

Complaint

119 F.T.C.

IN THE MATTER OF

MEDICAL STAFF OF GOOD SAMARITAN
REGIONAL MEDICAL CENTERCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3554. Complaint, Feb. 1, 1995--Decision, Feb. 1, 1995*

This consent order prohibits, among other things, the members of the medical staff from agreeing, or attempting to enter into an agreement, to prevent or restrict the services offered by Good Samaritan, the clinic, or any other health care provider by refusing to deal with others offering health care services, or by withholding patient referrals.

Appearances

For the Commission: *Mark J. Horoschak, Garry H. Gibbs, Steven J. Osnowitz and Gary H. Schorr.*

For the respondent: *Robert J. Milligan, Gallagher & Kennedy, Phoenix, AZ.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Medical Staff of Good Samaritan Regional Medical Center has violated and is violating Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

THE SAMARITAN ORGANIZATION AND RESPONDENT MEDICAL STAFF

PARAGRAPH 1. Samaritan Health Systems ("SHS"), formerly operated as two separate corporations (Samaritan Foundation and its subsidiary Samaritan Health Services), is a nonprofit corporation organized and existing under the laws of the State of Arizona. SHS operates nine full service medical and surgical hospitals in the United States, including four hospitals in Maricopa County, Arizona. Good

Samaritan Regional Medical Center ("Good Samaritan" or "the Hospital"), one of the hospitals operated by SHS, is a 571-bed tertiary, teaching hospital. Good Samaritan is the largest hospital in Arizona. The principal physical facilities of Good Samaritan are located at 1111 E. McDowell Road, Phoenix, Arizona.

PAR. 2. Respondent Medical Staff of Good Samaritan Regional Medical Center ("respondent Medical Staff" or "Medical Staff") is an unincorporated association, organized and existing under the laws of the State of Arizona, with its mailing address at 1111 E. McDowell Road, Phoenix, Arizona. The Medical Staff is composed of over 500 physicians and other practitioners who have privileges to attend patients at Good Samaritan.

PAR. 3. The overwhelming majority of physicians in Maricopa County and on the Medical Staff practice medicine in individual or small group practices on a fee-for-service basis. Under this traditional form of practice, when a patient's illness is beyond the capability or outside the medical specialty of an individual physician, the physician refers the patient to another independent physician. Except to the extent that competition has been restrained as herein alleged, most, if not all, of the Medical Staff's members have been and are now in competition among themselves and with other health care practitioners in Maricopa County.

PAR. 4. The Medical Staff is engaged in substantial activities for the economic benefit of its members. By virtue of its purposes and activities, the Medical Staff is a "corporation" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 5. The acts and practices of the Medical Staff, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

THE FORMATION OF THE SAMARITAN PHYSICIANS CENTER

PAR. 6. In early 1986, SHS began investigating the concept of developing a physician-hospital clinic joint venture. The idea for the joint venture was prompted by the anticipated opening of the Mayo Clinic in nearby Scottsdale, which was expected to offer significant competition for SHS hospitals in Maricopa County. While SHS was

still studying the idea, several members of Good Samaritan's medical staff independently approached the Hospital with the idea of opening a hospital-affiliated physician group practice. After a feasibility study showed that the group practice could be expected to significantly increase patient admissions to Good Samaritan, the Hospital and the physicians who approached the Hospital concerning the group practice agreed to implement their plans.

PAR. 7. In March 1987, Good Samaritan announced its plans to open the Samaritan Physicians Center ("SPC" or "the Clinic"), a multispecialty clinic in the Phoenix area. As originally planned, the Clinic was to have 39 physicians within five years and was to be a patient-oriented practice, benefitting patients by providing one-stop shopping for various medical specialties, extended hours, preventive care, house calls, and a single set of records and billing for each patient. Representatives of Good Samaritan and the SPC physicians believed that the Clinic had the potential for holding down medical costs.

THE CONSPIRACY TO RESTRICT COMPETITION

PAR. 8. Respondent Medical Staff, acting as a combination of its members and in conspiracy with at least some of its members and others, joined in a common plan to coerce, intimidate, and threaten to boycott Good Samaritan in order to induce termination of the Hospital's involvement with SPC. At various times during, and in furtherance of, the combination and conspiracy, respondent Medical Staff:

A. Agreed to boycott and threatened to boycott Good Samaritan by representing to Good Samaritan that doctors would jointly withhold patient admissions from Good Samaritan if Good Samaritan continued its relationship with SPC; and

B. Solicited physicians on the Medical Staff to threaten to withhold patient admissions from Good Samaritan if Good Samaritan continued its relationship with SPC.

CONDUCT FURTHERING THE CONSPIRACY

PAR. 9. Beginning in March 1987, Good Samaritan administrators and the SPC physicians presented their plans for the

new multispecialty clinic to various medical departments at the Hospital. Physicians at the March 10, 1987, Obstetrical/Gynecology Department meeting passed a motion "to inform [the] administration that this department condemns the development of a multispecialty care clinic on the [Good Samaritan] campus to capture patients." Physicians at this meeting commented that direct action by physicians would be beneficial in making known to the administration their feelings about the SPC, and there was general discussion regarding a physician boycott of the hospital.

PAR. 10. In December 1987, the Executive Committee of Samaritan Health Services approved Good Samaritan's request to broaden the size and scope of practice at the proposed SPC. The revised plan provided for SPC to eventually be located at two different sites having a total of 84 to 100 physicians.

PAR. 11. SPC began operations in a limited capacity in February 1988 with approximately four physicians. By July 1988, SPC had nineteen physicians on staff, and was continuing to expand.

PAR. 12. Physicians at a Medicine Department meeting on July 21, 1988, passed a motion to create a subcommittee "to discuss the economic impacts [of SPC] on [physicians'] offices in the vicinity of [Good Samaritan]." According to one physician who attended the meeting, "everyone [at the meeting] was wondering how this [the Clinic] would affect them economically."

PAR. 13. At a special meeting of the Medical Staff to discuss SPC on November 14, 1988, physicians complained that they had not approved the Clinic and that the venture would compete with members of the Medical Staff, and threatened to withhold patient admissions to Good Samaritan if the Hospital continued its relationship with SPC. Physicians asked "why should [they] continue to support a hospital that is putting up a clinic to compete with them?" Physicians stated that they had choices as to where to admit their patients and if the Hospital continued to give support to the Clinic they would take their patients elsewhere. Physician opposition to the Clinic at this meeting resulted in the Medical Staff passing a motion to advise the Boards of Samaritan Foundation and its subsidiaries that "these plans [to open a clinic] were instituted without the approval of any Medical Staff member or committee." After learning about the motion, Samaritan administrators, fearing a Medical Staff boycott of Good Samaritan, immediately put further

development of the SPC project on hold and froze physician staffing levels and Samaritan's financial support for further planned development.

PAR. 14. At the July 24, 1989, meeting of the Good Samaritan Medical Staff Executive Committee, members of the Medical Staff continued to express anger and hostility over the Clinic. Physicians stated that there is a continuing schism between the Medical Staff and the Hospital over the Clinic. Physicians stated that members of the Medical Staff wanted to know if Good Samaritan had reduced its financial commitment to the Clinic, so that they could make a decision on whether to continue their practices at Good Samaritan. A Medical Staff Advisory Committee, made up of physicians and hospital administrators, was created to provide the Hospital with physician input regarding the Clinic and other physician sensitive issues.

PAR. 15. On August 24, 1989, the Medical Staff Advisory Committee met to discuss the Clinic. Hospital representatives at this meeting agreed to downsize the Clinic by reducing the number of physicians at the Clinic from 100 to 50 and by reducing the Hospital's financial commitment to the project. Physicians at the meeting stated that there was still great unrest in the Medical Staff, and that this unrest would become apparent at the September 13th Quarterly Medical Staff Meeting.

PAR. 16. At the September 13, 1989, Quarterly Medical Staff Meeting, due to concerns about SPC, an Ad Hoc Committee was formed to conduct a vote of no-confidence in the Corporate Administration and the Governing Board of Samaritan Foundation. The results of the vote were findings of no-confidence in the Corporate Administration and the Governing Board of the Samaritan Foundation. Because of the two no-confidence votes by the Medical Staff, the President/Chief Executive Officer of the Samaritan Foundation resigned.

PAR. 17. As a result of the combination, conspiracy, acts and practices herein described, Good Samaritan halted further development of SPC from November 1988 through July 1, 1991, and then severed its relationship with SPC.

EFFECTS

PAR. 18. The purpose, effects, tendency, or capacity of respondent Medical Staff's conduct described in paragraphs eight through sixteen are and have been to restrain trade unreasonably and hinder competition in the provision of health care services in Maricopa County in the following ways, among others:

A. Depriving consumers of the price and quality benefits of competition between the SPC integrated multispecialty group practice and independent fee-for-service practitioners;

B. Depriving consumers of the full array of services that Good Samaritan sought to offer consumers in Maricopa County;

C. Hindering SPC's ability to offer health care services to consumers by raising its costs, reducing its efficiency, and delaying or preventing SPC from offering specialty and sub-specialty services;

D. Limiting competition among physicians in Maricopa County to the extent that physicians agreed not to compete with each other, but rather act only on collectively determined terms, in deciding whether to admit patients to Good Samaritan, to refer patients to SPC physicians, or otherwise to deal with Good Samaritan; and

E. Raising impediments to entry into the physician services market by innovative or nontraditional providers of health care services.

VIOLATION

PAR. 19. The combination, conspiracy, acts and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Competition Act. Such combination, conspiracy, acts and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

Commissioner Starek dissenting.

DECISION AND ORDER

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

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

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

1. Respondent Medical Staff of Good Samaritan Regional Medical Center is an unincorporated association, organized and existing under and by virtue of the laws of the State of Arizona, with its principal office and place of business located at 1111 E. McDowell Road, Phoenix, Arizona.

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

ORDER

I.

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

A. "*Medical Staff*" means the Medical Staff of Good Samaritan Regional Medical Center, its successors, assigns, officers, directors, committees, agents, employees, and representatives.

B. "*Good Samaritan*" means Samaritan Health Systems, formerly operated as two separate corporations (Samaritan Foundation and its subsidiary Samaritan Health Services), doing business as Good Samaritan Regional Medical Center, a non-profit corporation with its principal offices located at 1111 E. McDowell Road, Phoenix, Arizona, its subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

C. "*SPC*" means Samaritan Physicians Center, Inc., an Arizona Corporation, its subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

D. "*Integrated joint venture*" means a joint arrangement to provide health care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share a substantial risk of loss from their participation in the venture.

II.

It is ordered, That respondent Medical Staff, 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, between or among its members or with other physicians, providers of health care services, medical societies, hospitals, or medical staffs, for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by Good

Samaritan, SPC or any other provider of health care services, including any agreement to:

A. Refuse to deal, threaten to refuse to deal, or attempt to induce others to refuse to deal or threaten to refuse to deal; and

B. Withhold patient referrals, threaten to withhold patient referrals, or attempt to induce others to withhold patient referrals or threaten to withhold patient referrals.

III.

A. *It is further ordered*, That this order shall not be construed to prohibit the Medical Staff or its members from offering to participate or participating with other physicians, pursuant to the Medical Staff's bylaws, in *bona fide* utilization review, quality assurance, or credentialing activities in connection with the provision of physician services.

B. *It is further ordered*, That this order shall not be construed to prohibit any individual member of the Medical Staff from entering into an agreement or combination with any other physician or health care practitioner with whom the individual Medical Staff member practices in partnership or in a professional corporation, or who is employed by the same person as said Medical Staff member.

C. *It is further ordered*, That this order shall not be construed to prohibit respondent Medical Staff from forming, facilitating the formation of, or participating in, an "integrated joint venture" that limits the number of participating physicians, as long as the physicians participating in the joint venture remain free to deal with other persons or entities other than through the joint venture.

IV.

It is further ordered, That the Medical Staff shall:

A. Within thirty (30) days after the date this order becomes final, mail a copy of this order and the accompanying complaint to each member of the Medical Staff as of the date this order becomes final, and for a period of three (3) years after the date this order becomes final, distribute to each new member of the Medical Staff a copy of

this order and the accompanying complaint within thirty (30) days after he or she is officially admitted to the Medical Staff.

B. For a period of three (3) years after the date this order becomes final, maintain records adequate to describe in detail any action taken in connection with the activities covered by this order and, upon reasonable notice, make such records available to the Federal Trade Commission staff for inspection and copying.

C. Within sixty (60) days after the date this order becomes final, annually for three (3) years on the anniversary of the date this order becomes final, and at such other times as the Federal Trade Commission may by written notice require, file with the Federal Trade Commission a report setting forth in detail the manner and form in which it has complied and is complying with this order.

D. 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 or association, or any other change in the association which may affect compliance obligations arising out of this order.

Commissioner Starek dissenting.

STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

I do not agree with the Commission's decision to issue the final order in this matter because I continue to find the evidence insufficient to support reason to believe that the respondent violated the law.

As I noted in my earlier dissenting statement, the centerpiece of this case is a resolution adopted by the medical staff of Good Samaritan Regional Medical Center concerning plans under consideration by the Medical Center to develop a multispecialty medical clinic that would compete with staff members' private practices. That resolution -- approved on November 14, 1988, following certain medical staff members' complaints about plans for the clinic -- declared that those plans "were instituted without the approval of any [m]edical [s]taff member or committee." In the wake of the resolution, the Medical Center decided to "freeze" the development and planned expansion of the clinic, and eventually the Medical Center severed its financial and other ties to the clinic.

Neither the language of the medical staff resolution nor the other information unearthed in this investigation has established the validity of the core allegation here -- that in order to end the Medical Center's involvement with the clinic, medical staff members combined to threaten a boycott of the Medical Center (which they would effect by referring patients to other area hospitals). Although individual physicians on the medical staff made clear the Medical Center's administration their displeasure with the Medical Center's role in support of the clinic, the November 14, 1988 resolution and the other evidence in this case are insufficient to show an agreement to threaten a boycott.

Nothing that has come to the Commission's attention during the public comment period disturbs my view that this case rests almost exclusively -- and precariously -- on the purported boycott victims' characterization of the medical staff's collective state of mind. Because of the ambiguities and weaknesses that have plagued the evidence in the present case, I respectfully dissent from the Commission's decision to issue the final order.

IN THE MATTER OF

OERLIKON-BUHRLE HOLDING AG

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

Docket C-3555. Complaint, Feb. 1, 1995--Decision, Feb. 1, 1995

This consent order permits, among other things, a Switzerland-based corporation to acquire Leybold AG, a German firm, but requires the respondent to divest both the Leybold compact disc metallizer business and the Balzers-Pfeiffer turbomolecular pump business, within 12 months, to Commission approved entities. If the divestitures are not completed within 12 months, the Commission is permitted to appoint trustees to complete them. In addition, the respondent is required, for ten years, to obtain Commission approval before acquiring any interest in any entity engaged in either of the two markets at issue.

Appearances

For the Commission: *Ann B. Malester, Michael R. Moiseyev and Mary Lou Steptoe.*

For the respondent: *Tim Fieghery, Kaye, Scholer, Fierman, Hays & Handler, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent Oerlikon-Buhrle Holding AG ("Oerlikon-Buhrle"), a Swiss corporation subject to the jurisdiction of the Commission, has proposed to acquire all of the voting stock of Leybold AG ("Leybold"), a wholly-owned subsidiary of Degussa Aktiengesellschaft, ("Degussa"), a German corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Oerlikon-Buhrle is a corporation organized and existing under the laws of Switzerland, with its principal place of business located at Hofwiesenstrasse 135, CH - 8021, Zurich, Switzerland.

2. For purposes of this proceeding, respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. ACQUIRED COMPANY

3. Leybold, a wholly-owned subsidiary of Degussa, is a corporation organized and existing under the laws of the Federal Republic of Germany, with its principal place of business located at Wilhelm-Rohn-Strasse 25, D-6450 Hanau 1, Federal Republic of Germany.

4. Leybold is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

5. Oerlikon-Buhrle proposes to acquire 99.5 percent of the voting stock of Leybold for consideration of DM 99,500,000 ("Acquisition").

IV. THE RELEVANT MARKETS

6. For purposes of this complaint, one relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture, distribution and sale of turbomolecular pumps.

7. For purposes of this complaint, the relevant geographic area in which to analyze the effects of the Acquisition on the turbomolecular pump market is the United States.

8. The relevant market set forth in paragraphs six and seven is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

9. Entry into the turbomolecular pump market would not be timely, likely and sufficient to deter or counteract the adverse competitive effects described in paragraph sixteen because of the difficulty of developing competitive turbomolecular pump designs, establishing manufacturing facilities, organizing a sales and service network, and gaining customer acceptance in the marketplace.

10. Oerlikon-Buhrle and Leybold are actual competitors in the relevant market.

11. For purposes of this complaint, another relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture, distribution, and sale of compact disc metallizers.

12. For purposes of this complaint, the relevant geographic area in which to analyze the effects of the Acquisition on the compact disc metallizer market is the world.

13. The relevant market set forth in paragraphs eleven and twelve is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

14. Entry into the compact disc metallizer market would not be timely, likely and sufficient to deter or counteract the adverse competitive effects described in paragraph sixteen because of the difficulty of developing competitive compact disc metallizer designs, establishing a sales and service presence, and gaining customer acceptance in the marketplace.

