.

It is further ordered, That respondents David Barwacz and Larry Bostelaar shall, for a period of five (5) years after the date of service of this order, notify the Commission of the discontinuance of their present employment and of their affiliation with any new business or employment, involving the manufacture, advertising, sale, offering for sale or [6] distribution in commerce of any cable television equipment or accessories, or of their affiliation with any new business or employment in which their duties or responsibilities would involve the manufacture, advertising, sale, offering for sale or distribution of cable television equipment or accessories, with each such notice to include respondent's new business address and a statement as to the nature of the new business or employment, as well as a description of their duties and responsibilities.

VIII.

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

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I dissent from the Commission's decision to accept the consent agreement with C&D Electronics and its principals. Although this case may technically meet the criteria for application of an unfairness theory under Section 5 of the FTC Act, it is different from the usual case in which the Commission seeks to halt some form of seller behavior that creates or unfairly takes advantage of obstacles to fully informed decisions by consumers.

In this case, the product is a decoder, a device for obtaining access to cable programming. C&D allegedly acted unfairly by selling decoders to consumers who used them to obtain cable programming without paying for it, resulting in lost revenues for cable companies, higher cable prices for consumers and reduced franchise fees for municipalities. The order attempts to deal with the alleged unfairness by prohibiting C&D from selling decoders to unauthorized users.

The alleged injury, however, stems not from any overreaching by C&D but rather from the voluntary use of pirate decoders by consumers. What the order is really trying to stop—or, given C&D's size relative to the rest of the industry, to inhibit to some degree—is not the unlawful behavior of the seller of the product but rather the unlawful behavior of the consumers who purchase the product. This may be a laudable goal, but it is not the sort of accomplishment this agency was set up to achieve. By accepting this order, the Commission embarks on a course of social engineering that brings a radical new meaning to the concept of consumer protection.

No doubt consumers engage in a good deal of behavior, lawful or unlawful, that is costly to society. Some consumers litter our parks and highways, but the expense of cleaning up is not a basis for action by the Commission to restrict the sale of soft drink bottles and fast foods. Although federal or state lawmakers properly may attempt to restrict such behavior, I know of no mandate for the Federal Trade Commission to regulate undesirable behavior of individual citizens not involved in trade.

To address the problem of unauthorized cable TV decoders, Congress enacted the Cable Communications Policy Act of 1984, 47 U.S.C. Section 553, which exposes the users and sellers of pirate decoders to

substantial criminal penalties and civil liability. A number of state law restrictions also exist. In addition, the cable industry is developing technology to block pirate decoders. It seems to me that this agency should use its increasingly scarce resources to monitor unfair methods of competition and unfair or deceptive acts and practices by those who are engaged in trade and should leave the policing of the unauthorized use of decoders by consumers to the cable industry and to the Department of Justice.

SEPARATE STATEMENT OF CHAIRMAN DANIEL OLIVER

After extensive consideration and reflection I have concluded that the consent agreement in this matter should be provisionally accepted. This case fits the analytic framework that we have established for our "unfairness" jurisdiction, and the facts present justify Commission action. There is reason to believe that the practices of C&D Electronics have resulted in substantial consumer injury that is not offset by any legitimate countervailing benefits to consumers or competition and that the resultant consumer injury was not reasonably avoidable.¹

CONSUMER INJURY

The cost of stolen cable services is initially borne by the cable companies, the premium cable services, and the municipalities that grant cable franchises. There is little doubt, however, that most or all of those costs are passed along to honest cable service subscribers in the form of higher prices.

Such activities can result in actual and substantial consumer injury, far greater than that challenged in many of our other cases. In many of our deception and competition cases, for example, we rely in large part on presumptions about the likely adverse effects on consumers. And like our other competition and [2] consumer protection actions, this injury takes place in the context of a commercial transaction.

Moreover, consumer injury can provide a basis for Commission action even when there is no direct contact between the respondent and the ultimate consumer. Our concerns in halting conduct that results in unjustified harm to the public is not limited to injury incurred by the direct purchasers of products. An example of this is the Commission's consent agreement in *Phillip Morris, Inc.*, 82 FTC 16

¹ I am wholly unable to fathom concerns that we are engaging in some form of social engineering by accepting this consent agreement. In this case there is no attempt to substitute our views for those of an informed public. Congress, it should be noted, has already passed legislation prohibiting the type of conduct alleged here.

(1973), where the company had distributed free samples of razor blades that the Commission alleged were a safety hazard because they could come into the hands of small children or injure others who had not purchased a product.

The consumer injury at issue here is similar to that in our competition cases, where our purpose is ultimately to prevent restraints on trade that would result in consumer injury in the form of increased prices. In *FTC v. Indiana Federation of Dentists*, 106 S.Ct. 2009 (1986) the Court found that the concerted action taken by the dentists was:

likely enough to disrupt the proper functioning of the price-setting mechanism of the market that it may be condemned even absent proof that it resulted in higher prices or, as here, the purchase of higher priced services, than would occur in its absence.