15. Oerlikon-Buhrle and Leybold are actual competitors in the relevant market.

V. EFFECTS OF THE ACQUISITION

16. The effect of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in each relevant market in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct actual competition between Oerlikon-Buhrle and Leybold;

- b. By increasing the likelihood that Oerlikon-Buhrle would unilaterally exercise market power;
- c. By increasing the likelihood of collusion or coordinated interaction in the relevant markets;
- d. By increasing the likelihood that consumers would be forced to pay higher prices for turbomolecular pumps and compact disc metallizers;
- e. By increasing the likelihood that technological innovation would be reduced.

VI. VIOLATIONS CHARGED

17. The Acquisition described in paragraph five, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of certain assets and businesses of Degussa Aktiengesellschaft ("Degussa"), and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 Acts, and that a complaint should issue stating

its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described 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 Oerlikon-Buhrle AG ("Oerlikon-Buhrle") is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its principal executive offices located at Hofwiesenstrasse 135, CH - 8021 Zurich, Switzerland.

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

ORDER

I.

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

A. "*Oerlikon-Buhrle*" means Oerlikon-Buhrle Holding AG, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Oerlikon-Buhrle; their directors, officers, employees, agents (including, but not limited to, SKA), and representatives; and their successors and assigns.

B. "*Leybold*" means Leybold AG, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Leybold; their directors, officers, employees, agents, and representatives; and their successors and assigns.

C. "*SKA*" means Schweizerische Kreditanstalt, a banking corporation organized, existing and doing business under, and by virtue of the laws of Switzerland. Pursuant to the Trust Agreement dated October 6, 1994, SKA will hold all of the outstanding shares of Balzers-Pfeiffer GmbH in trust and for the account and risk of Oerlikon-Buhrle as of the time Leybold is acquired by Oerlikon-Buhrle, and will be an agent of Oerlikon-Buhrle.

D. "*Balzers-Pfeiffer*" means Balzers-Pfeiffer GmbH, a German corporation, its predecessors, subsidiaries, divisions, and groups and

affiliates controlled by Balzers-Pfeiffer; their directors, officers, employees, agents, and representatives; and their successors and assigns.

E. "*Respondent*" means Oerlikon-Buhrle.

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

G. "*Acquisition*" means Oerlikon-Buhrle's acquisition of voting securities of Leybold pursuant to the Purchase Agreement dated January 21, 1994.

H. "*Assets and Businesses*" means all assets, properties, business and goodwill, tangible and intangible, including, without limitation, the following:

1. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, copyrights, trademarks, trade names, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;
3. Inventory and storage capacity;
4. All rights, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
5. All rights under warranties and guarantees, express or implied;
6. All books, records, and files; and
7. All items of prepaid expense.

I. "*Trust Agreement*" means the trust agreement dated October 6, 1994, between Oerlikon-Buhrle and SKA, attached hereto as Attachment 1, pursuant to which SKA will hold all of the outstanding shares of Balzers-Pfeiffer GmbH in trust and for the account and risk of Oerlikon-Buhrle, as of the time Leybold is acquired by Oerlikon-Buhrle, and will be an agent of Oerlikon-Buhrle.

J. "*Leybold Compact Disc Metallizer Business*" means all of Leybold's rights, title and interest in and to:

1. Compact disc metallizers, including, but not limited to, Singulus, and all patents, trademarks, intellectual property, production technology and know-how related to the manufacture, distribution and sale of compact disc metallizers; and
2. All of Leybold's Assets and Businesses as further delineated in Schedule A, attached hereto and made a part hereof.

K. "*Leybold Thin Film Coating Systems Business*" means all of Leybold's rights, title and interest, as of the date this agreement is accepted by the Commission, in all Assets and Businesses relating to the development, manufacture, distribution, marketing or sale of vacuum systems and equipment for the deposition of thin films, including without limitation, vacuum web coating systems, architectural glass coaters, compact disc metallizers, compact disc replication lines, compact disc mastering equipment, precision optics coating systems, ophthalmic lens coating systems, decorative hard coating systems, silicon crystal growing systems, and vacuum coating systems for research and development. Such Assets and Businesses shall include all rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits. The Leybold Thin Film Coating Systems Business excludes magnetic and magneto-optical disc coating systems, systems for the manufacture of thin film heads for magnetic drives, vacuum systems for the coating of plastic parts, and vacuum systems for the coating of automotive parts.

L. "*Balzers-Pfeiffer Assets*" means all of the Assets and Businesses of Balzers-Pfeiffer and all of the other Oerlikon-Buhrle Assets and Businesses relating to the development, manufacture, distribution, marketing, or sale of turbomolecular pumps, as delineated in Schedule B, attached hereto and made a part hereof.

M. "*Ophthalmic Coating Business*" means all of Oerlikon-Buhrle's rights, title and interest in all Assets and Businesses relating to the development, manufacture, distribution, marketing, or sale of equipment used in the application of coatings to ophthalmic lenses, including all interests in such Assets and Businesses as acquired from Leybold.

N. "*Compact Disc Metallizers*" means vacuum systems for the deposition of reflective coatings on audio compact discs and CD-ROMs.

O. "*Turbomolecular Pumps*" means vacuum pumps employing turbomolecular processes to generate high vacuum environments.

II.

It is further ordered, That:

A. Oerlikon-Buhrle shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Leybold Compact Disc Metallizer Business, and shall also divest such additional ancillary Assets and Businesses and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Leybold Compact Disc Metallizer Business; provided that Oerlikon-Buhrle is not required to divest any of the assets identified in Part 2 of Schedule A unless such assets are required by the acquirer.

B. Oerlikon-Buhrle shall divest the Leybold Compact Disc Metallizer Business only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the Leybold Compact Disc Metallizer Business as an ongoing, viable operation, engaged in the same business in which the Leybold Compact Disc Metallizer Business is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Upon reasonable notice from the acquirer to Oerlikon-Buhrle, for a period of six months following the date of divestiture, Oerlikon-Buhrle shall provide such personnel, information, technical assistance, advice and training to the acquirer as is necessary to transfer the Leybold Compact Disc Metallizer Business pursuant to paragraph II. A. and establish such business as a viable, ongoing concern. Such assistance shall include reasonable consultation with knowledgeable employees of Oerlikon-Buhrle to satisfy the acquirer's management that its personnel are appropriately trained in the manufacture of compact disc metallizers to the extent Oerlikon-Buhrle has the ability to do so after the divestiture is complete. Oerlikon-Buhrle shall not charge the acquirer a rate more than its own direct costs for providing such technical assistance.

D. Pending divestiture of the Leybold Compact Disc Metallizer Business, Oerlikon-Buhrle shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Leybold Compact Disc Metallizer Business and to prevent the destruction, removal, wasting, deterioration or impairment of the Leybold Compact Disc Metallizer Business except for ordinary wear and tear.

E. At the time of the execution of a purchase agreement between Oerlikon-Buhrle and a proposed acquirer of the Leybold Compact Disc Metallizer Business, Oerlikon-Buhrle shall provide the acquirer with a complete list of all non-clerical, salaried employees of the Leybold Compact Disc Metallizer Business, who have been involved in the development, production, distribution, or sale of Leybold compact disc metallizers at any time during the period from September 1, 1992, until the date of the purchase agreement. Such list shall state each such individual's name, position, address, telephone number, and a description of the duties of and work performed by the individual in connection with any compact disc metallizer product developed, produced, or distributed by Leybold.

F. Oerlikon-Buhrle shall provide the proposed acquirer with an opportunity to inspect the personnel files and other documentation relating to the individuals identified in paragraph II. E. of this order to the extent permissible under applicable laws. For a period of six (6) months following the divestiture, Oerlikon-Buhrle shall further provide the Commission-approved acquirer with an opportunity to interview such individuals and negotiate employment contracts with them.

G. Oerlikon-Buhrle shall provide the individuals identified in paragraph II. E. of this order with ample financial incentives to continue in their employment positions during the period covered by the Leybold Hold Separate Agreement, hereto attached, and to accept employment with the Commission-approved acquirer at the time of the divestiture. Such incentives shall include:

1. Continuation of all employee benefits offered by Leybold until the date of the divestiture; and
2. A bonus equal to 25 percent of an employee's annual salary (including any other bonuses) as of the date this order becomes final for any individual who agrees to employment with the Commission-

approved acquirer, payable upon the beginning of their employment by the Commission-approved acquirer.

H. For a period of one (1) year commencing on the date of the individual's employment by the Commission-approved acquirer, Oerlikon-Buhrle shall not re-hire any of the individuals identified in paragraph II.E. of this order who accept employment with the Commission-approved acquirer.

III.

It is further ordered, That:

A. Respondent Oerlikon-Buhrle shall divest, and shall direct SKA to take all steps necessary to divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Balzers-Pfeiffer Assets, and Oerlikon-Buhrle shall also divest such additional ancillary Assets and Businesses and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of Balzers-Pfeiffer; provided that Oerlikon-Buhrle is not required to divest any of the assets identified in Part 2 of Schedule B, unless such assets are required by the acquirer.

B. Oerlikon-Buhrle shall divest, and shall direct SKA to take all steps necessary to divest, the Balzers-Pfeiffer Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Balzers-Pfeiffer Assets is to ensure the continuation of Balzers-Pfeiffer as an ongoing, viable operation, engaged in the same business in which it is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint. Provided, however, that nothing in this order shall prevent Oerlikon-Buhrle from transferring the stock and share capital of Balzers-Pfeiffer to SKA at the time Oerlikon-Buhrle acquires Leybold pursuant to the Trust Agreement. However, such transfer shall not fulfill Oerlikon-Buhrle's obligation under this order to divest the Balzers-Pfeiffer Assets.

C. Pending divestiture of the Balzers-Pfeiffer Assets, Oerlikon-Buhrle shall take such actions, and shall direct SKA to take such actions, as are necessary to maintain the viability and marketability of Balzers-Pfeiffer and to prevent the destruction, removal, wasting, deterioration or impairment of any of the Balzers-Pfeiffer Assets except for ordinary wear and tear.

D. Oerlikon-Buhrle shall take all steps necessary to ensure that SKA complies with the Trust Agreement, including, without limitation, pursuing any legal action it may have against SKA for monetary and equitable damages arising from any breach of the Trust Agreement by SKA. Oerlikon-Buhrle shall not agree to any alteration, reformation, amendment or other change to the Trust Agreement without the prior approval of the Commission. In addition to the requirements of this paragraph III, Oerlikon-Buhrle shall direct SKA to take all steps necessary to accomplish the requirements of this order pertaining to the Balzers-Pfeiffer Assets.

IV.

It is further ordered, That:

A. If Oerlikon-Buhrle has not divested, absolutely and in good faith, and with the prior approval of the Commission, the Leybold Compact Disc Metallizer Business within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Leybold Thin Film Coating Systems Business.

B. If Oerlikon-Buhrle and SKA have not divested, absolutely and in good faith, and with the prior approval of the Commission, the Balzers-Pfeiffer Assets within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Balzers-Pfeiffer Assets.

C. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Oerlikon-Buhrle and in the case of the Balzers-Pfeiffer Assets, SKA, at the direction of Oerlikon-Buhrle, shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph IV shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to

it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Oerlikon-Buhrle to comply with this order.

D. If a trustee is appointed by the Commission or a court pursuant to paragraph IV.A. or paragraph IV.B., Oerlikon-Buhrle shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Oerlikon-Buhrle and in the case of the Balzers-Pfeiffer Assets, SKA, at the direction of Oerlikon-Buhrle, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Oerlikon-Buhrle or in the case of the Balzers-Pfeiffer Assets, SKA, at the direction of Oerlikon-Buhrle, has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Oerlikon-Buhrle of the identity of any proposed trustee, Oerlikon-Buhrle shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Leybold Thin Film Coating Systems Business and/or the Balzers-Pfeiffer Assets.

3. Within ten (10) days after appointment of the trustee, Oerlikon-Buhrle shall execute a trust agreement, and in the case of the Balzers-Pfeiffer Assets, Oerlikon-Buhrle shall direct SKA to execute a trust agreement, that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture(s) required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph IV.D.3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Leybold Thin Film Coating Systems Business and/or the Balzers-Pfeiffer Assets, or to any other relevant information, as the trustee may request. Oerlikon-Buhrle shall develop, and in the case of the Balzers-Pfeiffer Assets, Oerlikon-Buhrle shall direct SKA to develop, such financial or other information as such trustee may request and shall cooperate with the trustee. Oerlikon-Buhrle shall take no action, and Oerlikon-Buhrle shall direct SKA to take no action, to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Oerlikon-Buhrle or SKA shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Oerlikon-Buhrle's absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to the acquirer(s) as set out in paragraphs II and III of this order, as appropriate; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Oerlikon-Buhrle from among those approved by the Commission. If requested by the trustee or acquirer, Oerlikon-Buhrle shall provide the acquirer with the assistance required by paragraph II.C. of this order.

7. The trustee shall serve, without bond or other security, at the cost and expense of Oerlikon-Buhrle, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Oerlikon-Buhrle, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Oerlikon-Buhrle, and the trustee's power shall

be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Leybold Thin Film Coating Systems Business and/or the Balzers-Pfeiffer Assets.

8. Oerlikon-Buhrle shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph IV of this order.

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

11. The trustee shall have no obligation or authority to operate or maintain the Leybold Thin Film Coating Systems Business or the Balzers-Pfeiffer Assets.

12. The trustee shall report in writing to Oerlikon-Buhrle and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture(s).

V.

It is further ordered, That, until the earlier of ten (10) years from the date this order becomes final or until Oerlikon-Buhrle has sold all of the Assets and Businesses of either Balzers' ophthalmic lens coating business or Leybold's ophthalmic lens coating business, Oerlikon-Buhrle shall not transfer any interest in the stock, share capital, or assets of the Ophthalmic Coating Business to any third party, other than to a subsidiary of Oerlikon-Buhrle, without providing advance written notification to the Federal Trade Commission. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter "the

Notification"). Oerlikon-Buhrle shall provide to the Federal Trade Commission, at least thirty days prior to transferring any interest in the stock, share capital, or assets of the Ophthalmic Coating Business, both the Notification and supplemental information either in Oerlikon-Buhrle's possession or reasonably available to Oerlikon-Buhrle. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representatives of Oerlikon-Buhrle and of the firm who proposes to acquire the stock, share capital, or assets of the Ophthalmic Coating Business who negotiated the acquisition agreement; and any management or strategic plans discussing the proposed transaction. If, within the thirty-day period, representatives of the Federal Trade Commission make a written request for additional information, Oerlikon-Buhrle shall not consummate the transaction until twenty days after submitting such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

VI.

It is further ordered, That Oerlikon-Buhrle shall comply with all terms of the Balzers-Pfeiffer Agreement to Hold Separate and the Leybold Systems Business Agreement to Hold Separate, attached to this order and made a part hereof as Appendices I and II. The Balzers-Pfeiffer Agreement to Hold Separate the Balzers-Pfeiffer Assets shall continue in effect until Oerlikon-Buhrle and SKA have divested all of the Balzers-Pfeiffer Assets. The Leybold Systems Business Agreement to Hold Separate shall continue in effect until Oerlikon-Buhrle has divested all of the Leybold Compact Disc Metallizer Business or the Leybold Thin Film Coating Systems Business as required by this order.

VII.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Oerlikon-Buhrle shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in, the manufacture of turbomolecular pumps;

B. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale of turbomolecular pumps;

C. Acquire any of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in, the manufacture of compact disc metallizers; or

D. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale of compact disc metallizers.

Provided, however, that this paragraph VII shall not apply to the acquisition of products or services acquired in the ordinary course of business, or of any non-exclusive license to any patent or other form of intellectual property (excluding assets of the Leybold Compact Disc Business and Balzers-Pfeiffer).

VIII.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Oerlikon-Buhrle has fully complied with paragraphs II, III, IV, and VI of this order, Oerlikon-Buhrle shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II, III, IV, and VI of this order. Oerlikon-Buhrle shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II, III, IV, and VI of this order, including a description of all substantive contacts or negotiations for the divestiture(s) required by this order, including the identity of all parties contacted. Oerlikon-Buhrle shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, Oerlikon-Buhrle shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with paragraphs V and VII of this order.

IX.

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent, relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent, and without restraint or interference from respondent, to interview officers, directors, or employees of respondent. Officers and employees of respondent whose places of employment are outside the United States shall be made available on reasonable notice.

X.

It is further ordered, That

A. Oerlikon-Buhrle shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

SCHEDULE A

Oerlikon-Buhrle shall divest all of the Assets and Businesses of the Leybold Compact Disc Metallizer Business pursuant to the terms

of this order. The assets identified in paragraph I.J. of this order shall include all assets, properties, business and goodwill, tangible and intangible, of Leybold in or relating to the development, manufacture, sale, distribution and marketing of compact disc metallizers, compact disc lines, and compact disc mastering systems, including without limitation, the following:

PART 1

1. All Leybold compact disc metallizers, including, but not limited to, equipment and documentation;
2. All Leybold compact disc metallizer inventory (including work in progress);
3. All lists or other information necessary to source materials, parts, components and other inputs involved in the production of Leybold compact disc metallizers;
4. All rights, title and interest in and results of all research and development efforts by Leybold relating to improvements, developments, and variants of Leybold compact disc metallizer products;

PART 2

5. All Assets and Businesses of Leybold relating solely to the development, manufacture, sale, distribution and/or marketing of compact disc lines and/or compact disc mastering systems, including equipment, documentation, inventory, work in process, information necessary to source materials, parts, components, and other inputs, all rights, title and interest and results of all research and development efforts by Leybold relating solely to improvements, developments, and variants or Leybold compact disc line and or mastering system products, and employment contracts to the extent permissible under applicable law.

SCHEDULE B

Oerlikon-Buhrle shall divest all of the Assets and Businesses of the Balzers-Pfeiffer Assets pursuant to the terms of this order. The assets identified in paragraph I.L. of this order shall include all assets, properties, business and goodwill, tangible and intangible, of Oerlikon-Buhrle as of the date this order is accepted by the

Commission, in or relating to the development, manufacture, marketing, sale, and distribution of turbomolecular pumps, including without limitation, the following:

PART 1

1. All of the stock and share capital, or participation held by Oerlikon-Buhrle of Balzers-Pfeiffer, including, without limitation, all stock, share capital, or participation held in trust by SKA for the account and risk of Oerlikon-Buhrle as of the date Leybold is acquired by Oerlikon-Buhrle;

2. All patents, intellectual property, trademarks, production technology, and know-how related to the development, manufacture, marketing, sale, or distribution of turbomolecular pumps;

3. All rights, title and interest in and results of all research and development efforts relating to improvements, developments, and variants of turbomolecular pump products;

4. All rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits used in the manufacture of turbomolecular pumps;

PART 2

5. All Assets and Businesses of Oerlikon-Buhrle (excluding Balzers-Pfeiffer) in or relating to the sale, distribution or marketing of turbomolecular pumps.

ATTACHMENT 1

TRUST AGREEMENT

PREAMBLE

A. OBH owns 100% of the shares of stock of BHAG.

BHAG is the unrestricted owner of 95.5% of the capital of Balzers Deutschland Holding GmbH with registered seat in Asslar, Germany ("BDH"), which equals a nominal value of DM 38'200'000.--. BHAG controls BDH by votes. The remaining 4.5% of the capital of BDH is owned by IHAG Holding AG.

BDH is the unrestricted owner of 99.5% of the capital of a nominal total value of DM 14'925'000.-- of Balzers-Pfeiffer GmbH

with registered seat in Asslar, Germany ("B-P"). The remaining 0.5% of the capital of B-P is owned by IHAG Holding AG, Zurich.

For the purposes of the following provisions of this Trust Agreement, "Capital Contributions" and/or "Capital Contributions of BDH" shall mean the 95.5% of the capital of BDH owned by BHAG.

The Capital Contributions are not subject to any restrictions regarding their transfer by agreement or through inheritance. According to the Articles of BDH any transfer of Capital Contributions is only subject to the approval of the shareholders (majority of votes recorded).

B. On January 21, 1994, OBH and the German company Degussa AG signed a sales contract under which Degussa AG sold all shares of Leybold AG in Hanau (Germany) to OBH and IHAG Holding AG, Zurich. The effectiveness of that sales contract is subject to the condition that the acquisition of Leybold AG is not prohibited by the German Bundeskartellamt in accordance with Section 24 sec. 2 first sentence GWB.

The sales contract is further subject to the condition that all other competent antitrust authorities which have jurisdiction over this transaction (especially the one of the United States) approve the transaction.

In order to prevent a possible negative decree of both the German Bundeskartellamt ("BKA") and the Federal Trade Commission ("FTC") and in order to ensure that the division turbomolecular pumps of B-P is placed outside the Oerlikon-Buhrle group of companies, BHAG intends to transfer the Capital Contributions to an unrelated third party within twelve (12) months of the date on which the consent order of the FTC enters into force. In the meantime the Capital Contributions shall be held by CS as a trustee of BHAG.

This procedure has been discussed by OBH with both the BKA and the FTC.

C. Under a consent order of the FTC (the text and content of which is unknown to CS), OBH will be required to elect a three-person management committee for the Balzers-Pfeiffer business ("Balzers-Pfeiffer Management Committee"). The Balzers-Pfeiffer Management Committee shall consist of the President, the financial officer of B-P and a financial officer of OBH whose responsibilities with OBH do not involve direct management of OBH's turbomolecular pumps. The Chairman of the Balzers-Pfeiffer Management Committee shall be [name to be inserted by OBH]

(provided he agrees, or a comparable, knowledgeable person among the managers of Balzers-Pfeiffer), who shall remain independent of OBH and competent to assure the continued viability and competitiveness of the B-P assets.

The consent order will provide that OBH shall not exercise, and OBH shall direct CS not to exercise direction or control over, or influence directly or indirectly, B-P, the Balzers-Pfeiffer Management Committee, or any of its operations or businesses; provided, however, that OBH may exercise only such direction and control over B-P as is necessary to assure compliance with the consent order and with all applicable laws.

D. The consent order of the FTC shall further provide as follows:

If OBH and CS have not absolutely and in good faith, and with the prior approval of the FTC, divested B-P within twelve (12) months of the date the order becomes effective, the FTC (or a court upon motion by the FTC) may appoint a trustee to divest B-P (the "FTC Trustee").

Subject to the prior approval of the FTC, the FTC Trustee shall have the exclusive power and authority to divest B-P.

Within ten (10) days after appointment of the FTC Trustee, OBH shall direct CS to execute a trust agreement, that, subject to the prior approval of the FTC and, in the case of a court-appointed FTC Trustee, of the court, transfers to the FTC Trustee all rights and powers necessary to permit the FTC Trustee to effect the divestiture(s) required by this order.

The FTC Trustees shall have full and complete access to the personnel, books, records and facilities related to the B-P assets, or to any other relevant information, as the FTC Trustee may request. OBH shall take no action, and OBH shall direct CS to take no action to interfere with or impede the FTC Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by OBH or CS shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the FTC or, for a court-appointed FTC Trustee, by the court.

The FTC Trustee shall have no obligation or authority to operate or maintain B-P.

Based on these declarations and confirmations the Parties hereto agree to follows:

ART. 1 - TRANSFER OF THE CAPITAL CONTRIBUTIONS OF BDH TO CS

BHAG herewith request CS and CS accepts to purchase the Capital Contributions on a fiduciary basis at the purchase price of SFr. 1.-- (subject to Art. 5 para. 4) in accordance with the respective formal requirements (public deed). CS further agrees to hold and administrate the Capital Contributions in accordance with this Trust Agreement.

ART. 2 - FIDUCIARY HOLDING AND ADMINISTRATION
OF THE CAPITAL CONTRIBUTIONS

CS will hold the Capital Contributions as a trustee in its own name, but for the account and risk of BHAG.

CS shall exercise its fiduciary rights as a shareholder of BDH, including but not limited to the right to vote and the right to elect, exclusively in accordance with the directions of BHAG or of any other party duly authorized by BHAG. CS accepts that BHAG for the purposes of this Trust Agreement has already authorized OBH to give its own directions to CS. For that reason the following provisions emphasize the relationship between CS and OBH, however, without changing the contractual position of BHAG as the trustor.

CS has taken note of the obligations of OBH under the consent order of the FTC set forth hereabove under paragraphs C, and D, and accepts that accordingly OBH will give directions to CS. CS will use its best efforts to comply in good faith with the directions received from OBH, without, however, assuming any direct liability to the FTC for its (CS') own acts, or, quite generally, for the acts of OBH or BHAG or the Balzers-Pfeiffer Management Committee.

Any directions given to CS are subject to the applicable laws and to bonos mores and shall always take the standing and reputation of CS into consideration. CS shall not be obliged to comply with any directions which do not meet the requirements of this provision.

In particular, CS shall:

a) Not make use of its right to vote without having first obtained the directions of OBH. The same shall apply to all other rights of CS consistent with the management of BDG;

b) Transmit immediately all documents which CS receives as a shareholder of BDH without any delay to OBH and CS shall further inform OBH on at least a quarterly basis in writing regarding all matters concerning BDH and B-P to the extent CS has knowledge of such matters as a fiduciary shareholder of BDH and to the extent such transmittal and disclosure of information is not subject to any legal and corporate restrictions;

c) Transfer without any undue delay all performances which CS receives as a shareholder of BDH including but not limited to dividends on the Capital Contributions to BHAG;

d) Subject to Art. 5 para. 3 hereafter, not dispose of the Capital Contributions held by CS without the prior written approval of OBH;

e) Transfer the Capital Contributions on first demand of OBH to a third party named by OBH;

f) Not incur any extraordinary expenses and not enter into any extraordinary obligations without the prior written approval of OBH;

g) At all times act in good faith in the exclusive economic interest of BHAG even if it is impossible for CS to obtain directions from OBH in time for any other reason whatsoever;

h) To treat the present Trust Agreement strictly confidential. Exemptions from this obligation to special confidentiality and from bank secrecy obligations are however permitted if CS would suffer substantial disadvantages (i.e. as a result of an imputation of the Capital Contributions to the taxable assets of CS) or in cases where CS is obligated by law to disclose this Trust Agreement (i.e. under binding orders issued in the course of a criminal procedure, antitrust procedure, procedures of supervising authorities or securities (SEC) authorities). In the event of any such exemption CS shall immediately inform OBH regarding its duty to disclose. The parties hereto agree, however, that each of them or both of them will inform the German Bundeskartellamt and the FTC and the German, Swiss and US tax authorities of this Trust Agreement.

ART. 3 - INDEMNIFICATION OF CS

BHAG shall reimburse CS any and all costs and expenses (with interest) incurred by CS in the course of the correct performance of CS' duties and obligations under this Trust Agreement. The reimbursement shall in particular include any costs and expenses incurred in connection with the transfer, administration and sale of

the Capital Contributions as well as for instance the costs of external legal counsel to CS in connection with the conclusion and performance of this Trust Agreement.

OBH indemnifies and holds CS harmless against any and all claims of third parties, including claims of tax authorities and labor unions, and holds CS free of any obligations which CS might incur in the course of the correct performance of this Trust Agreement.

ART. 4 - NON-DEPRIVAL OF B-P OF ASSETS

OBH and BHAG shall not undertake any activities and shall not direct CS to undertake any activities which would deprive B-P of any of its assets belonging to the business of high vacuum pumps or which otherwise might impair the competitiveness of B-P in this field. In any event, OBH and BHAG shall not give any such directions to CS either. However, this interdiction does not apply to activities in the field of laboratory equipment and pre-vacuum pumps.

ART. 5 - NON-TRANSFER OF CAPITAL CONTRIBUTIONS TO OBH AND/OR BHAG

In full knowledge of Art. 404 of the Swiss Code of Obligations ("CO"), OBH and BHAG represent that they shall in no event request the transfer of the Capital Contributions of BDH and also the capital contributions of B-P held by BDH to OBH, BHAG or to any other company of the Oerlikon-Buhrle Group of Companies as long as the Capital Contributions of B-P held by BDH are not yet transferred to an unrelated third party. This interdiction shall become ineffective as soon as it becomes clear that OBH will not be permitted to acquire the Leybold-Group for antitrust reasons or if the German Bundeskartellamt confirms in writing that it waives the requirement to sell the Capital Contributions to an unrelated third party.

Subject to the pending authorizations of FTC and BKA for the acquisition of Leybold AG by the Oerlikon-Buhrle Group, BHAG will use its best efforts to sell the Capital Contributions to an unrelated third party within twelve (12) months of the date on which the consent order of the FTC enters into force.

If BHAG is unable to find a suitable unrelated third party as buyer for the Capital Contributions within twelve (12) months of the date on which the consent order of the FTC becomes final, CS shall

continue to hold and administrate the Capital Contributions until the FTC Trustee sells the Capital Contributions to such unrelated third party in accordance with the consent order of the FTC.

In any event CS shall pay the full purchase price paid by such unrelated third party to BHAG without any deductions, other than the purchase price of SFr. 1.-- stipulated in Art. 1 and any claims CS may have under the present Trust Agreement.

ART. 6 - FEES

As consideration for its performance under this Trust Agreement until February 28, 1995 CS has received from OBH a contingent fee of SFr. 70'000.--. In addition, CS shall receive a further contingent fee of SFr. 130'000.-- at the date of the closing of the acquisition of Leybold AG by the Oerlikon-Buhrle Group of Companies. If CS shall continue to hold the Capital Contributions as a trustee of BHAG after that date, CS shall further receive a quarterly contingent fee of SFr. 50'000.--, payable at the end of each three months period starting March 1, 1995. Such quarterly contingent fee shall be paid pro rata temporis in the event that the fiduciary relationship under this Trust Agreement between CS and OBH/BHAG ends before any running period of three months.

In addition to the contingent fees mentioned above, CS shall receive an additional contingent fee of SFr. 100'000.-- payable on the date of the signature of a sales contract for the sale of the Capital Contributions to an unrelated third party or (subject to the approval of the competent antitrust authorities) to a company of the Oerlikon-Buhrle Group.

ART. 7 - JOINT LIABILITY

OBH and BHAG shall be jointly and severally liable with respect to the performance of all of their obligations under this Trust Agreement. It is in the sole discretion of CS to decide if it wishes to fulfill its obligations towards BHAG or OBH and CS shall be released from any obligation which it has performed to either BHAG or OBH respectively.

ART. 8 - GENERAL CONDITIONS

This Trust Agreement has been concluded for an unlimited period of time and can be terminated by each party in accordance with Art. 404 CO.

Any termination of this Trust Agreement by CS shall not entitle BHAG or OBH to any claim against CS, even if such termination occurs at an unreasonable time in the meaning of Art. 404 II CO.

In the event of any termination of this Trust Agreement, BHAG shall accept the transfer of the Capital Contributions from CS to BHAG against consideration of SFr. 1.--, provided that on the date of such termination the Capital Contributions are still owned by CS as a trustee of BHAG.

The Board of Directors of OBH has approved this Trust Agreement.

Any amendments of this Trust Agreement shall be made in writing.

This Trust Agreement supersedes and replaces the Agreement between the parties dated May 26, 1994.

If any provision of this Trust Agreement shall be held ineffective, the validity of the remaining provisions hereof shall not be challenged thereby and the parties shall use their best efforts to substitute any such ineffective provision by a provision allowing to maintain the purpose of the replaced provision.

ART. 9 - ARBITRATION

Any disputes arising out of the present Trust Agreement are to be submitted to a court of three arbitrators of Zurich Chamber of Commerce with seat in Zurich, one arbitrator to be appointed by each of the parties, for final decision pursuant to the provisions of its Conciliation and Arbitration Rules.

ART. 10 - APPLICABLE LAW

This Trust Agreement shall be subject to and construed in accordance with Swiss law, in particular sec. 394 *et seq.* CO.

APPENDIX I

BALZERS-PFEIFFER AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Hold Separate") is by and between Oerlikon-Buhrle Holding AG ("Oerlikon-Buhrle"), a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business at Hofwiesenstrasse 135, CH-8021 Zurich, Switzerland 4002; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

PREMISES

Whereas, on January 21, 1994, Oerlikon-Buhrle entered into an Agreement with Degussa Aktiengesellschaft ("Degussa") to acquire all the voting stock of Leybold AG ("Leybold") (hereinafter "Acquisition"); and

Whereas, Leybold, a wholly-owned subsidiary of Degussa, with its principal office and place of business located at Wilhelm-Rohn-Strasse 25, D-6450 Hanau 1, Federal Republic of Germany, manufactures and markets, among other things, turbomolecular pumps; and

Whereas, Oerlikon-Buhrle, with its principal office and place of business located at Hofwiesenstrasse 135, CH-8021 Zurich, Switzerland, through its subsidiary Balzers-Pfeiffer GmbH ("Balzers-Pfeiffer"), manufactures and markets, among other things, turbomolecular pumps; and

Whereas, Schweizerische Kreditanstalt ("SKA"), with its principal office and place of business located at Paradeplatz, CH-8001 Zurich, Switzerland, will hold all outstanding shares of Balzers-Pfeiffer GmbH in trust and for the account and risk of Oerlikon-Buhrle at the time Oerlikon-Buhrle acquires Leybold pursuant to the trust agreement attached to the proposed order as Attachment 1; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Balzers-Pfeiffer Assets, as defined in paragraph I.L. of the Consent Agreement, during the period prior to the final acceptance of the order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Balzers-Pfeiffer Assets and the Commission's right to have Balzers-Pfeiffer continue as a viable competitor; and

Whereas, the purpose of the Hold Separate is:

A. To preserve Balzers-Pfeiffer as a viable, competitive, and independent business pending divestiture of the Balzers-Pfeiffer Assets,

B. To remedy any anticompetitive effects of the Acquisition, and

C. To preserve the Balzers-Pfeiffer Assets as viable, ongoing assets engaged in the turbomolecular pump business until divestiture is achieved; and

Whereas, Oerlikon-Buhrle's entering into this Hold Separate shall in no way be construed as an admission by Oerlikon-Buhrle that the Acquisition is illegal; and

Whereas, Oerlikon-Buhrle understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate.