Id. at 2019. Such price increases injure consumers who cease purchasing or turn to a less satisfactory substitute (i.e., who then have no direct contact with the respondent) as well as those who continue to purchase at higher prices. The injury alleged [3] here is more direct than in many of those cases, and I am aware of no compelling reason for treating the situations differently.

In addition, in a case of this sort injury to consumers may go well beyond a simple increase in prices; the activity here may provide disincentives that will result in services not being available to consumers at all. There is little or no reason for businesses to establish cable services, or expand and improve existing ones, unless sufficient revenue can be generated to warrant expenditures. Widespread or unchecked free riding could discourage ventures that would offer such services or could result in raising the prices for cable subscriptions in existing networks beyond optimal levels. Thus such action could not only result in present injury, but also could undermine the competitive process that encourages innovation or maintenance of such facilities and thereby increase the risks of collateral consumer injury of a different type.

COUNTERVAILING BENEFITS TO CONSUMERS OR COMPETITION

I am unable to identify any collateral benefits to consumers or competition that are likely to offset the conduct alleged here. Significant free riding on services paid for by others can hardly be considered a benefit that offsets the resultant costs imposed on honest cable subscribers. [4]

AVOIDABILITY OF THE INJURY

This aspect of our unfairness jurisdiction involves an inquiry into whether market forces provide an adequate disincentive for conduct injurious to consumers.² In many of our cases there is a defect in the information available to consumers in making purchase decisions that they cannot easily protect themselves from.³

However, we have also recognized that unfairness may be involved in situations where there is no informational problem—for example, where a clearly defined right cannot be enforced effectively by private actions.⁴ In my view, it was this rationale that supported our finding of liability in *Orkin Exterminating*, Docket 9176, (December 15, 1986). In that case, like this one, there was a firmly established (and rational) [5] legal standard governing the conduct, the consumer injury alleged was substantial and readily identifiable, and the injury resulted from commercial transactions within our jurisdiction and expertise.⁵

Private actions may not be able to deter the type of conduct that C&D Electronics was charged with engaging in. First, most cable companies and municipalities do not have the technology to detect the use of these sorts of decoders, and thus have a difficult time determining the scope of the problem and the source of illegal decoder use.⁶ Thus most municipalities, even though deprived of revenue, have little incentive to take action. Cable companies are faced with the same difficulties. Moreover, they may have little incentive to fund litigation which will benefit competitors as much as, or perhaps more, than themselves. Even where a problem is identified and litigation ensues, the relief obtained frequently extends only to the geographic area of the complaining party. Neither trade associations nor the premium services themselves have mounted efforts to curtail such activities. As a result I believe that the consumer injury alleged to result from the actions of C&D Electronics is not reasonably avoidable. [6]

² The need for this inquiry is made explicit in the Commission's Policy Statement on Unfairness, and is incorporated into the analysis of whether injury is reasonably avoidable:

Normally we expect the marketplace to be self-correcting, and we rely on consumer choice—the ability of individual consumers to make their own private purchasing decisions without regulatory intervention—to govern the market.

Unfairness Statement at 7.

³ *Id.* “[W]e rely on consumer choice—the ability of individual consumers to make their own private purchasing decisions without regulatory intervention”

⁴ “In some senses any injury can be avoided—for example, by hiring independent experts to test all products in advance, or by private legal actions for damages—but these courses may be too expensive to be practicable for individual consumers to pursue.” Unfairness Statement, n.19 at 7.

⁵ These considerations demonstrate why there is no role for the Commission in matters such as pollution or gun control.

⁶ Even if the technology to circumvent use of illicit decoders were available, however, the cost of implementing safeguards of that type would probably be imposed on consumers as well.

Statement

109 F.T.C.

CONCLUSION

Accepting this consent decree does not, to my mind, signal a broad foray into Commission enforcement of all property rights. In fact, I would suspect that situations like the one present here will come to our attention infrequently. When we do find substantial consumer injury in such situations, it is important that the conduct satisfy our criteria on unfairness, and it is particularly necessary that we be able to determine whether private actions are adequate to vindicate private rights. This process must, of necessity, result from case-by-case analysis based on the particular facts involved. I am satisfied that the consent agreement negotiated in this matter satisfies those standards, and I am therefore voting to accept it provisionally.