Now, therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the proposed order for public comment it will

grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the Consent Order, it will not seek further relief from Oerlikon-Buhrle with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate, the Agreement Containing Consent Order to which it is annexed and made a part thereof, and the order, once it becomes final, and in the event that the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Balzers-Pfeiffer Assets pursuant to the Consent Order, as follows:

1. Oerlikon-Buhrle agrees to execute and be bound by the Consent Agreement.

2. Oerlikon-Buhrle agrees that from the date this Hold Separate is accepted until the earliest of the times listed in subparagraphs 2.a. - 2.b., it will comply with the provisions of paragraph three. of this Hold Separate.

a. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's rules;

b. The time that the divestiture of the Balzers-Pfeiffer Assets required by paragraph II and/or paragraph IV of the Consent Agreement is completed.

3. Oerlikon-Buhrle shall hold, and Oerlikon-Buhrle shall direct SKA to take all steps necessary to hold, the Balzers-Pfeiffer Assets, as they are presently constituted, separate and apart on the following terms and conditions:

a. The Balzers-Pfeiffer Assets, as defined in paragraph I.L. of the Consent Agreement, shall be held separate and apart and shall be operated independently of Oerlikon-Buhrle (meaning here and hereinafter, Oerlikon-Buhrle excluding the Balzers-Pfeiffer Assets and excluding all personnel connected with Balzers-Pfeiffer as of the date this Agreement is signed) except to the extent that Oerlikon-Buhrle must exercise direction and control over the Balzers-Pfeiffer Assets to assure compliance with this Hold Separate or the Consent Agreement.

b. Oerlikon-Buhrle shall maintain, and shall direct SKA to maintain, the marketability, viability, and competitiveness of the Balzers-Pfeiffer Assets, and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear, and is shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of the Balzers-Pfeiffer Assets.

c. Oerlikon-Buhrle shall appoint Wolfgang Dondorf, the Geschaeftsfuehrer ("President") of Balzers-Pfeiffer, provided he agrees, or a comparable, knowledgeable person among the top management of the Balzers-Pfeiffer Assets, as President to manage and maintain Balzers-Pfeiffer on a day to day basis during the Hold Separate. The President shall have exclusive management and control of Balzers-Pfeiffer, and shall manage Balzers-Pfeiffer independently of Oerlikon-Buhrle's other businesses.

d. The President shall report exclusively to the Balzers-Pfeiffer Aufsichtsrat ("Board"), which shall be appointed by Oerlikon-Buhrle. The Board shall consist of Wolfgang Dondorf, who is the President of Balzers-Pfeiffer as of the date of this Hold Separate; Wilfried Glaum, who is the Controller of Balzers-Pfeiffer (or a comparable, knowledgeable person among the top management of Balzers-Pfeiffer); and Dr. Beat Baumgartner, who is an Oerlikon-Buhrle financial officer (or a comparable, knowledgeable person from Oerlikon-Buhrle's financial office who has no direct involvement with Oerlikon-Buhrle's turbomolecular pump business). The President shall be the Chairman of the Board. Except for the Oerlikon-Buhrle employee serving on the Board, Oerlikon-Buhrle shall not permit any officer, employee, or agent of Oerlikon-Buhrle also to be an officer, employee or agent of Balzers-Pfeiffer. Each Board member shall enter into a confidentiality agreement agreeing to be bound by the terms and conditions set forth in Attachment A, appended to this Hold Separate. The Board shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the Board during the term of the Hold Separate shall be audio recorded, and the recording shall be retained for two (2) years after the termination of the Hold Separate.

e. All material transactions, out of the ordinary course of business and not precluded by paragraph three hereof, shall be subject to a majority vote of the Board.

f. Oerlikon-Buhrle shall not exercise, and Oerlikon-Buhrle shall direct SKA not to exercise, direction or control over, or influence directly or indirectly, the Balzers-Pfeiffer Assets, the Board, or the President, or any of their operations, assets, or businesses; provided, however, that Oerlikon-Buhrle may exercise only such direction and control over the Balzers-Pfeiffer Assets as is necessary to assure compliance with this Hold Separate, the order and with all applicable laws and except as otherwise provided in this Hold Separate.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating and consummating the Acquisition, defending investigations or litigation, obtaining legal advice, complying with this Hold Separate or the Consent Order or negotiating agreements to divest assets, Oerlikon-Buhrle shall not receive or have access to, or the use of, any material confidential information of the Balzers-Pfeiffer Assets or the activities of the President or Board not in the public domain, nor shall Balzers-Pfeiffer, the President or the Board receive or have access to, or the use of, any material confidential information about Oerlikon-Buhrle. Oerlikon-Buhrle may receive on a regular basis from Balzers-Pfeiffer aggregate financial information necessary and essential to allow Oerlikon-Buhrle to file financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Oerlikon-Buhrle from sources other than Balzers-Pfeiffer or the Board, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

h. Except as is permitted by this Hold Separate, the Board member appointed by Oerlikon-Buhrle who is also an officer, agent, or employee of Oerlikon-Buhrle ("Oerlikon-Buhrle Board Member") shall not receive any Balzers-Pfeiffer material confidential information and shall not disclose any such information obtained through his or her involvement with Balzers-Pfeiffer to Oerlikon-Buhrle or use it to obtain any advantage for Oerlikon-Buhrle. The Oerlikon-Buhrle Board Member shall participate in matters that come

before the Board only for the limited purpose of considering any capital investment of over \$250,000, approving any proposed budget and operating plans, authorizing dividends and repayment of loans consistent with the provisions hereof, reviewing material transactions described in subparagraph 3.e, and carrying out Oerlikon-Buhrle's responsibilities under the Hold Separate and the order. Except as permitted by the Hold Separate, the Oerlikon-Buhrle Board Member shall not participate in any matter, or attempt to influence the decisions of the Balzers-Pfeiffer management with respect to matters that would involve a conflict of interest between Oerlikon-Buhrle and Balzers-Pfeiffer. Meetings of the Board during the term of the Hold Separate shall be audio recorded and the recording retained for two (2) years after the termination of the Hold Separate.

i. Oerlikon-Buhrle shall not change, and Oerlikon-Buhrle shall direct SKA not to change, the composition of the Board unless the Chairman of the Board consents. The Chairman of the Board shall have the power to remove members of the Board for cause and to require Oerlikon-Buhrle to appoint replacement members to the Board in the same manner as provided in paragraph 3.d. of this Hold Separate. Oerlikon-Buhrle shall not change the composition of the management of Balzers-Pfeiffer, except that the Board shall have the power to remove management employees for unsatisfactory performance or for cause.

j. If the President or member of the Board ceases to act or fails to act diligently, a substitute President or member of the Board shall be appointed in the same manner as provided in paragraphs 3.c. and 3.d.

k. Oerlikon-Buhrle sales and distribution personnel connected with the Balzers-Pfeiffer Assets or providing support services to Balzers-Pfeiffer as of the date this Hold Separate is signed shall continue, as employees of Oerlikon-Buhrle, to provide such services as they are providing to Balzers-Pfeiffer as of the date of this Hold Separate. Such Oerlikon-Buhrle personnel must retain and maintain all material confidential information relating to Balzers-Pfeiffer on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Oerlikon-Buhrle business, including without limitation the turbomolecular pumps business. Such Oerlikon-Buhrle personnel

shall also execute a confidentiality agreement prohibiting the disclosure of any confidential Balzers-Pfeiffer information.

l. Balzers-Pfeiffer shall be staffed with sufficient employees to maintain the viability and competitiveness of the Balzers-Pfeiffer Assets, which employees shall be Balzers-Pfeiffer employees and may also be hired from sources other than Balzers-Pfeiffer. Each management employee of Balzers-Pfeiffer shall execute a confidentiality agreement prohibiting the disclosure of any Balzers-Pfeiffer confidential information.

m. Oerlikon-Buhrle shall circulate to the management employees of Balzers-Pfeiffer and appropriately display a notice of this Hold Separate and consent order in the form attached hereto as Attachment A.

n. Oerlikon-Buhrle shall cause, and Oerlikon-Buhrle shall direct SKA to cause, Balzers-Pfeiffer to continue to expend funds for research and development, quality control, manufacturing and marketing of Balzers-Pfeiffer products at a level not lower than that expended in fiscal 1994 or budgeted in fiscal 1995, and shall increase such spending as deemed reasonably necessary by the Board in light of competitive conditions. If necessary, Oerlikon-Buhrle shall provide Balzers-Pfeiffer with any funds necessary to accomplish the foregoing. Oerlikon-Buhrle shall continue to provide to Balzers-Pfeiffer such support services as it provided prior to the Acquisition.

o. All earnings and profits of Balzers-Pfeiffer shall be retained separately by Balzers-Pfeiffer. If necessary, Oerlikon-Buhrle shall provide Balzers-Pfeiffer with sufficient working capital to operate at the rate of operation in effect during the twelve (12) months preceding the date of the Hold Separate. Balzers-Pfeiffer may pay dividends in the same manner as it paid dividends prior to the Acquisition if its 1994 earnings enable it to do so; provided, however that any such dividends shall not exceed the amount of dividends Balzers-Pfeiffer paid in 1993.

p. Oerlikon-Buhrle shall indemnify the Board against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Board members.

q. Notwithstanding the provisions of paragraph 3.h., companies who undertake a due diligence process in the course of negotiations to purchase the Balzers-Pfeiffer Assets shall be accompanied and

assisted by the Oerlikon-Buhrle Board Member, in addition to appropriate Balzers-Pfeiffer employees selected by the Board. The Oerlikon-Buhrle Board Member may delegate tasks relating to such due diligence to attorneys, accountants and/ or other financial employees of Oerlikon-Buhrle who are not directly engaged in the Oerlikon-Buhrle turbomolecular pump business; provided, however, that such Oerlikon-Buhrle employees, accountants and attorneys shall execute a confidentiality agreement prohibiting the disclosure of any Balzers-Pfeiffer confidential information.

4. Should the Federal Trade Commission seek in any proceeding to compel Oerlikon-Buhrle to divest itself of the Balzers-Pfeiffer Assets or any additional assets, as provided in the proposed order, or to seek any other equitable relief, Oerlikon-Buhrle shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Oerlikon-Buhrle shall also waive all rights to contest the validity of this Hold Separate.

5. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege or provision of applicable law, and upon written request with reasonable notice to Oerlikon-Buhrle made to its General Counsel, Oerlikon-Buhrle shall permit any duly authorized representative or representatives of the Commission:

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

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

6. This Hold Separate shall not be binding until approved by the Commission.

ATTACHMENT A

NOTICE OF DIVESTITURE AND
REQUIREMENT FOR CONFIDENTIALITY

Oerlikon-Buhrle Holding AG ("Oerlikon-Buhrle") has entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission ("Commission") relating to the divestiture of the Balzers-Pfeiffer Assets, which include Balzers-Pfeiffer GmbH ("Balzers-Pfeiffer"). Until after the Commission's order becomes final and the Balzers-Pfeiffer Assets are divested, Balzers-Pfeiffer must be managed and maintained as a separate, ongoing business, independent of all other Oerlikon-Buhrle businesses. All competitive information relating to the Balzers-Pfeiffer Assets, including, without limitation, its turbomolecular pump business, must be retained and maintained by the persons involved in the Balzers-Pfeiffer Assets, including employees and agents of Oerlikon-Buhrle and Balzers-Pfeiffer, on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment or agency involves any other Oerlikon-Buhrle business. Similarly, all such persons involved in any other Oerlikon-Buhrle business shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such business to or with any person whose employment or agency involves the Balzers-Pfeiffer Assets.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the consent order, may subject Oerlikon-Buhrle to civil penalties and other relief as provided by law.

APPENDIX II

LEYBOLD SYSTEMS BUSINESS AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Hold Separate") is by and between Oerlikon-Buhrle Holding AG ("Oerlikon-Buhrle"), a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business at Hofwiesenstrasse 135, CH-8021 Zurich, Switzerland 4002; and the Federal Trade Commission ("Commission"), an

independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

PREMISES

Whereas, on January 21, 1994, Oerlikon-Buhrle entered into an Agreement with Degussa Aktiengesellschaft ("Degussa") to acquire all the voting stock of Leybold AG ("Leybold") (hereinafter "Acquisition"), and

Whereas, Leybold AG, a wholly-owned subsidiary of Degussa, with its principal office and place of business located at Wilhelm-Rohn-Strasse 25, D-6450 Hanau 1, Federal Republic of Germany, through its Thin Film Coating Systems Business, manufactures and markets, among other things, compact disc metallizers; and

Whereas, Oerlikon-Buhrle, with its principal office and place of business located at Hofwiesenstrasse 135, CH-8021 Zurich, Switzerland, through its subsidiary Balzers AG, manufactures and markets, among other things, compact disc metallizers; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of Leybold Thin Film Coating Systems Business ("Leybold Systems Business"), as defined in paragraph I.K. of the Consent Agreement, during the period prior to the final acceptance of the order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Leybold Compact Disc Metallizer Business or the Leybold Systems Business and the

Commission's right to have the Leybold Systems Business continue as a viable competitor; and

Whereas, the purpose of the Hold Separate is:

A. To preserve the Leybold Systems Business and the Leybold Compact Disc Metallizer Business as a viable, competitive, and independent business pending divestiture of the Leybold Compact Disc Metallizer Business or the Leybold Systems Business,

B. To remedy any anticompetitive effects of the Acquisition, and

C. To preserve the Leybold Systems Business as viable, ongoing assets engaged in the manufacture and sale of vacuum systems and equipment for the deposition of thin films until divestiture is achieved; and

Whereas, Oerlikon-Buhrle's entering into this Hold Separate shall in no way be construed as an admission by Oerlikon-Buhrle that the Acquisition is illegal; and

Whereas, Oerlikon-Buhrle understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate.

Now, therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the proposed order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the consent order, it will not seek further relief from Oerlikon-Buhrle with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate, the Agreement Containing Consent Order to which it is annexed and made a part thereof, and the order, once it becomes final, and in the event that the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Leybold Systems Business pursuant to the consent order, as follows:

1. Oerlikon-Buhrle agrees to execute and be bound by the Consent Agreement.

2. Oerlikon-Buhrle agrees that from the date this Hold Separate is accepted until the earliest of the times listed in subparagraphs 2.a. - 2.b., it will comply with the provisions of paragraph three of this Hold Separate:

a. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's rules; or

b. The time that divestiture of the Leybold Compact Disc Metallizer Business or the Leybold Systems Business required by paragraph II and/or paragraph IV of the Consent Agreement is completed.

3. Oerlikon-Buhrle shall hold the Leybold Systems Business, separate and apart on the following terms and conditions:

a. Leybold Systems Business, as defined in paragraph I.K. of the Consent Agreement, shall be held separate and apart and shall be operated independently of Oerlikon-Buhrle (meaning here and hereinafter, Oerlikon-Buhrle excluding Leybold Systems Business and excluding all personnel connected with the Leybold Systems Business as of the date this Agreement is signed, but including all other portions of Leybold), except to the extent that Oerlikon-Buhrle must exercise direction and control over the Leybold Systems Business to assure compliance with this Hold Separate or the Consent Agreement.

b. Oerlikon-Buhrle shall maintain the marketability, viability, and competitiveness of the Leybold Systems Business, including the Leybold Compact Disc Metallizer Business, and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or business it may have to divest except in the ordinary course of business and except for ordinary wear and tear, and it shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of the Leybold Systems Business including the Leybold Compact Disc Metallizer Business.

c. Oerlikon-Buhrle shall appoint Roland Lacher, the general manager of the Leybold Systems Business, provided he agrees, or a comparable, knowledgeable person among the top management of the Leybold Systems Business, as Manager to manage and maintain the

Leybold Systems Business on a day to day basis during the Hold Separate. The Manager shall have exclusive management and control of the Leybold Systems Business, and shall manage the Leybold Systems Business independently of Oerlikon-Buhrle's other businesses.

d. The Manager shall report exclusively to the Leybold Systems Business Management Committee ("Management Committee"), which shall be appointed by Oerlikon-Buhrle. The Committee shall consist of Roland Lacher, who is the manager of the Leybold Compact Disc Metallizer business as of the date of this Hold Separate (or a comparable, knowledgeable person from among the top management of the Leybold Compact Disc Metallizer business); Dr. Joachim Manke, who is a manager of the Leybold Systems Business (or a comparable, knowledgeable person from among the top management of the Leybold Systems business); and Dr. Beat Baumgartner, who is an Oerlikon-Buhrle financial officer (or a comparable, knowledgeable person from Oerlikon-Buhrle's financial office who has no direct involvement with Oerlikon-Buhrle's vacuum systems business). The Manager shall be the Chairman of the Management Committee. Except for the Oerlikon-Buhrle employee serving on the Management Committee, Oerlikon-Buhrle shall not permit any officer, employee, or agent of Oerlikon-Buhrle also to be an officer, employee or agent of the Leybold Systems Business. Each Management Committee member shall enter into a confidentiality agreement agreeing to be bound by the terms and conditions set forth in Attachment A, appended to this Hold Separate. The Management Committee shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the Management Committee during the term of the Hold Separate shall be audio recorded, and the recording shall be retained for two (2) years after the termination of the Hold Separate.

e. All material transactions, out of the ordinary course of business and not precluded by paragraph three hereof, shall be subject to a majority vote of the Management Committee.