IN THE MATTER OF
ALLIED CORPORATION

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

Docket C-3109. Consent Order, May 17, 1983—Modifying Order, Mar. 18, 1987

The Federal Trade Commission has modified a 1983 consent order (101 F.T.C. 721) by requiring that, until 1993 and with certain exceptions, the successors to Allied must obtain prior FTC approval before acquiring any interests or assets of a high-purity acid maker.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On July 29, 1986, Allied Corporation ("Allied") filed a document entitled "Petition By Allied Corporation Pursuant to Section 5(b) of the FTCA and Rule 2.51 To Reopen and Terminate Paragraph III of the Consent Order Entered in Docket No. C-3109." The petition requests that the Commission reopen the order and terminate Paragraphs III and IV. In the alternative, Allied requests that the Commission relieve Allied of its compliance obligations under those paragraphs. Paragraph III prohibits Allied from acquiring for ten years without prior Commission approval "any assets of or any stock interest in any company engaged in the manufacture of high-purity acid in the United States * * *." Paragraph IV requires Allied to file annual reports respecting its compliance with Paragraph III. The preamble to the order defines "respondent" to mean "Allied Corporation, its subsidiaries, affiliates, divisions, successors, and assigns."

On September 19, 1985, Allied merged with The Signal Companies, Inc. ("Signal"). They formed a new parent corporation, Allied Signal Inc. ("Allied Signal"), with Allied becoming a wholly owned subsidiary of Allied-Signal. In December 1985, Allied-Signal restructured itself by forming a new corporation containing thirty-five former businesses of Allied or Signal. The new corporation was named The Henley Group, Inc. and included the entire high-purity acid business of Allied. On May 28, 1986, Allied-Signal spun-off Henley. Seventy percent of the equity of Henley was distributed to the shareholders of Allied-Signal as a stock dividend ("Distribution"). The remaining thirty percent was retained by Allied-Signal. The formation agreement between Allied-Signal and Henley dated February 26, 1986, included a schedule of enumerated liabilities which stated that Henley may be liable for the Commission's order in this matter. On Janu-

ary 28, 1987, Allied-Signal sold nearly all of its remaining Henley stock to Henley.

Allied requests that the Commission terminate Paragraphs III and IV on the basis of changed conditions of fact and the public interest. In the alternative, it requests that Allied be relieved of its obligations under those paragraphs. Allied states that Allied-Signal has divested itself of all of the businesses and assets that gave rise to the order and, therefore, there are no longer competitive concerns that would justify the need for prior Commission approval for any acquisition that Allied may wish to make of a high-purity acid business.

After reviewing Allied's petition and other information, including a December 18, 1986 letter from Henley, the Commission has concluded that termination of Paragraphs III and IV is not warranted. The creation of Henley and transfer to it of Allied's high-purity acid business is not a changed condition of fact warranting such action. The business appears to be continuing in an essentially identical form, and there is consequently reason to believe that Henley may be a successor to Allied for purposes of the order. See *Golden State Bottling Co., Inc. v. NLRB*, 414 U.S. 168, 171 n.2, 181, 182 n.5 (1973).

In view of the foregoing, the Commission has concluded that changed conditions of fact and the public interest warrant a modification to the order relieving Allied of its compliance obligations under Paragraphs III and IV. Allied is no longer engaged in the manufacture and sale of high-purity acids as a result of the transfer of that business to Henley. Furthermore, Allied states that it does not intend now to reenter the market.

Accordingly, it is hereby ordered that the proceeding be, and it hereby is, reopened and the order modified to relieve Allied of its compliance obligations under Paragraphs III and IV.

IN THE MATTER OF
RELIANCE WOOD PRESERVING, INC., ET AL.

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

Docket C-3210. Complaint, April 2, 1987—Decision, April 2, 1987

This consent order prohibits, among other things, the Federalsburg, MD manufacturer of flame-retardant, pressure-treated wood from misrepresenting the flame-retardant value of its products and requires respondents to notify purchasers that some of the wood may not meet established safety standards.

Appearances

For the Commission: *Charles Peterson and Truett M. Honeycutt.*

For the respondents: *Starke Evans, Federalsburg, MD.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Reliance Wood Preserving, Inc., a corporation, McCoy Industries, Inc., a corporation, Reliance Treated Wood, Inc., a corporation, and Daniel Roy Dorman, individually and as an officer of Reliance Wood Preserving, Inc., ("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) Respondent Reliance Wood Preserving, Inc. (Reliance), is a Maryland corporation with its office and principal place of business located in the Federalsburg Industrial Park, P.O. Box 349, Federalsburg, Maryland 21632. Respondent Reliance manufactures, advertises, and sells fire retardant treated wood (FRTW).

(b) Respondent Daniel Roy Dorman (Dorman) resides in the State of Maryland. He is president of respondent Reliance; he directs, controls, formulates, or participates in the acts and practices of respondent Reliance.

(c) Respondent Reliance Treated Wood, Inc. (Treated Wood), is a North Carolina corporation with its office located at 300 East Wendor Avenue, Greensboro, North Carolina 27420 and its principal place of business located at Federalsburg Office Park, Federalsburg, Maryland. Respondent Treated Wood advertises and sells FRTW.

(d) Respondent McCoy Industries, Inc. (McCoy), is a North Carolina

corporation with its office and principal place of business located at 300 East Wendover Avenue, Greensboro, North Carolina 27420. McCoy owns 100% of the outstanding stock of respondent Treated Wood.