f. Oerlikon-Buhrle shall not exercise direction or control over, or influence directly or indirectly, the Leybold Systems Business, including the Leybold Compact Disc Metallizer Business, the Management Committee, or the Manager of the Leybold Systems Business, any of their operations, assets, or businesses; provided, however, that Oerlikon-Buhrle may exercise only such direction and

control over the Leybold Systems business as is necessary to assure compliance with this Hold Separate, the order and with all applicable laws and except as otherwise provided in this Hold Separate.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating and consummating the Acquisition, defending investigations or litigation, obtaining legal advice, complying with this Hold Separate or the consent order of negotiating agreements to divest assets, Oerlikon-Buhrle shall not receive or have access to, or the use of, any material confidential information of the Leybold Systems Business or the activities of the Manager or Management Committee not in the public domain, nor shall the Leybold Systems Business, Manager, or the Management Committee receive or have access to, or the use of, any material confidential information about Oerlikon-Buhrle. Oerlikon-Buhrle may receive on a regular basis from the Leybold Systems Business aggregate financial information necessary and essential to allow Oerlikon-Buhrle to file financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Oerlikon-Buhrle from source other than the Leybold Systems Business or the Management Committee, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

h. Except as is permitted by this Hold Separate, the Management Committee member appointed by Oerlikon-Buhrle who is also an officer, agent, or employee of Oerlikon-Buhrle ("Oerlikon-Buhrle Management Committee Member") shall not receive any Leybold Systems Business material confidential information and shall not disclose any such information obtained through his or her involvement with the Leybold Systems Business to Oerlikon-Buhrle or use it to obtain any advantage for Oerlikon-Buhrle. The Oerlikon-Buhrle Management Committee member shall participate in matters that come before the Management Committee only for the limited purpose of considering any capital investment of over \$250,000, approving any proposed budget and operating plans, authorizing dividends and repayment of loans consistent with the provisions hereof, reviewing material transactions described in subparagraph

3.e, and carrying out Oerlikon-Buhrle's responsibilities under the Hold Separate and the order. Except as permitted by the Hold Separate, the Oerlikon-Buhrle Management Committee Member shall not participate in any matter, or attempt to influence the votes of the other directors on the Management Committee with respect to matters that would involve a conflict of interest between Oerlikon-Buhrle and the Leybold Systems Business.

i. Oerlikon-Buhrle shall not change the composition of the Management Committee unless the Management Committee consents. The Chairman of the Management Committee shall have the power to remove members of the Management Committee for cause and to require Oerlikon-Buhrle to appoint replacement members to the Management Committee in the same manner as provided in paragraph 3.d. of this Hold Separate. Oerlikon-Buhrle shall not change the composition of the management of the Leybold System Business, except that the Management Committee shall have the power to remove management employees unsatisfactory performance or for cause.

j. If the Chairman of the Management Committee ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in paragraphs 3.c. and 3.d.

k. Oerlikon-Buhrle personnel connected with the Leybold Systems Business or providing support services to the Leybold Systems Business as of the date this Hold Separate is signed may continue, as employees of Oerlikon-Buhrle, to provide such services as they are currently providing to the Leybold Systems Business. Such Oerlikon-Buhrle personnel must retain and maintain all material confidential information relating to the Leybold Systems Business on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Oerlikon-Buhrle business.

l. The Leybold Systems Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Leybold Systems Business, which employees shall be the Leybold Systems Business' employees and may also be hired from source other than Oerlikon-Buhrle. Each management employee of the Leybold Systems Business shall execute a confidentiality agreement

prohibiting the disclosure of any Leybold Systems Business confidential information.

m. Oerlikon-Buhrle shall circulate to the management employee of the Leybold Thin Film Coating Systems Business and appropriately display a notice of this Hold Separate and consent order in the form attached hereto as Attachment A.

n. The Leybold Systems Business shall continue to expend funds for research and development, quality control, and marketing of Leybold Systems Business products at a level not lower than that budgeted for either the 1993 or 1994 fiscal year, and shall increase such spending as deemed reasonably necessary in light of competitive conditions. Within thirty (30) days of the date of this Hold Separate, the Chairman of the Management Committee shall develop a budget and operating plan for the 1995 fiscal year that complies with the provisions of this paragraph and present it to the Management Committee for approval. If necessary, Oerlikon-Buhrle shall provide the Leybold Systems Business with any funds to accomplish the foregoing. Oerlikon-Buhrle shall provide the Leybold Systems Business such support services as provided by Leybold prior to the Acquisition.

o. Oerlikon-Buhrle shall provide the Leybold Systems Business with sufficient working capital to operate at a level not less than the rate of operation in effect during the twelve (12) months preceding the date of the Hold Separate.

p. The Management Committee shall serve at the cost and expense of Oerlikon-Buhrle. Oerlikon-Buhrle shall indemnify the Management Committee against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Management Committee members.

q. The Management Committee shall have access to and be informed about all companies who inquire about, seek or propose to buy the Leybold Systems Business.

r. Notwithstanding the provisions of paragraph 3.h., companies who undertake a due diligence process in the course of negotiations to purchase the Leybold Compact Disc Metallizer Assets may be accompanied and assisted by the Oerlikon-Buhrle Management Committee Member, in addition to appropriate Leybold Systems Business employees selected by the Management Committee. The

Oerlikon-Buhrle Management Committee Member may delegate tasks relating to such due diligence to attorneys, accountants and/or other financial employees of Oerlikon-Buhrle who are not directly engaged in the Oerlikon-Buhrle compact disc metallizer business; provided, however, that such Oerlikon-Buhrle employees, accountants and attorneys shall execute a confidentiality agreement prohibiting the disclosure of any Leybold Systems Business confidential information.

4. Should the Federal Trade Commission seek any proceeding to compel Oerlikon-Buhrle to divest the Leybold Compact Disc Metallizer Business, Leybold Systems Business or any additional assets, as provided in the proposed order, or to seek any other equitable relief, Oerlikon-Buhrle shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Oerlikon-Buhrle shall also waive all rights to contest the validity of this Hold Separate.

5. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege or provision of applicable law, and upon written request with reasonable notice to Oerlikon-Buhrle made to its General Counsel, Oerlikon-Buhrle shall permit any duly authorized representative or representatives of the Commission:

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

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

6. This Hold Separate shall not be binding until approved the Commission.

ATTACHMENT A

NOTICE OF DIVESTITURE AND
REQUIREMENT FOR CONFIDENTIALITY

Oerlikon-Buhrle Holding Ag ("Oerlikon-Buhrle") and Leybold have entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission ("Commission") relating to the divestiture of the Leybold Compact Disc Metallizer Business and Leybold Thin Film Coating Systems Business. Until after the Commission's order becomes final and the Compact Disc Metallizer Business Assets are divested, the Leybold Thin Film Coating Systems Business must be managed and maintained as a separate, ongoing business, independent of all other Oerlikon-Buhrle businesses. All competitive information relating to the Leybold Thin Film Coating Systems Business must be retained and maintained by the persons involved in the Leybold Thin Film Coating Systems Business on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment or agency involves any other Oerlikon-Buhrle business shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such business to or with any person whose employment or agency involves the Leybold Thin Film Coating Systems Business.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the consent order, may subject Oerlikon-Buhrle to civil penalties and other relief as provided by law.

IN THE MATTER OF

OLSEN LABORATORIES, INC., ET AL.

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

Docket C-3556. Complaint, Feb. 6, 1995--Decision, Feb. 6, 1995

This consent order prohibits, among other things, two Kansas-based firms and an official from making false claims for Eez-Away, an arthritis pain treatment, or similar products. The consent order requires the respondents to possess competent and reliable scientific evidence before making any health or medical benefit claim for any personal or household product or service they market in the future; requires them to clearly identify any future infomercial that they disseminate as paid advertising; and prohibits them from misusing endorsements.

Appearances

For the Commission: *Lesley Anne Fair* and *Beth M. Grossman*.

For the respondents: *Tish Pahl, Olsson, Frank & Weeda*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Olsen Laboratories, Inc. and Richfield Distributors, Inc., corporations, and Peter F. Olsen, individually and as an officer and director of said corporations ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Olsen Laboratories, Inc. is a Delaware corporation, with its principal office and place of business at 11088 Alhambra Street, Leawood, Kansas.

Respondent Richfield Distributors, Inc. is a New York corporation, with its principal office and place of business at 11088 Alhambra Street, Leawood, Kansas.

Respondent Peter F. Olsen is an officer and director of Olsen Laboratories, Inc. and Richfield Distributors, Inc. Individually or in

concert with others, he formulates, directs and controls the acts and practices of Olsen Laboratories, Inc. and Richfield Distributors, Inc., including the acts and practices alleged in this complaint. His principal office and place of business is the same as that of the corporate respondents.

PAR. 2. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed external analgesics, including Eez-Away Relief, to consumers. These products are "drugs" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Eez-Away Relief, including but not necessarily limited to the attached Exhibits A and B, transcriptions of the program-length television commercials (or "infomercials") entitled, respectively, "30 Minutes" and "Eez-Away the Pain." The aforesaid advertisements contain the following statements and depictions:

A. JULIA GABOR (Consumer endorser): "It is a miracle drug and I'm, I, uh, I know it is." (Exhibit A, p. 1)

B. SHELLY DUVALL (Anchor): "And we'll tell you about a recent breakthrough in the treatment of arthritis that has brought new hope to many chronic arthritis sufferers. Much new work is being done, and the good news is there's hope. Later on we'll tell you about a new arthritis remedy that could provide the much sought-after relief from pain. So if you or someone you love has arthritis, muscle or joint pain, please, stay tuned. The pain may soon be over." (Exhibit A, p. 3)

C. MARIE GIORDANO (Consumer endorser): "Well, I had my back, lower back pain for about three years, and it was just really so bad I couldn't walk. I had to take time off from work, and I was laid up for really two weeks at home on my back flat. I tried many things, and nothing really worked." (Exhibit A, pp. 4-5; Exhibit B, p. 3)

* * *

"When I first applied it, I had very little hope that anything was going to help me. I have arthritis, and I figured that was it. But it really made me comfortable after the pain was gone. I felt 'aahhh.'" (Exhibit A, p. 7; Exhibit B, p. 5)

D. DAVID FLYNN (Anchor): "We recently learned that some exciting new research is being done on a new type of pain reliever. We wanted to find out more."

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SHELLY DUVALL: "We spoke with chiropractor Dr. John Panicali. We learned that he took part in a research study of a new arthritis treatment that's been getting a lot of attention." (Exhibit A, p. 5)

E. SHELLY DUVALL: "The new product tested by Dr. Panicali is called 'Eez-Away Relief.' When we spoke with him, he had been dispensing it for several months. And what were his findings?" (Exhibit A, p. 5)

DR. JOHN PANICALI (Chiropractor): "Patients that we've been working with for many months now have reached a certain point of relief, but at that point, we've reached a stone wall. So we tried this product on those patients. And patients are coming back and telling me, 'Doc, I don't know what that stuff was, but I'm getting further motion, I'm doing things now I never did before, for the first time I'm climbing stairs without pain, I can actually look over my shoulder when I back out of my driveway.'" (Exhibit A, p. 6; Exhibit B, p. 4)

F. DR. PANICALI: "The unique thing about Eez-Away Relief is that it absorbs through the skin surface at a faster rate than other products. But what's also unique is that once it's at the joint surface, it binds to tissues, ligaments and fats and stays within the joint for a much longer period of time, affording relief for a longer period, and pain-free motion." (Exhibit A, p. 6)

G. JOHN BOISE (Consumer endorser): "I tried it, every couple of hours for about three or four days, and the pain just disappeared completely. And so now I've been using it like once a week, and the pain just stays away; and I can start moving my hands a lot better than I ever used to be able to move them." (Exhibit A, p. 7; Exhibit B, p. 5)

* * *

"I've been trying a lot of different medications over the past two or three years trying to eliminate arthritis in my joints, and since I used Eez-Away, it just worked and it's like a miracle." (Exhibit A, p. 22; Exhibit B, p. 20)

H. DAVID FLYNN: "Shelly, these results are very impressive, but is it safe? Has it been properly tested?"

SHELLY DUVALL: "Absolutely, David. It's met all the FDA requirements, and it contains only ingredients that are recognized by the FDA itself to be both safe and effective for pain relief."

FLYNN: "But what's the big secret? Can we now buy it in stores?"

DUVALL: "Til now the only way to get some was to see one of the testing physicians like Dr. Panicali. Unfortunately, it's still not available in stores." (Exhibit A, pp. 7-8)

I. VOICE-OVER: "This breakthrough pain reliever is so new, so revolutionary, that it's not yet available in stores." (Exhibit A, pp. 9, 19 & 25; Exhibit B, pp. 6, 16 & 23)

J. VOICE-OVER: "At last, you won't have to live with that nagging pain in your hands, back, arms, elbows, knees and other joints. With Eez-Away, you'll regain the vitality you once had to enjoy life again with mobility and freedom. Simple pleasures like biking, fishing, tennis, and fun with your family will all return once the pain is gone." (Exhibit A, pp. 9, 20 & 26; Exhibit B, pp. 7, 17 & 23-24)

K. VOICE-OVER: "So if you have arthritis that won't go away, order Eez-Away now. It's guaranteed, so you have nothing to lose but the pain." (Exhibit A, pp. 11, 22 & 28; Exhibit B, pp. 9, 19 & 26)

L. UNIDENTIFIED CONSUMER ENDORSER: "I use it for about ten minutes, all over, and it has no odor. And I got dressed, and about ten minutes later I -- there was no pain. It was like I -- it was hard to believe that there was actually no pain." (Exhibit A, p. 12)

M. *Depiction: Close-up of assorted over-the-counter medications, including Bufferin, Mineral Ice, Excedrin, Ben Gay, Heet, Icy Hot, Tylenol, and Advil.*

DAVID FLYNN: "This is just a sampling of some of the pain remedies that we found in our local drugstore. There are literally aisles full of pills and ointments that claim to relieve pain. Shelly, what makes Eez-Away so different?"

SHELLY DUVALL: "Well, the people that we spoke to, David, said simply that these remedies just don't work the way that Eez-Away does. They've been searching for relief, they finally found it with this product." (Exhibit A, p. 13)

N. DAVID FLYNN: "Next we have a woman who was crippled by arthritis pain until she found Eez-Away."

SHELLY DUVALL: "This is the true story of Dee Sanchez." (Exhibit A, p. 13)

SHELLY DUVALL: ". . . a few short months ago she was suffering from severe chronic arthritis." (Exhibit A, p. 13)

SHELLY DUVALL: "Dee was in excruciating pain" (Exhibit A, p. 14)

DEE SANCHEZ (Consumer endorser): "I had tried just about every type of rub, every type of cream that came on the market. I'd go buy it and give it a try. I'd tried a few, uh, I had an aunt that even made up some home remedies that were supposed to be from the old country that would help my arthritis and so forth. And nothing was doing any good."

SHELLY DUVALL (Exhibit A)/EILEEN FULTON (Exhibit B): "Then one day Dee's luck changed. Dee [She] was introduced to new Eez-Away Relief. The results were immediate and dramatic." (Exhibit A, pp. 14-15; Exhibit B, pp. 12-13)

O. SHELLY DUVALL: "[W]e have seen this same story again and again with other people. People who had lost mobility, stopped being active because of the pain. They were able to get up and enjoy life with the help of Eez-Away." (Exhibit A, p. 16)

P. SHELLY DUVALL: "Another physician taking part in the Eez-Away test program was Dr. Thomas Jackson of Vero Beach, Florida. He's a cardiologist with a special concern for the effects of arthritis on a person's general health." (Exhibit A, p. 16)

DR. THOMAS JACKSON (Cardiologist): "Minnie Benjamin has juvenile rheumatoid arthritis. Now juvenile rheumatoid arthritis begins in the teenage years. It can begin in childhood. She's had it for a long time. When I saw Minnie, she had a problem with her ankle and with her wrist and was unable to walk properly, limping, and had a splint on her hand. I gave her Eez-Away because I had used it in a few other instances. I mentioned to her to use it according to the directions. She came back the next morning, the splint was off and she wasn't limping. So I was really impressed with that overnight response. You know, it's rather fabulous, rather amazing to say the least."

MINNIE BENJAMIN: "You see I'm not wearing my brace. And I hope I don't have to put it on anymore because the Eez-Away has helped me get rid of it." (Exhibit A, p. 17; Exhibit B, pp. 14-15)

Q. PHIL SABATO (Consumer endorser): "With this product, Eez-Away, I'm back to normal. I can walk again, I could bend down without being in pain, I could

climb up the ladder. I don't have the pain that I did in the past." (Exhibit A, p. 18; Exhibit B, p. 15)

R. SANDY DUVALL (Consumer endorser): "After using Eez-Away, I don't have any problems. I have no pain, and I don't think about it any more. It's really, uh, it's like a new lease on life." (Exhibit A, p. 18; Exhibit B, p. 15)

* * *

"I used it three or four times the first day. And by the third time I put it on, I had absolutely no pain in my hand at all." (Exhibit A, p. 24; Exhibit B, p. 22)

S. DAVID FLYNN: "Needless to say, we are impressed with this new product, so we spoke with the person who developed this revolutionary new pain remedy." (Exhibit A, p. 23) [EILEEN FULTON: "Now let's meet the man who developed this revolutionary pain remedy, Mr. Peter Olsen." (Exhibit B, p. 21)]

PETER OLSEN: "When we first developed Eez-Away, we knew it would relieve a lot of pain, and it has. Even doctors are amazed. As a matter of fact, we're so confident that we actually have a guarantee. Use the product for 30 days. If you're not satisfied, we'll return your money." (Exhibit A, p. 23; Exhibit B, p. 21)

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that Eez-Away Relief is a new and unique product that is a major breakthrough in the treatment of arthritis pain.