DEFINITIONS

PAR. 2. For the purposes of this Complaint, the following definitions apply:

a. "ASTM E 84" is a test recognized in the lumber industry as a measure of the fire retardancy of wood based on the rate of flame spread.

b. An "ASTM E 84 flame spread index" (flame spread index) of 25 or less is the score that most, if not all, building codes require a wood product to obtain in order to be used in certain applications where FRTW is required.

c. "Fire Retardant Treated Wood" or "FRTW" is wood that has an ASTM flame spread index of 25 or less and is chemically treated under pressure with fire retardant chemicals.

d. "Respondents' FRTW" means wood that Reliance has represented or Treated Wood has advertised as being fire retardant or class "A" or having a flame spread of 25 or less.

e. A "class 'A' rating" means that FRTW possesses a flame spread index of 25 or less.

f. "Flameguard" is a brand name that respondents use for their FRTW.

g. "Underwriters Laboratories" (UL) is a laboratory that, among other things, tests the fire retardancy of wood and performs quality control inspections of FRTW.

h. "The American Wood Preservers Bureau" is an industry association concerned with the quality of wood.

i. "Timber Products Inspection" is a quality control agency that, among other things, attests to the fact that wood is fire retardant.

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

COUNT I

PAR. 4. The allegations contained in paragraphs one through three are incorporated herein by reference.

PAR. 5. Respondents Reliance and Dorman have placed labels on respondents' FRTW that read as follows:

- a. FLAMEGUARD
ASTM-E 84 25 OR LESS
MEA 140-83 M
Exterior
- b. 83 FLAMEGUARD 84
Fire Retardant Treated Wood
ASTM-E 84 25 OR LESS
Reliance Wood Preserving, Inc.,
Federalsburg, Maryland
Quality assured by Timber Products Inspection

PAR. 6. Through the use of the labels on respondents' FRTW described in paragraph five above, respondents Reliance and Dorman have made the following material representations, directly or by implication:

(1) Respondents' FRTW bearing the labels placed on it by respondents Reliance and Dorman, as described in paragraph five above, has a flame spread index of 25 or less as measured by the ASTM E 84 test.

(2) Respondents' FRTW bearing the labels placed on it by respondents Reliance and Dorman, as described in paragraph five above, is quality assured or otherwise approved by Timber Products Inspection.

PAR. 7: In truth and in fact:

(1) At least some of respondents' FRTW bearing the labels placed on it by respondents Reliance and Dorman, as described in paragraph five above, which was sold prior to April 15, 1985, does not have a flame spread index of 25 or less.

(2) At least some of respondents' FRTW bearing the labels placed on it by respondents Reliance and Dorman, as described in paragraph five above, which was sold prior to April 15, 1985, is not quality assured or otherwise approved by Timber Products Inspection.

Therefore, the representations set forth in paragraph six were and are false and misleading.

COUNT II

PAR. 8. The allegations contained in paragraphs one through three are incorporated herein by reference.

PAR. 9. Respondent Treated Wood advertises FRTW through promotional flyers and brochures. In such advertisements, Treated Wood

has made various statements, prior to April 15, 1985, concerning the fire retardant properties and the quality classifications, approvals, or certifications of respondents' FRTW. Typical and illustrative of these statements, but not all-inclusive thereof, are the following from the promotional flyer attached hereto as Exhibit A:

- a. "Flameguard has a low flame spread index of 25 or less";
 - b. "Flameguard is UL classified";
 - c. "All tests have been conducted and certified by the TPI Agency, Conyers, Georgia";
- and
- d. "All lumber and plywood to be fire-retardant treated will be pressure treated with Reliance Flameguard to comply with the requirements of a flame spread rating of 25 or less when tested for a period of not less than 30 minutes without evidence of significant progressive combustion in accordance with the standard test method for surface burning characteristics of building materials (ASTM-E 84 . . .). . . ."

PAR. 10. Typical and illustrative of the statements made by Treated Wood, prior to April 15, 1985, concerning respondents' FRTW, but not all-inclusive thereof, are the following from the promotional flyer attached hereto as Exhibit B:

- a. "Flameguard Underwriters Laboratories tested and certified";
- b. "Fire retardant";
- c. "Class 'A' rating";
- d. A depiction of Timber Products Inspection's logo; and
- e. A depiction of the American Wood Preservers Bureau's logo.

PAR. 11. Through the use of the statements contained in paragraphs nine and ten above and other statements not specifically set forth herein, Treated Wood has made the following material representations, directly or by implication:

- (1) Respondents' FRTW has a flame spread index of 25 or less.
- (2) Respondents' FRTW possesses a class "A" rating.
- (3) UL classifies or otherwise approves respondents' FRTW.
- (4) Timber Products Inspection assures the quality of or otherwise approves respondents' FRTW.
- (5) American Wood Preservers Bureau approves or certified respondents' FRTW for fire retardancy.

PAR. 12. In truth and in fact:

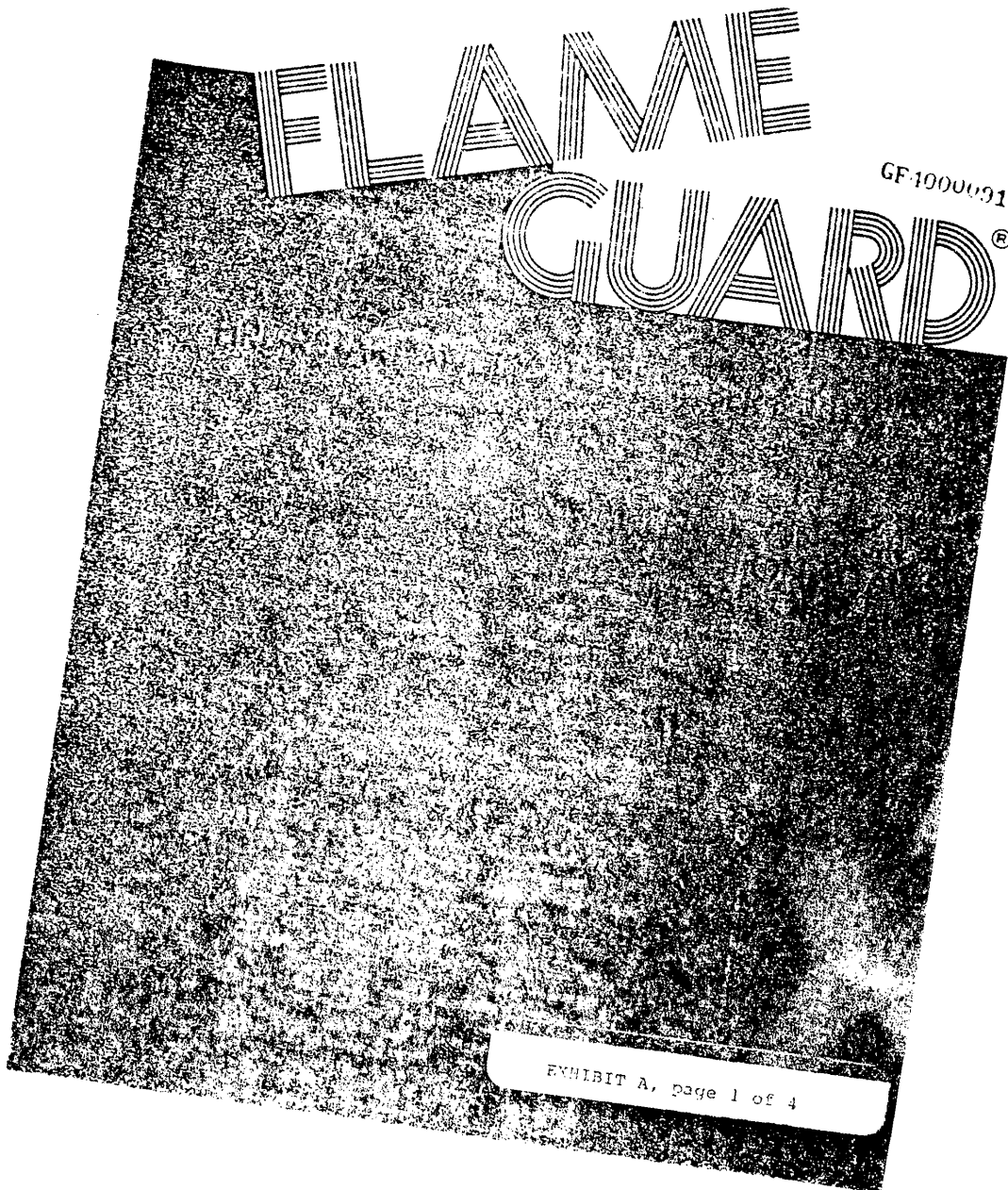
- (1) At least some of respondents' FRTW, which was sold prior to April 15, 1985, has a flame spread index higher than 25.
- (2) At least some of respondents' FRTW, which was sold prior to April 15, 1985, does not possess a class "A" rating.
- (3) UL has not classified or otherwise approved respondents' FRTW.

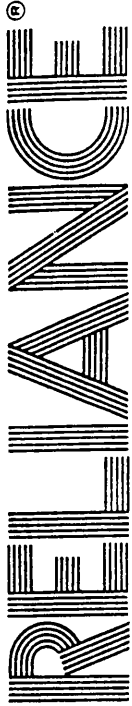
(4) At least some of respondents' FRTW, which was sold prior to April 15, 1985, is not quality assured or otherwise approved by Timber Products Inspection.

(5) American Wood Preservers Bureau has not approved or certified respondents' FRTW for fire retardancy.

Therefore, the representations set forth in paragraph eleven were and are false and misleading.