PAR. 6. In truth and in fact, Eez-Away Relief is not a new and unique product that is a major breakthrough in the treatment of arthritis pain. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that scientific research proves that Eez-Away Relief is effective for the rapid elimination of severe pain and physical disabilities caused by arthritis.

PAR. 8. In truth and in fact, scientific research does not prove that Eez-Away Relief is effective for the rapid elimination of severe pain and physical disabilities caused by arthritis. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached

as Exhibits A and B, respondents have represented, directly or by implication, that:

A. Eez-Away Relief rapidly eliminates severe pain and physical disabilities caused by arthritis.

B. Eez-Away Relief provides long-term pain relief.

C. Eez-Away Relief significantly increases the range of motion in the affected joints of people with arthritis, including those with rheumatoid arthritis.

D. Eez-Away Relief is more effective than other over-the-counter medications in relieving arthritis pain.

PAR. 10. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph nine, respondents possessed and relied upon a reasonable basis that substantiated such representations.

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

PAR. 12. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that Eez-Away Relief relieves arthritis pain by penetrating through the skin to the affected joint.

PAR. 13. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that at the time they made the representation set forth in paragraph twelve, respondents possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 14. In truth and in fact, at the time they made the representation set forth in paragraph twelve, respondents did not possess and rely upon a reasonable basis that substantiated such

representation. Therefore, the representation set forth in paragraph thirteen was, and is, false and misleading.

PAR. 15. Through the use of the statements and depictions contained in the advertisements set forth in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that the testimonials or endorsements from consumers appearing in advertisements for Eez-Away Relief reflect the typical or ordinary experience of members of the public who use Eez-Away Relief.

PAR. 16. Through the use of the statements and depictions contained in the advertisements set forth in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that, at the time they made the representation set forth in paragraph fifteen, they possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 17. In truth and in fact, at the time they made the representation set forth in paragraph fifteen, respondents did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph sixteen, was, and is, false and misleading.

PAR. 18. By and through the "30 Minutes" infomercial, a transcription of which is attached hereto as Exhibit A, respondents have represented, directly or by implication, that "30 Minutes" is an independent television program and is not paid commercial advertising.

PAR. 19. In truth and in fact, "30 Minutes" is not an independent television program and is paid commercial advertising. Therefore, the representation set forth in paragraph eighteen was, and is, false and misleading.

PAR. 20. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Commissioner Azcuenaga recused.

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EXHIBIT A

30 MINUTES

Graphic:

This program is a paid for advertisement by Olsen Labs Inc.

Graphic:

The program you are about to see is true. The names of the people have not been changed and their statements have not been altered. We make this claim for your protection and in the interest of truth.

VOICE -OVER:

The program you are about to see is true. The names of the people have not been changed and their statements have not been altered. We make this claim for your protection and in the interest of truth.

MARIE GIORDANO:

It's a good feeling about yourself. You're able to smile again, be happy again.

UNIDENTIFIED WOMAN #1:

I'm very excited, yes, I'm very excited.

JULIA GABOR:

It is a miracle drug and I'm, I, uh, I know it is.

UNIDENTIFIED WOMAN # 2:

They want to borrow it, but no one's getting it.

SCOTT WALTER:

When I tried Eez-Away, I couldn't believe it.

SANDY DUVALL:

A product that says it will work that does work.

TOM BURKE:

And it works everytime.

DEE SANCHEZ:

Wow! That's all I can -- that's all I can do.

Wow.

Depiction:

People playing tennis.

VOICE-OVER:

The good life. For most people it means free time, friendship, happiness and health.

Depiction:

Men fishing.

And, thanks to modern medicine, Americans are now living longer

Depiction:

Woman diving into pool.

with the opportunity of many more years of this good life.

Depiction:

People playing shuffleboard.

But tragically, there is one common disease that deprives millions of Americans of their chance at the good life -- Arthritis.

Depiction:

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Man pitching horseshoes.

Since the dawn of civilization, man has searched for a cure for this crippling disease,

Depiction:

People riding bicycles.

and today we continue that search on "30 Minutes".

Depiction:

Man and woman sitting at anchor news desk with a camera and cameraman off to the side.

Moves in to close-up of the two anchors

Large superimposed text: 30 Minutes

Hello, I'm David Flynn.

DAVID FLYNN:
SHELLY DUVALL:

And I'm Shelly Duvall, and welcome to another edition of "30 Minutes."

DAVID FLYNN:

Chances are that you or someone you know has arthritis. This painful disease affects nearly 40 million Americans. That's 1 in 7 people in this country.

SHELLY DUVALL:

Many of us associate arthritis with older people, but the fact is it strikes all ages, even children.

DAVID FLYNN:

There is still no cure for arthritis, and so many people who suffer from it are in a constant search for treatment that will bring them some relief. Today on "30 Minutes" we will take a look at how people are coping with this terrible disease.

SHELLY DUVALL:

And we'll tell you about a recent breakthrough in the treatment of arthritis that has brought new hope to many chronic arthritis sufferers. Much new work is being done, and the good news is there's hope. Later on we'll tell you about a new arthritis remedy that could provide the much sought-after relief from pain. So if you or someone you love has arthritis, muscle or joint pain, please, stay tuned. The pain may soon be over.

DAVID FLYNN:

Let's start at the beginning. What is arthritis and what do we know about it?

DAVID FLYNN (Voiceover):

The word arthritis is derived from Greek and literally means "inflamed joint."

Graphic:

ARTHRITIS

Inflamed Joint

DAVID FLYNN (V/O):

There are many types of arthritis, but the most common form is osteoarthritis

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DAVID FLYNN (V/O): Most often characterized by redness, swelling, stiffness, and pain.
 Graphic:
Osteoarthritis
 Redness
 Swelling
 Stiffness
 Pain
 According to the Arthritis Foundation, every person over 60 probably has Osteoarthritis to some degree.
 Graphic:
 Every person over 60 probably has Osteoarthritis.

SHELLY DUVALL: But the worst thing about arthritis is how it can ruin lives. People who were once strong and active are often reduced to helplessness and depression because of the constant pain.

JULIA GABOR: I had arthritis so bad, I was in bed for 6 months, no exercise. I had to get up -- I was in a wheelchair.
 Arthritis sufferer

SAMUEL GREEN: I had arthritis in these hands so bad, it felt, it felt like somebody had a knife -- and then he rammed it in there [indicating his hand] and pulled it.
 Arthritis sufferer

JANNIE BUHR: It's very hard on me now with visiting the grandchildren. I do not stay very long with them, and I've always loved them, and planned to stay with them before, but I can't -- I just can't do it anymore.
 Arthritis sufferer

MARIE GIORDANO: Well, I had my back, lower back pain for about three years, and it was just really so bad I couldn't walk. I had to take time off from work, and I was laid up for really two weeks at home on my back flat. I tried many things, and nothing really worked.
 Arthritis sufferer

DAVID FLYNN: What can these people do? We recently learned that some exciting new research is being done on a new type of pain reliever. We wanted to find out more.

SHELLY DUVALL: We spoke with chiropractor Dr. John Panicali. We learned that he took part in a research study of a new arthritis treatment that's been getting a lot of attention.
 Depiction:
 Dr. Panicali in examining room with patient.

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Complaint

- SHELLY DUVALL (V/O): He sees many arthritis sufferers. We asked him why arthritis is such a difficult disease to treat.
- DR. JOHN PANICALI:
Doctor of Chiropractic I find that the worst thing about arthritis is that about half the people give up. They feel that once they have it, there is nothing that can be done. And that's not necessarily true. We find that they give up on life; they become depressed. Their exercise and their activity is limited. A lot of older patients start to gain weight because they're less active. So it's a -- it's a disease that affects the body, but I find that in more cases it affects the mind.
- Depiction:
Dr. Panicali applying, and explaining to patient in examining room how to apply, Eez-Away.
- SHELLY DUVALL (V/O): The new product tested by Dr. Panicali is called "Eez-Away Relief." When we spoke with him, he had been dispensing it for several months. And what were his findings?
- DR. PANICALI: Patients that we've been working with for many months now have reached a certain point of relief, but at that point, we've reached a stone wall. So we tried this product on those patients. And patients are coming back and telling me, "Doc, I don't know what that stuff was, but I'm getting further motion, I'm doing things now I never did before, for the first time I'm climbing stairs without pain, I can actually look over my shoulder when I back out of my driveway." The product is natural. There's no side effects. There's no way at all this product can harm you.
- Depiction:
Dr. Panicali, in front of a panel of x-rays, examining x-rays and pointing things out to patient.
- DR. PANICALI (V/O): The unique thing about Eez-Away Relief is that it absorbs through the skin surface at a faster rate than other products. But what's also unique is that once it's at the joint surface, it binds to tissues, ligaments and fats and stays within the joint for a much longer period of time, affording relief for a longer period, and pain-free motion.

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DR. PANICALI:
Doctor of Chiropractic

The best thing I find with Eez-Away Relief is that patients can return to their normal lifestyle. Patients have found that they can go on. They can do activities around the house; they can go back to their normal lifestyle, perform activities that they thought were long gone.

Depiction:

Dr. Panicali applying Eez-Away to a patient's shoulder and explaining how to use the product.

SHELLY DUVALL (V/O):

Dr. Panicali introduced many of his patients to Eez-Away Relief. We asked a few of them for their reviews.

PAT MURANO:
Businessman

I'm the type of guy, just like you are. I don't believe everything somebody tells me, unless I try it, for myself. I've tried the product, Eez-Away Relief. I know it works.

JOHN BOISE:
Plant Manager

I tried it, every couple of hours for about three or four days, and the pain just disappeared completely. And so now I've been using it like once a week, and the pain just stays away; and I can start moving my hands a lot better than I ever used to be able to move them.

PATRICIA ROBINSON:
Travel Agent

I couldn't put up my hair. I couldn't lift up my arms. I couldn't do anything with my right arm. And I started using Eez-Away and I can now lift it.

MARIE GIORDANO:
Teacher's Aide

When I first applied it, I had very little hope that anything was going to help me. I have arthritis, and I figured that was it. But it really made me comfortable after the pain was gone. I felt "aahhh."

SHELLY DUVALL:

I want you to know that these folks have not been paid to endorse this product. They're real people who've had real results. We found that Eez-Away is giving people a lot of hope, even people who've tried it all.

DAVID FLYNN:

Shelly, these results are very impressive, but is it safe? Has it been properly tested?

SHELLY DUVALL:

Absolutely, David. It's met all the FDA requirements, and it contains only ingredients that are recognized by the FDA itself to be both safe and effective for pain relief.

DAVID FLYNN:

But what's the big secret? Can we now buy it in stores?

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SHELLY DUVALL: Til now the only way to get some was to see one of the testing physicians like Dr. Panicali. Unfortunately, it's still not available in stores.

DAVID FLYNN: We've got to take a break, but when we come back, we'll talk with the person who developed this revolutionary new pain remedy.

SHELLY DUVALL (V/O): And we'll spend a day in the life of an arthritis sufferer, when "30 Minutes" continues.
Depiction:
Child runs and jumps into Dee Sanchez's arms.

DEE SANCHEZ (V/O): This just works. I put it on, and I don't hurt.
DEE SANCHEZ: It's everything I could ever have asked for, and it's given me back my life.
Superimposed text:
EEZ-AWAY Gets Results

COMMERCIAL INSERT
Graphic:
ATTENTION!
ARTHRITIS SUFFERERS

VOICE-OVER: Attention arthritis sufferers, the program you are now watching features a powerful Arthritis Treatment called Eez-Away Relief.
Graphic:
(Scrolling down the screen) The program that you are now watching features a powerful Arthritis Treatment called EEZ-AWAY RELIEF.
This breakthrough pain reliever is so new, so revolutionary, that it's not yet available in stores.
However, if you or someone you love suffer from chronic aches, pains or stiffness, we have wonderful news.
Depiction:
Dr. Panicali rubbing Eez-Away on a woman's hand in an examining room
Superimposed text on close up of woman's hand:
Aches
Pains
Stiffness
For a limited time only the makers of Eez-Away are offering this amazing new pain remedy directly to you through this introductory TV offer.
Graphic:

Complaint

119 F.T.C.

Arm bent at 90 degree angle, with the elbow enhanced in red. A bottle of Eez-Away comes from the right of the screen and then tips toward the reddened elbow, the top flips up, the red disappears, the top closes and the bottle comes to stand at the right hand side of the screen.

At last, you won't have to live with that nagging pain in your hands, back, arms, elbows, knees and other joints. With Eez-Away, you'll regain the vitality you once had to enjoy life again with mobility and freedom. Simple pleasures like biking, fishing, tennis, and fun with your family will all return once the pain is gone.

Depictions:

Screen, divided into four quadrants, with pictures of people bicycling, fishing, playing tennis, and swimming

Superimposed text:

Biking

Fishing

Tennis

Just apply Eez-Away to the painful area and soon you'll feel the power, the relief. Eez-Away is patented, and has no messy residue or strong medicine smell, and it's not taken internally so it won't upset your stomach like some pain relievers.

Depiction:

Man in locker room applying Eez-Away to his knee

Superimposed text:

Easy To Use

And doctors recommend it as safe, even on sensitive skin.

Depiction:

Dr. Panicali applying Eez-Away to patient's shoulder in examining room.

Superimposed text:

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No Strong Smell

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We'll also include this beautiful, "Natural Care Workbook." It's 60 pages of valuable

161

Complaint

information to give you strength and to keep you limber once the pain is gone.

Depiction:

Close up of the front cover of booklet. On the cover is a stop sign with the words "THE PAIN STOPS HERE." Some of the contents of the book are shown, including drawings of exercises, someone receiving a massage, and three progressively smaller profiles of the human body.

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Plus, if you call now, we'll also include another 8-oz. bottle of Eez-Away. Perfect for your purse or briefcase. It's a \$24.95 value free, just for trying Eez-Away.

The entire Eez-Away package, including 2 8-oz. bottles plus the natural care workbook, would cost over \$60.00 if sold separately. But now, through this special TV offer, you pay only \$39.95.

We're so confident that Eez-Away Relief will work for you, that we're offering a complete money back guarantee.

Superimposed text:

30 DAY GUARANTEE

1-800-938-2828

If you're not convinced that Eez-Away is the most effective pain remedy that you've ever tried, return it for a full refund.

So if you have arthritis that won't go away, order Eez-Away now. It's guaranteed, so you have nothing to lose but the pain. Call now.

Graphic:

Call

1 - 800 - 938 - 2828

\$39.95 + \$5.95 Shipping & Handling

EEZ - AWAY

P.O. Box A

Lincoln, KS 67455

ALLOW 4 TO 6 WEEKS FOR DELIVERY

OLSEN LABS, INC., 115 WEST ELM ST, LINCOLN, KS 67455

Have your credit card or checkbook ready and call 1-800-938-2828. A \$57.00 value for just \$39.95, plus \$5.95 shipping and handling. Call 1-800-938-2828 or send your check or money order to EEZ-AWAY, P.O. Box A, Lincoln, KS 67455, or call 1-800-938-2828.

END COMMERCIAL INSERT

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- JANNIE BUHR: Now, I can move the knee without any pain to it. I'm always surprised that I can use them and there's no pain. I mean, you know, I sit down, I lay down, I don't have the pain that I always had.
- UNIDENTIFIED WOMAN #3: I use it for about ten minutes, all over, and it has no odor. And I got dressed, and about ten minutes later I -- there was no pain. It was like I -- it was hard to believe that there was actually no pain.
- SAMUEL GREEN: But now that I use this Eez-Away, see, you can see for yourself [opening and closing his hands].
- JULIA GABOR: But I just used it on my shoulder and I think that I knew that would help my shoulder within, within a week. I was, oh, I thought it was a miracle drug.
- UNIDENTIFIED WOMAN #1: Since I've been using Eez-Away, I have a better grip, and I can do my laundry better, I can do my housework much better, and I can also comb my hair much better, because I couldn't raise my hand or hold a grip on the comb to comb my hair.
- UNIDENTIFIED WOMAN #2: [Shuffling a deck of cards] And at one time I was not able to shuffle a deck of cards as I'm doing now. Since I've used Eez-Away, I'm able to shuffle the cards on my own with have -- without having someone do it for me. And it's the greatest thing to know that you can do it on your own.
- Depiction:
The two anchors sitting behind a news desk. To the left is a camera and cameraman.
Large superimposed text: 30 Minutes
- Depiction:
Close-up of assorted over-the-counter medications, including Bufferin, Mineral Ice, Excedrin, Ben Gay, Heet, Icy Hot, Tylenol, and Advil.
- DAVID FLYNN: This is just a sampling of some of the pain remedies that we found in our local drugstore. There are literally aisles full of pills and ointments that claim to relieve pain. Shelly, what makes Eez-Away so different?
- SHELLY DUVALL: Well, the people that we spoke to, David, said simply that these remedies just don't work the way that Eez-Away does. They've been

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searching for relief, they finally found it with this product.

DAVID FLYNN: Next we have a woman who was crippled by arthritis pain until she found Eez-Away.

SHELLY DUVALL: This is the true story of Dee Sanchez.

Depiction:
Dee Sanchez outside at a picnic.