PAR. 13. The acts or practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting interstate commerce in violation of Section 5 of the Federal Trade Commission Act.

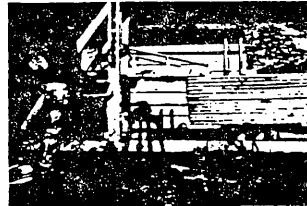
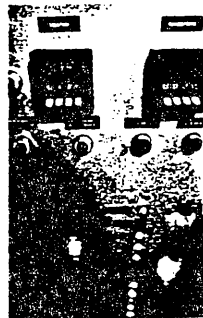




FLAMEGUARD® FIRE-RETARDANT TREATED WOOD HAS MANY USES.

FLAMEGUARD® pressure-treated wood products can be used both for interior or exterior construction where safety from fire is mandatory. Flameguard fire-retardant wood is ideal for roof and floor trusses, beams, roofdecks, trim, loadbearing and non-bearing partitions, steps, stairways, ladders, scaffolding, siding, framing, balconies, walkways and facades or any other application that requires fire-resistant and noncombustible building materials.

As Flameguard treated wood remains clear and will not develop the unsightly surface bloom common with many other fire retardant treatments, Flameguard products are particularly suited to architectural millwork, moldings, and paneling.



ADVANTAGES

FLAMEGUARD is a special formulation of fire retardant chemicals pressure impregnated for maximum wood penetration and protection.

FLAMEGUARD has a low flame spread rating of 25 or less and generates low smoke levels. Its self-extinguishing characteristic eliminates wood so treated as a source of fuel thereby limiting the spread of fire.

FLAMEGUARD fire-retardant treated wood retains its strength under fire conditions longer than untreated wood and many other building materials including steel.

FLAMEGUARD has a very low hygroscopicity and does not absorb and retain moisture even in high humidities. Use in humidities up to 95% is recommended.

FLAMEGUARD is compatible with metal fasteners. Unlike the sulphate and chloride contained in many fire-retardant treatments, the chemicals in our process are non-corrosive.

FLAMEGUARD is a clear fire-retardant treatment which causes little, if any, change in the original color of the wood. Unlike wood treated with other fire-retardant processes, Flameguard products are free of chemical deposits and have no unsightly residue to mar the surface of the wood.

GF-1000192

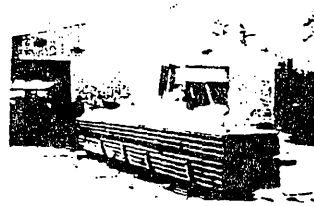
FLAMEGUARD is non-blooming even in extremely humid conditions. Like untreated wood, Flameguard treated wood will weather naturally.

FLAMEGUARD treated wood does not require sealing. The surface of the treated wood will remain clean and can be left unfinished, stained or painted with oil based products.

FLAMEGUARD fire-retardant treated wood qualifies for lower insurance rates with major rating organizations. In many states buildings constructed with fire-retardant treated lumber is granted the same rating as masonry construction and is classified similar to noncombustible material. Shingles treated with Fireguard carry a B rating without foil being placed under them.

FLAMEGUARD is halogen free and is acceptable for construction of nuclear power plants. Free formaldehyde is not given off by Flameguard treated wood.

FLAMEGUARD treated wood, although not marketed as preservative-treated products, does give protection from decay since the wood is sealed and the chemicals are toxic to insects.



FLAMEGUARD is injected through a pressure treatment that forces the fire-retardant chemicals into wood without injuring the wood fibers. The process is operated on a time-pressure schedule that equalizes the natural differences present in lumber and plywood.

FLAMEGUARD reduces the splitting and checking characteristics of untreated wood.

FLAMEGUARD treated wood is readily available with substantial inventories of treated wood products and an abundant supply of raw materials.

EXHIBIT A, page 3 c

SPECIFICATIONS

All lumber and plywood to be fire-retardant treated will be pressure treated with Reliance® Flameguard® to comply with the requirements of a flame spread rating of 25 or less when tested for a period of not less than 30 minutes without evidence of significant progressive combustion in accordance with the standard test method for surface burning characteristics of building materials (ASTM E-84, NFPA 255, AWPA C-20 and C-27), U.L. 723.

GF-100

Each treated product will be tested and will bear the performance identification label assuring its compliance with the standards of the American Wood Preservers Association. Shingles and shakes will be fire-retardant pressure treated to meet the requirements for a Class B or Class C covering in accordance with the Standard Test, ASTM E-108 Test for Roof Covering Materials.

STANDARDS AND APPROVALS

Flameguard® meets the requirements of the following specifying agencies: Federal Specification MIL-L-19140C; Building Officials and Code Administrators International; International Conference of Building Officials; Southern Building Code Congress International, Inc.; National Fire Protection Association, Inc.; American Wood Preservers Association; National Building Code, Insurance Services Office, Nuclear Energy Liability Property Insurance Association and many other local, county and state building codes, insurance underwriters and rating bureaus.

All tests have been conducted and certified by The T.P.I. Agency, Conyers, Georgia.

Flameguard is U.L. Classified (U.L. 723).

Flameguard® treated lumber and plywood is a product of Reliance® Treated Wood. For additional information or to place orders contact one of our offices:

RELIANCE
TREATED WOOD

P.O. Box 22101
Greensboro, NC 27420
919/379-0801
Outside North Carolina 800/334-9113

P.O. Box 400
Federalsburg, MD 21632
301/754-5711

P.O. Box 203
Newtown Square, PA 19073
215/353-6466

GF-1000000

Complaint

109 F.T.C.

EXHIBIT B

RELIANCE TREATED WOOD

POST OFFICE BOX 206 • NEWTOWN SQUARE, PA 18875 • TELEPHONE (717) 858-8488

PRODUCERS OF C.C.A. PRESSURE TREATED LUMBER & PLYWOOD, INTERIOR

& EXTERIOR FIRE RETARDENT LUMBER & PLYWOOD OFFER THE FOLLOWING:

SHOW STOPPER SPECIAL

2 X 4 - 1 pkg./12', 1 pkg./16'

2 X 6 - 1 pkg./14'

2 X 8 - 1 pkg./12', 1 pkg./16'

4 X 4 - 1 pkg./8'

1 X 4 - 1 pkg./12'

AND YOUR CHOICE OF EITHER

3 X 5 - 1 pkg./8' OR 6 X 6 - 1 pkg./8'

THIS TRUCKLOAD OF C.C.A. 40 G'S #2 SOUTHERN YELLOW PINE CAN GET

YOU IN THE PRESSURE TREATED LUMBER BUSINESS FOR ONLY \$4,500.00

AND A SMALL DELIVERY CHARGE TO YOUR YARD.

FLAMEGUARD

UNDERWRITERS LABORATORIES TESTED

AND CERTIFIED

Fire Retardant

EXTERIOR

CLASS "A" RATING

INTERIOR

CLAUDE SHANNON

JIM BRADY

RITCH BENNER

EXHIBIT B

BOOTH 16

TIMBER PRODUCTS INSPECTION

GC2050010



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

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

1. Respondent Reliance Wood Preserving, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at Federalsburg Industrial Park, P.O. Box 349, in the City of Federalsburg, State of Maryland.

Respondent Daniel Roy Dorman 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

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

A. "ASTM E 84" is a test recognized in the lumber industry as a

measure of the fire retardancy of wood based on the rate of flame spread.

B. An "ASTM E 84 flame spread index" (flame spread index) of 25 or less is the score that most, if not all, building codes require a wood product to obtain in order to be used in certain applications where FRTW is required.

C. "Fire Retardant Treated Wood" or "FRTW" is wood chemically treated under pressure with fire retardant chemicals and has an ASTM flame spread index of 25 or less.

D. "Respondents' FRTW" is wood that Reliance and Dorman represented as being fire retardant or Class "A" or having a flame spread of 25 or less.

E. A "class 'A' rating" means that FRTW possesses a flame spread index of 25 or less.

F. "Flameguard" is a brand name that respondents use for their FRTW.

G. "Timber Products Inspection" is a quality control agency that, among other things, attests to the fact that wood is fire retardant.

I.

It is ordered, That Reliance Wood Preserving, Inc., and Daniel Roy Dorman, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertisement, offering for sale, sale, or distribution of respondents' FRTW, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, that:

A. Respondents' FRTW is fire retardant, unless such is the fact;

B. Respondents' FRTW possesses a flame spread index of 25 or less, unless such is the fact;

C. Respondents' FRTW possesses a class "A" rating, unless such is the fact;

D. Respondents' FRTW has specified fire retardant properties, unless such is the fact;

E. Respondents' FRTW is classified or otherwise approved by UL, unless such is the fact;

F. Respondents' FRTW is quality assured or otherwise approved by Timber Products Inspection, unless such is the fact;

G. Respondents' FRTW is certified or otherwise approved by the American Wood Preservers' Bureau, unless such is the fact; and

H. Respondents' FRTW is certified or otherwise approved by any

organization, individual, or governmental agency, unless such is the fact.

For at least three years from the last dissemination of any such representation, respondents shall maintain records to be made available upon reasonable request for review by the Federal Trade Commission substantiating representations referred to in this section of the order. Substantiation for representations in Sections I.A. through I.D. shall consist of certifications or tests made in accordance with customary industry standards by an inspection service for fire retardant wood recognized by one of the following bodies: Building Officials and Code Administrators International, Inc.; International Conference of Building Officials; or the Southern Building Code Congress International, Inc.

II.

It is further ordered, That, within fifteen (15) days after the date of service of this order, respondent Reliance Wood Preserving, Inc., shall request that the follow-up service currently inspecting its FRTW confirm that it is inspecting respondents' FRTW by forwarding to the service a letter in the form attached as Appendix A.