SHELLY DUVALL (V/O): Dee Sanchez lives in Lynnford, New Jersey. She's married and the mother of two girls. From these pictures you wouldn't know that a few short months ago she was suffering from severe chronic arthritis.

DEE SANCHEZ: I just plain hurt. Sometimes I just wanted to sit down and cry because it was so frustrating because I couldn't -- I couldn't do all the things that were me. The simple things. To a lot of people it wouldn't matter. Cleaning my house, taking curtains down and washing them, hanging them back up. I couldn't do that.

SHELLY DUVALL (V/O): Dee was in excruciating pain, and it wasn't only she that was suffering. The deterioration of Dee's physical and mental state was taking its toll on her family as well.

Depiction:
Sanchez's husband and daughters outside at a picnic table.

FRANK SANCHEZ: We have a family that's close, and yet all want to do things together, and no fault to Dee on this thing, if I were in pain constantly, your nerves were on edge, and things that would not irritate someone normally, I mean the slightest little thing can, can set off an argument when none need have come. You tend to overreact when you're hurting.

VANESSA SANCHEZ: She'd be, like, complaining, start dropping stuff, and, like, we'd ask to help, and she'd say, "No! I can get it!" She'd tell us to go away.

FRANK SANCHEZ: You react two ways. One with anger at yourself because you can't do anything about and probably frustration. Uh, with her -- but combined with her irritability it only made matters worse.

SHELLY DUVALL (V/O): Dee was desperate, her life was falling apart. She tried everything.

DEE SANCHEZ: I had tried just about every type of rub, every type of cream that came on the market. I'd go

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buy it and give it a try. I'd tried a few, uh, I had an aunt that even made up some home remedies that were supposed to be from the old country that would help my arthritis and so forth. And nothing was doing any good.

SHELLY DUVALL (V/O): Then one day Dee's luck changed. Dee was introduced to new Eez-Away Relief.

Depiction:
Sanchez pouring Eez-Away on to cotton ball and rubbing onto her shoulder.

DEE SANCHEZ: The results were immediate and dramatic. I think the first thing I noticed was just when I woke up in the morning just to [stretching] you know, you automatically stretch and I could stretch. I'm cooking again, my house is spotless again. I can clean.

DEE SANCHEZ (V/O): I can fix my little one's hair every morning before she goes to school,

Depiction:
Sanchez braiding her daughter's hair. and sew,

Depiction:
Sanchez sewing on a button. and scrub my floor the old fashioned way even though the kids laugh at me for doing it.

Depiction:
Sanchez mopping her floor.

I mean I can, I can hug my husband, and he can grab me all he wants. It doesn't hurt anymore.

Depiction:
Sanchez brushing her hair in front of the mirror and her husband comes and hugs her from behind

DEE SANCHEZ: Everything that I've ever done, it's -- it's back again.

Depiction:
Sanchez and family taking a walk.

SHELLY DUVALL (V/O) Yes, Dee Sanchez is a happy woman today, enjoying life again. She's regained her health and her spirits, and her relationship with her family is better than ever.

Depiction:
Daughter jumping into Sanchez's arms and Sanchez catching her.

What does she think of Eez-Away Relief?

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DEE SANCHEZ:

Wow! Here I am and I work, and I'm, I'm me again. I'm Dee. And that's the best thing I can say, I'm me again.

DAVID FLYNN:

This stuff must be very powerful.

SHELLY DUVALL:

Well, David, it certainly worked for Dee Sanchez. Her story is so inspiring, but we have seen this same story again and again with other people. People who had lost mobility, stopped being active because of the pain. They were able to get up and enjoy life with the help of Eez-Away.

Depiction:

Dr. Jackson examining Minnie Benjamin's wrist.

SHELLY DUVALL (V/O):

Another physician taking part in the Eez-Away test program was Dr. Thomas Jackson of Vero Beach, Florida. He's a cardiologist with a special concern for the effects of arthritis on a person's general health.

DR. THOMAS JACKSON:
Cardiologist

The arthritis is dangerous when -- when people tend to become sedentary. When they sit down and they tend to not move, and they tend not to walk, and not to exercise, they are limiting the-- their longevity, really. They don't do quite as well as people that are out there, active, and they're doing things. People who are older, many times feel, uh, young as long as they can do the things that, uh, younger people do.

I've had an opportunity to -- to give some samples, to see some people get responses, and to notice smiles on their faces and flexible joints. That's been good. That's been very good.

Depiction:

Dr. Jackson, in examining room, removing splint from Minnie Benjamin's wrist.

DR. JACKSON (V/O):

Minnie Benjamin has juvenile rheumatoid arthritis. Now juvenile rheumatoid arthritis begins in the teenage years. It can begin in childhood. She's had it for a long time. When I saw Minnie, she had a problem with her ankle and with her wrist and was unable to walk properly, limping, and had a splint on her hand. I gave her Eez-Away because I had used it in a few other instances. I mentioned to her to use it according to the directions.

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DR. JACKSON: She came back the next morning, the splint was off and she wasn't limping.
So I was really impressed with that overnight response. You know, it's rather fabulous, rather amazing to say the least.

MINNIE BENJAMIN: You see I'm not wearing my brace And I hope I don't have to put it on anymore because the Eez-Away has helped me get rid of it.
Medical technician

DAVID FLYNN: Do you have arthritis? We'll tell you how to find out when 30 Minutes continues.
Depiction:
Two anchors sitting at desk, camera and cameraman off to the left

DR. THOMAS JACKSON: I'm not going to put my reputation on the line for -- for something that's -- that I am not convinced will be of a benefit of my patients. I'm certainly not going to recommend something that's going to harm them. It works!
Cardiologist

PHIL SABATO: With this product, Eez-Away, I'm back to normal. I can walk again, I could bend down without being in pain, I could climb up the ladder. I don't have the pain that I did in the past.
Science Teacher

SCOTT WALTER: I really used Eez-Away quite a bit -- for two hours straight, and in that two hours time, I was able to bring my finger down and touch my hand. So I was, I was impressed by that. And I stayed with the product and now I've got the mobility where I can close my hand, I'm able to use my hand, close my fist, I'm able to write, and I'm free to work with my hands again.
Business owner

SANDY DUVALL: After using Eez-Away, I don't have any problems. I have no pain, and I don't think about it any more. It's really, uh, it's like a new lease on life.
Communications Specialist

TOM BURKE: Before the product, I could only open and close very slowly. Ever since I've been using it now I have full use of the hand [opening and closing hand]. I was out playing football with the kids yesterday, because now I can catch and throw the football. And as long as I use it, I got no fear.
Business Executive

COMMERCIAL INSERT
Graphic:
ATTENTION!
ARTHRITIS SUFFERERS

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Complaint

VOICE-OVER:

Attention arthritis sufferers, the program you are now watching features a powerful Arthritis Treatment called Eez-Away Relief.

Graphic:

(Scrolling down the screen) The program that you are now watching features a powerful Arthritis Treatment called EEZ-AWAY RELIEF.

This breakthrough pain reliever is so new, so revolutionary, that it's not yet available in stores.

However, if you or someone you love suffer from chronic aches, pains or stiffness, we have wonderful news.

Depiction:

Dr. Panicali rubbing Eez-Away on a woman's hand in an examining room

Superimposed text on close up of woman's hand:

Aches

Pains

Stiffness

For a limited time only the makers of Eez-Away are offering this amazing new pain remedy directly to you through this introductory TV offer.

Graphic:

Arm bent at 90 degree angle, with the elbow enhanced in red. A bottle of Eez-Away comes from the right of the screen and then tips toward the reddened elbow, the top flips up, the red disappears, the top closes and the bottle comes to stand at the right hand side of the screen.

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Depictions:

Screen, divided into four quadrants, with pictures of people bicycling, fishing, playing tennis, and swimming

Superimposed text:

Biking,

Complaint

119 F.T.C.

Fishing

Tennis

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Depiction:

Man in locker room applying Eez-Away to his knee

Superimposed text:

Easy To Use

And doctors recommend it as safe, even on sensitive skin.

Depiction:

Dr. Panicali applying Eez-Away to patient's shoulder in examining room.

Superimposed text:

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No Strong Smell

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Complaint

We're so confident that Eez-Away Relief will work for you, that we're offering a complete money back guarantee.

Superimposed text:

30 DAY GUARANTEE

1-800-938-2828

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So if you have arthritis that won't go away, order Eez-Away now. It's guaranteed, so you have nothing to lose but the pain. Call now.

Graphic:

Call

1-800-938-2828

\$39.95 + \$5.95 Shipping & Handling

EEZ-AWAY

P.O. Box A

Lincoln, KS 67455

ALLOW 4 TO 6 WEEKS FOR DELIVERY

OLSEN LABS, INC., 115 WEST ELM ST, LINCOLN, KS 67455

Have your credit card or checkbook ready and call 1-800-938-2828. A \$57.00 value for just \$39.95, plus \$5.95 shipping and handling. Call 1-800-938-2828 or send your check or money order to EEZ-AWAY, P.O. Box A, Lincoln, KS 67455, or call 1-800-938-2828.

END COMMERCIAL INSERT
UNIDENTIFIED WOMAN #2:

It changed my life in the sense where I'm independent again. Where I can do for myself. I can tie my shoe. I can put my own stockings on, I don't need help to do that anymore. I can button my own clothes and comb my own hair, and it's making me feel like a woman again.

JOHN BOISE:

I've been trying a lot of different medications over the past two or three years trying to eliminate arthritis in my joints, and since I used Eez-Away, it just worked and it's like a miracle.

MARIE GIORDANO:

I wish everybody could feel the same relief that I felt three weeks ago when I first applied it. It's a wonderful feeling knowing that there is something out there that can work and it does work, it's positive thinking. And I would recommend it to everyone.

Depiction:

Complaint

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Two anchors sitting at news desk with camera and cameraman to left of screen.

Superimposed text:

30 Minutes

DAVID FLYNN:

Needless to say, we are impressed with this new product, so we spoke with the person who developed this revolutionary new pain remedy.

PETER OLSEN:

Developer of Eez-Away

When we first developed Eez-Away, we knew it would relieve a lot of pain, and it has. Even doctors are amazed. As a matter of fact, we're so confident that we actually have a guarantee. Use the product for 30 days. If you're not satisfied, we'll return your money.

SHELLY DUVALL:

Do you have arthritis? Here are the warning signs.

SHELLY DUVALL (V/O):

Swelling in one or more joints.

Early morning stiffness.

Recurring pain or tenderness in any one joint.

Inability to move a joint normally.

Obvious redness and warmth in a joint.

Unexpected weight loss, fever or weakness combined with joint pain.

Graphic:

Arthritis Warning-Signs

Swelling

Stiffness

Pain or Tenderness

Inability to Move Normally

Redness and Warmth

Weight Loss or Fever

Weakness with Pain

DAVID FLYNN:

If you have symptoms, you should begin to treat them immediately. Arthritis can be controlled, but the sooner you start, the better.

DR. THOMAS JACKSON:

Cardiologist

This medication is safe, topical, and will be able to get around many of the problems that we have not been able to get around before.

Uh, it's going to make an impact, I believe, in the way we treat arthritis in the future.

JOHN BOISE:

Sometimes my hands got so bad that literally I would have to take some time off from work because I couldn't stand the pain in my knuckles. Uh, now it's no problem. I have no pain whatsoever, my hands are fine, and I, I can go back to work and enjoy it and make a living.

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Complaint

SANDY DUVALL:

I followed the directions. It was real easy to put on, the smell didn't knock me out. And I used it three or four times the first day. And by the third time I put it on, I had absolutely no pain in my hand at all.

DR. PANICALI:
Doctor of Chiropractic

Eez-Away Relief is a perfect example that you should never give up. Patients that suffer from daily pain, there's something out there that can help you. I thank God that this is something that can bring these patients relief.

DEE SANCHEZ:

Who knows what my life would have been like? I could still be walking around in such pain that's totally unnecessary. So, anybody that is watching this, try it. It's worth it.

COMMERCIAL INSERT

Graphic:

ATTENTION!**ARTHRITIS SUFFERERS**

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Complaint

119 F.T.C.

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Close up of the front cover of booklet. On the cover is a stop sign with the words "THE

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Complaint

PAIN STOPS HERE." Some of the contents of the book are shown, including drawings of exercises, someone receiving a massage, and three progressively smaller profiles of the human body.

This \$11.95 value is yours absolutely free. Plus, if you call now, we'll also include another 8-oz. bottle of Eez-Away. Perfect for your purse or briefcase. It's a \$24.95 value free, just for trying Eez-Away.

The entire Eez-Away package, including 2 8-oz. bottles plus the natural care workbook, would cost over \$60.00 if sold separately. But now, through this special TV offer, you pay only \$39.95.

We're so confident that Eez-Away Relief will work for you, that we're offering a complete money back guarantee.

Superimposed text:

30 DAY GUARANTEE

1-800-938-2828

If you're not convinced that Eez-Away is the most effective pain remedy that you've ever tried, return it for a full refund.

So if you have arthritis that won't go away, order Eez-Away now. It's guaranteed, so you have nothing to lose but the pain. Call now.

Graphic:

Call

1-800-938-2828

\$39.95 + \$5.95 Shipping & Handling

EEZ-AWAY

P.O. Box A

Lincoln, KS 67455

ALLOW 4 TO 6 WEEKS FOR DELIVERY

OLSEN LABS, INC., 115 WEST ELM ST. LINCOLN, KS 67455

Have your credit card or checkbook ready and call 1-800-938-2828. A \$57.00 value for just \$39.95, plus \$5.95 shipping and handling. Call 1-800-938-2828 or send your check or money order to EEZ-AWAY, P.O. Box A, Lincoln, KS 67455, or call 1-800-938-2828.

END COMMERCIAL INSERT

DAVID FLYNN:

I hope you've enjoyed this 30 Minutes. And I hope we've shown you that you don't need to sit still for arthritis pain any longer.

Complaint

119 F.T.C.

Superimposed text at bottom of screen:
1-800-938-2828

SHELLY DUVALL:

Yes. Now you can fight back. It's your life, don't feel old before your time. If you have chronic pain, find a remedy that works for you and begin treatment right away. You'll be glad you did.

DAVID FLYNN:

Good luck, and we'll see you next time on "30 Minutes."

SHELLY DUVALL:

Good bye.

Depiction:

The two anchors sitting at the desk with a camera and cameraman in the left part of the screen.

Superimposed text:

Network Marketing International, Inc. (c)
1991.

Graphic:

This program has been a paid for advertisement by Olsen Labs Inc.

All rights reserved.

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Complaint

EXHIBIT B

EEZ-AWAY THE PAIN

VOICE-OVER: This program is a paid for advertisement by Olsen Labs, Incorporated.

Graphic:
This program is a paid for advertisement by Olsen Labs, Inc.

EILEEN FULTON: Hi there, I'm Eileen Fulton. Oh, yes, I play that character on a daytime soap opera. Now if you or someone you know is suffering from arthritis, joint or muscle pain, I've got the best news for you, it's called Eez-Away Relief, and believe me, it works and it works fast, and I know because I use it and I just love it. Now please stay tuned because we're gonna tell you more.

MARIE GIORDANO: It's a good feeling about yourself. You're able to smile again, be happy again.

UNIDENTIFIED WOMAN #1: I'm very excited, yes, I'm very excited.

UNIDENTIFIED WOMAN #2: They wanna borrow it, but no one's getting it.

SCOTT WALTER: When I tried Eez-Away, I couldn't believe it.

SANDY DUVALL: A product that says it'll work that does work.

TOM BURKE: And it works every time.

DEE SANCHEZ: Wow! That's all, that's all I can do. Wow.

VOICE-OVER: This is the good life. For most people it means free time, friendship, happiness and good health. We all want to stay active no matter what our age, but tragically there is one common ailment that deprives many of us of this good life -- Arthritis.

Depictions:
People playing tennis, shuffleboard, horseshoes, fishing, swimming, and biking.

VOICE-OVER: Stay tuned, for in the next few moments, you'll learn about a fabulous new arthritis pain remedy called Eez-Away Relief.

Graphic:
EEZ-AWAY THE PAIN
We welcome you now to "EEZ-AWAY THE PAIN," with your host, one of daytime TV's most popular stars, Eileen Fulton.

EILEEN FULTON: Oh, for over 30 years I've been playing this real fun character on a daytime soap opera. I've seen a lot of changes since then. Television's come a long way, well so have I. Look, I'm not a teenager anymore, thank

Complaint

119 F.T.C.

goodness for that. But I have to admit, I have noticed some little aches and pains. My doctor said it's arthritis.

I'm sorry to say that there's no cure for arthritis just yet, but we can control the symptoms now, can't we. Many of us would just do anything to get rid of some of these aches and pains. Of course there's some of us who have serious arthritis, and that can be crippling.

I want you to listen to some of these stories.

JULIA GABOR:
Arthritis Sufferer

I had arthritis so bad. I was in bed for 6 months, no exercise. I had to get up, I was in a wheelchair.

SAMUEL GREEN:
Arthritis Sufferer

I had arthritis in these hands so bad it felt, it felt like somebody had a knife and then he'd rammed it in there [indicating his hand], then pulled it.

JANNIE BUHR:
Arthritis Sufferer

It's very hard on me now with visiting the grandchildren. I do not stay very long with them and I've always loved them and planned to stay with them before. But I can't, I just can't do it anymore.