III.

It is further ordered, That, within fifteen (15) days after the date of service of this order, respondents shall notify all purchasers of respondents' FRTW prior to April 15, 1985, that some of respondents' FRTW sold prior to April 15, 1985, may not have the fire retardant properties specified in respondents' representations concerning that FRTW. Such notice in the form of Appendix B shall be made by postage pre-paid, certified mail, return receipt requested, addressed to the last known address of the purchasers of respondents' FRTW who purchased prior to April 15, 1985, as reflected in respondents' business records and in a list furnished to respondents by Reliance Treated Wood, Inc., Greensboro, N.C.

IV.

It is further ordered, That respondent, Reliance Wood Preserving, Inc., shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, 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 its

organization that may affect compliance obligations arising out of this order.

V.

It is further ordered, That the individual respondent Daniel Roy Dorman notify the Commission fifteen (15) days in advance of any proposed change of his affiliation with respondent Reliance and within fifteen (15) days of any new affiliation that he has with any corporation, partnership, proprietorship, or other business entity engaged in the manufacture, advertisement, offering for sale, sale, or distribution of fire retardant treated wood.

VI.

It is further ordered, That, within fifteen (15) days after service of this order, respondent Reliance Wood Preserving, Inc., shall provide a copy of this order and of the complaint in this proceeding to each current officer and director of Reliance Wood Preserving, Inc., and, for a period of three (3) years after that date, shall provide a copy of such order and complaint to each new officer and director of Reliance Wood Preserving, Inc., within fifteen (15) days after each new officer or director is appointed or relected, and shall secure from each current and future officer and director a signed statement acknowledging receipt of such copy.

VII.

It is further ordered, That:

A. Within sixty (60) days after the date of service of this order, each respondent shall file or cause to be filed with the Commission a written report setting forth in detail the manner and form in which it has complied with this order, including a list of the individuals or entities notified pursuant to Paragraph III of this order together with a copy of the return receipts from such individuals or entities showing their receipt of such required notification.

B. In addition to the report required by VII(A), each respondent shall file or cause to be filed, within sixty days after service of this order, copies of the most recent ASTM E 84 tests conducted to obtain certification that each species of respondents' FRTW is fire retardant together with reports from the follow-up service utilized by respondents regarding its two most recent follow-up inspections.

C. In addition to the report required by VII(A) and test results

required by VII(B), each respondent shall file or cause to be filed, one (1) year after the date of service of this order and at such times as the Commission or its staff by written notice require, a written report setting forth in detail the manner and form in which it has complied and is complying with this order.

APPENDIX A

[Date]

Dear _____:

On _____ Reliance Wood Preserving, Inc., entered into a consent agreement with the Federal Trade Commission. The agreement, among other things, requires Reliance to possess substantiation for the claim that Reliance's fire retardant treated wood ("FRTW") is fire retardant (i.e., has a flame spread index of 25 or less).

Reliance requests that you write a letter directly to the Commission confirming that you are currently performing follow-up inspections to assure that Reliance's FRTW is in fact fire retardant. In your letter, please indicate that you will notify the Commission should you cease performing follow-up inspections on Reliance's FRTW. Your letter should be sent to the address below:

Federal Trade Commission
Division of Enforcement
6th Street & Pennsylvania Ave.
Washington, D.C. 20580

Your cooperation will be greatly appreciated.

Reliance Wood Preserving, Inc.

By: _____

APPENDIX B

[Date]

Dear [Customer:]

On _____ Reliance Wood Preserving, Inc., entered into a consent agreement with the Federal Trade Commission settling charges that some Flameguard fire retardant treated wood (FRTW) manufactured and sold prior to April 15, 1985, may not in fact be fire retardant.

Most of our FRTW is sold by Reliance Treated Wood, Inc., a subsidiary of McCoy Industries, Inc., both of which are located in Greensboro, N.C.

Because our records and/or Reliance Treated Wood's records indicate that you may have purchased Flameguard during the applicable time period, our agreement with the Federal Trade Commission requires us to notify you of the possibility that some Flameguard fire retardant treated wood may not be fire retardant so that you may take whatever steps, if any, that you deem appropriate. Please bear in mind that only FRTW manufactured and sold prior to April 15, 1985, is involved.

Reliance Wood Preserving, Inc.

By: _____

DISSENTING STATEMENT OF COMMISSIONER, ANDREW J. STRENIO, JR.

I would reject the agreement for the reasons specified at length in my earlier dissent from the Commission action of December 29, 1986 accepting the consent agreement, subject to final approval. In my view, both the danger to public safety from the misrepresentations alleged in this matter and the difficulty for consumers of detecting the existence and extent of injury indicate that monetary redress should be included in the settlement.

In the absence of any such monetary redress, I respectfully dissent from the Commission's action granting final approval to this consent agreement.