MARIE GIORDANO:
Arthritis Sufferer

Well, I had my back, lower back pain for about three years, and it was just really so bad I couldn't walk. I had to take time off from work, and I was laid up for really two weeks at home on my back flat. I tried many things, and nothing really worked.

EILEEN FULTON:

Well, I certainly wasn't about to let that happen to me. I'm having too much fun to let a little arthritis slow me down. I have spent years searching for something that could relieve the pain so I could continue doing all the things I love to do. Finally, I found the answer, and it's called Eez-Away Relief. And it is amazing because it really does work, and it works fast. That's why I'm so excited to be telling you about this wonderful product. So stay tuned, because later, we'll tell you how you can get some of this amazing pain reliever for your very own self.

But first, let's hear from chiropractor Dr. John Panicali. He's been dispensing Eez-Away Relief to his patients for several years. We asked him why arthritis is so difficult to treat.
Depiction:

Dr. Panicali with patient in examining room.

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Complaint

DR. JOHN PANICALI:
Doctor of Chiropractic

I find that the worst thing about arthritis is that half the people give up. They feel that once they have it there's nothing that can be done, and that's not necessarily true. We find that they give up on life. They become depressed, their exercise and their activity is limited. A lot of older patients start to gain weight because they are less active. So, it's a disease that affects the body, but I find that in more cases it affects the mind.

Depiction:

Dr. Panicali applying Eez-Away to a patient's shoulder and instructing patient on how to use the product.

EILEEN FULTON:

Dr. Panicali has had great results with Eez-Away Relief, but let him tell you himself.

DR. PANICALI:

Patients that we've been working with for many months now have reached a certain point of relief, but at that point, we've reached a stone wall. So we tried this product on those patients. And patients are coming back and telling me, "Doc, I don't know what that stuff was, but I'm getting further motion, I'm doing things now I never did before, for the first time I'm climbing stairs without pain, I can actually look over my shoulder when I back out of my driveway." The product is natural. There's no side effects. There's no way at all this product can harm you.

The best thing I find with Eez-Away Relief is that patients can return to their normal lifestyle. Patients have found that they can go on, they can do activities around the house, they can go back to their normal lifestyle, perform activities that they thought were long gone.

Depiction:

Dr. Panicali applying Eez-Away to a patient's shoulder and instructing patient on how to use product.

EILEEN FULTON:

Dr. Panicali introduced many of his patients to Eez-Away Relief. We asked a few of them for their reviews:

PAT MURANO:
Businessman

I'm the type of guy, just like you are, I don't believe everything somebody tells me unless I try it for myself. I've tried the product, Eez-Away Relief, I know it works.

Complaint

119 F.T.C.

JOHN BOISE:
Plant Manager

I tried it, every couple of hours for about three or four days, and the pain just disappeared completely. And so now I've been using it like once a week, and the pain just stays away; and I can start moving my hands a lot better than I ever used to be able to move them.

PATRICIA ROBINSON:
Travel Agent

I couldn't put up my hair. I couldn't lift my arms, I couldn't do anything with my right arm. And I started using the Eez-Away and I can now lift it.

MARIE GIORDANO:
Teacher's Aide

When I first applied it, I had very little hope that anything was going to help me. I have arthritis, and I figured that was it. But it really made me comfortable after the pain was gone. I felt "aahhh."

EILEEN FULTON:

I want you to know these folks have not been paid to endorse this product. They're real people who've had real results. Eez-Away is giving a lot of people hope. Even people who've tried it all. Before I tried Eez-Away, I wanted to know if it was completely safe. I can assure you that Eez-Away meets with all FDA requirements and it contains only ingredients that are recognized by the FDA as both safe and effective for pain relief. Now, right now we're going to take a moment to tell you once more how you can order Eez-Away for your very own, so you stay tuned.

DEE SANCHEZ:

This just worked. I put it on and I don't hurt - it's everything I could have ever have asked for, it's given me back my life.

Superimposed text:

EEZ-AWAY gets results.

COMMERCIAL INSERT

Graphic:

Attention! Arthritis Sufferers.

The program that you are now watching features a powerful arthritis treatment called EEZ-AWAY RELIEF.

VOICE-OVER:

Attention arthritis sufferers, the program you are now watching features a powerful arthritis remedy called Eez-Away Relief.

This breakthrough pain reliever is so new, so revolutionary, that it's not yet available in stores.

However, if you or someone you love suffers from chronic aches, pain or stiffness we have wonderful news.

Depiction:

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Complaint

Dr. Panicali rubbing Eez-Away on a woman's hand in the examining room.

Superimposed text on close up of woman's hand:

Aches

Pains

Stiffness

For a limited time only, the makers of Eez-Away are offering this new pain remedy directly to you through this special introductory TV offer.

At last, you won't have to live with that nagging pain in your hands, back, arms, elbows, knees and other joints.

Graphic:

Arm bent at 90 degree angle, with the elbow enhanced in red. A bottle of Eez-Away comes from the right of the screen and tips toward the reddened elbow, the top flips up, the red disappears, the top closes and the bottle comes to stand at the right hand side of the screen.

Superimposed text:

Hands

Back

Elbows

Knees

Other Joints

With Eez-Away, you'll regain the vitality you once had to enjoy life again with mobility and freedom. Simple pleasures like biking, fishing, tennis, and fun with your family will all return once the pain is gone.

Depiction:

Screen, divided into four quadrants, with pictures of people bicycling, fishing, playing tennis, and swimming

Superimposed text:

Biking

Fishing

Tennis

Just apply Eez-Away to the painful area and soon you'll feel the power, the relief.

Depiction:

Man in locker room applying Eez-Away.

Superimposed text:

Easy to use.

Complaint

119 F.T.C.

Eez-Away is patented. It has no messy residue or strong medicine smell, and it's not taken internally so it won't upset your stomach like some pain relievers.

Depiction:

Dr. Panicali applying Eez-Away to woman's shoulder in examining room.

Superimposed text:

No mess

No strong smell

And doctors recommend it as safe even for sensitive skin.

Depiction:

Dr. Panicali giving bottle of Eez-Away to patient.

With your order you get two 8 oz. bottles of Eez-Away Relief. That's a full 60 day supply.

Plus, when you call we'll also send you this valuable guide to natural arthritis treatment: "The Pain Stops Here." It shows you how exercise, diet, posture and more can fight the affects of arthritis and put you in control again. It's an \$11.95 value, but it can be yours free just for trying Eez-Away.

And once you try Eez-Away, we know you'll want to spread the word. So with your order we'll also send you this additional 8 oz. bottle of Eez-Away to share with a friend or loved one. This "pass-along" bottle makes a great gift and it's yours absolutely free if you call now.

When you order you'll get two 8 oz. bottles of Eez-Away plus the free "pass-along" bottle for a total of three bottles of Eez-Away Relief. That's a 90 day supply. Plus, you also get the arthritis careworkbook, "The Pain Stops Here," absolutely free.

The entire package including all this would cost over 80 dollars if sold separately, but now through this special TV offer, it can be yours for \$29.95. That's a savings of over 50 dollars. Now save money while you stop the pain just pennies a day for Eez-Away Relief.

We're so confident that Eez-Away will work for you that we offer a complete money back guarantee.

Superimposed text:

161

Complaint

30 Day Guarantee.

If you're not convinced that Eez-Away is the most effective pain remedy you've ever tried, return it for a full refund and keep the arthritis workbook as our gift to you.

Superimposed text (appears above Guarantee, in smaller type): Individual Results May Vary
So if you have arthritis that won't go away, order Eez-Away now. It's guaranteed, so you have nothing to lose but the pain. Call now.

Superimposed text:

The program you are watching is a paid advertisement for EEZ-AWAY RELIEF.

Graphic:

EEZ-AWAY RELIEF \$29.95 *plus \$5.95 shipping,*

10847 Sherman Way *CA resident add sales tax*

Sun Valley, CA 91352

1-800-674-5700

allow 1-3 weeks delivery

30 day money back guarantee

Stop the pain. Enjoy life again with Eez-Away. With this special offer, you get two bottles of Eez-Away and a natural care workbook packed with information and exercises to keep you limber and build strength. Call now and get a third bottle free to share. The entire 80 dollar Eez-Away package can be yours for just \$29.95 plus shipping. There's no risk. You have nothing to lose but the pain. Use your credit card and call 1-800-647-5700. Or mail check or money order to EEZ-AWAY.

END COMMERCIAL INSERT

Superimposed text:

(displayed during all of the following testimonials)

1-800-674-5700

JANNIE BUHR:

Now, I can move the knee without any pain to it. I'm always surprised that I can use them and there's no pain, I, you know, I sit down, I lay down. I don't have the pain that I always had.

SCOTT WALTER:

I stayed with the product and now I've got the mobility where I can close my hand, I'm able to use my hand, close my fist, able to write and free to work with my hands again.

SAMUEL GREEN:

But now that I use this Eez-Away, see, you can see for yourself [moving hands].

Complaint

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JULIA GABOR:

Well I just used it on my shoulder and I think I knew that that was helping my shoulder within, within a week.

UNIDENTIFIED WOMAN 1:

Since I've been using Eez-Away, I have a better grip and I can do my laundry better. I can do my housework much better and I can also comb my hair much better because I couldn't raise my hand or hold a grip on the comb to comb my hair.

UNIDENTIFIED WOMAN #2:

[Shuffling cards] And at one time I wasn't able to shuffle a deck of cards, as I'm doing now, since I've used Eez-Away I'm able to shuffle the cards on my own without having someone do it for me, and it's the greatest thing to know that you can do it on your own.

VOICE-OVER:

We welcome you back to "EEZ-AWAY THE PAIN," with you host, one of daytime TV's most popular stars, Eileen Fulton.

Graphic:

Eez-Away the Pain

With

Eileen Fulton

EILEEN FULTON:

When you're in pain, sometimes the slightest little movement can be so difficult. And if you're like I am, you'll search everywhere trying to find the right medication. And there's so many things on the market today, so what makes Eez-Away so different? Well, for me it works and from the testimony of all these other people, you see I'm not by myself. Now I want you to meet a woman who has really suffered terribly from arthritis pain until she found Eez-Away. This is the true story of Dee Sanchez.

Depiction:

Sanchez family having a picnic.

Dee Sanchez lives in Lindhurst, New Jersey, she's married and the mother of two girls. From these pictures, you wouldn't know that just a few short months ago she was suffering from severe chronic arthritis.

DEE SANCHEZ:

I just plain hurt. Sometimes I just wanted to sit down and cry because it was so frustrating, because I couldn't, I couldn't do all the things that were me. They're simple things, to a lot of people, it wouldn't matter. Cleaning my house, taking the curtains down, washing

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Complaint

them, hanging them back up. I couldn't do that.

EILEEN FULTON: Dee was in excruciating pain. And it wasn't only she who was suffering. The deterioration of Dee's physical and mental state was taking it's toll on her family as well.

FRANK SANCHEZ: We have a, a family that's close and yet we all want to do things together and, no fault to Dee on this thing, if I were in pain constantly, uh, your nerves are on edge and things that would not irritate someone normally the slightest little thing can, can set off an argument when none need to have come -- you tend to overreact when you're hurting.

VANESSA SANCHEZ: She'd be like complaining, she kept dropping stuff, and like we'd ask to help, and she'd say "No I can get it!" And she'd just tell us to go away.

FRANK SANCHEZ: You react in two ways, one with anger at yourself because you can't do anything about it, and probably frustration with her, combined with her irritability, it only made matters worse.

EILEEN FULTON: Dee was desperate, her life was falling apart. She tried everything.
Superimposed text:
The program you are watching is a paid advertisement for Eez-Away Relief.

DEE SANCHEZ: I had tried just about every type of rub, every type of cream that came on the market. I'd go buy it and give it a try. I'd tried a few, uh, I had an aunt who even made up some home remedies that were supposed to be from the old country that would help my arthritis and so forth. And nothing was doing any good.
Depiction:
Dee pouring Eez-Away onto a cotton ball and applying to her shoulders.

EILEEN FULTON: Then one day Dee's luck changed. She was introduced to new Eez-Away Relief. The results were immediate and dramatic.

DEE SANCHEZ: I think the first thing I noticed was just that I woke up in the morning just to, you know you automatically stretch, and I could stretch. I'm cooking again, my house is spotless again, I can clean, I can fix my little one's hair every morning before she goes to school, sew, and scrub my floors the old fashioned way even

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119 F.T.C.

though the kids laugh at me for doing it, I can I mean I can hug my husband and he can grab me all he wants - it doesn't hurt anymore, everything that I've ever done, it's back again.

Depictions:

Dee sewing, mopping, doing her hair and her daughter's and hugging her husband.

EILEEN FULTON:

Yes, Dee Sanchez is a happy woman today. Enjoying life again. She's regained her health, and her spirit and her relationship with her family is better than ever. What does she think of Eez-Away Relief?

DEE SANCHEZ:

Wow! Here I am and I work and I'm, I'm me again, I'm Dee and that's the best thing I can say, I'm me again.

EILEEN FULTON:

[Playing piano] Do you know, when my arthritis flares up I can't even play this simplest little piece, and it breaks my heart because I really love the piano. But now that I have my Eez-Away, there's no stopping me, no sir. If you have pain that limits your activity, don't you wait another minute--Eez-Away really does work. But don't just take it from me, here's another doctor who's become an Eez-Away believer.

Depiction:

Dr. Jackson, in an examining room, examining Minnie Benjamin's wrist.

This is Doctor Thomas Jackson of Vero Beach, Florida. He's a cardiologist with special concern for the effects of arthritis on a person's general health.

DR. JACKSON:
Cardiologist

Arthritis is dangerous when, when people tend to become sedentary, when they sit down and they tend to not move, they tend not to walk, not to exercise. They are limiting the, their longevity, really, they don't do quite as well as people that are out there, active, and they're doing things. People who are older, many times, feel, uh, young as long as they can do the things that, uh, younger people do. I've had an opportunity to, to give some samples, to see some people get responses and to notice smiles on their faces and flexible joints. That's been good, that's been very good.

Depiction:

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Complaint

Doctor Jackson, in examining room, removing wrist splint from Minnie Benjamin.

Minnie Benjamin has juvenile rheumatoid arthritis. Now juvenile rheumatoid arthritis begins in the teenage years. It can begin in childhood. She's had it for a long time. When I saw Minnie, she had a problem with her ankle and with her wrist and was unable to walk properly, limping, and had a splint on her hand. I gave her Eez-Away because I had used it in a few other instances. I mentioned to her to use it according to the directions. She came back the next morning, the splint was off and she wasn't limping.

So I was really impressed with that overnight response. You know, it's rather fabulous, rather amazing to say the least.

MINNIE BENJAMIN:
Medical Technician

You see I'm not wearing my brace. And I hope I don't have to put it on anymore because the Eez-Away has helped me get rid of it.

PHIL SABATO:
Science Teacher

With this product, Eez-Away, I'm back to normal. I can walk again, I could bend down without being in pain, I could climb up the ladder. I don't have the pain that I did in the past.

SCOTT WALTER:
Business Owner

I really used Eez-Away quite a bit for two hours straight, and in that two hours time I was able to bring my finger down and touch my hand. So I was, I was impressed by that.

JULIA GABOR:
Arthritis Sufferer

I'm very satisfied with it and I intend to use it until even, until I forget that I even have that grab pain every now and then.

SANDY DUVALL:
Communications Specialist

After using Eez-Away, I don't have any problems. I have no pain, and I don't think about it anymore. It's really, uh, it's like a new lease on life.

TOM BURKE:
Business Executive

Before the product I could only open and close very slowly. But since I've been using it, I have full use of the hands. [Opens and closes his hands]. I was out playing football with the kids yesterday, because now I can catch and throw the football and as long as I use it I got my freedom.

DR. JACKSON:

I'm not going to put my reputation on the line or for something that I am not convinced will be of a benefit to my patients. And I'm certainly not going to recommend something that's gonna harm them. It works. It's simple.

Complaint

119 F.T.C.

EILEEN FULTON:

It is effective. The proof is in the pudding. All I say is try the pudding, you know, taste it for yourself, try it.

Eez-Away is so easy to use, I'll show you how in just a minute. But first, here's another chance to order Eez-Away through our introductory TV offer.

COMMERCIAL INSERT

Graphic:

Attention! Arthritis Sufferers.

The program that you are now watching features a powerful arthritis treatment called EEZ-AWAY RELIEF.

VOICE-OVER:

Attention arthritis sufferers, the program you are now watching features a powerful arthritis remedy called Eez-Away Relief.

This breakthrough pain reliever is so new, so revolutionary, that it's not yet available in stores.

However, if you or someone you love suffers from chronic aches, pain or stiffness we have wonderful news.

Depiction:

Dr. Panicali rubbing Eez-Away on a woman's hand in the examining room.

Superimposed text on close up of woman's hand:

Aches

Pains

Stiffness

For a limited time only, the makers of Eez-Away are offering this new pain remedy directly to you through this special introductory TV offer.

At last, you won't have to live with that nagging pain in your hands, back, arms, elbows, knees and other joints.

Graphic:

Arm bent at 90 degree angle, with the elbow enhanced in red. A bottle of Eez-Away comes from the right of the screen and tips toward the reddened elbow, the top flips up, the red disappears, the top closes and the bottle comes to stand at the right hand side of the screen.

Superimposed text:

Hands

Back

Elbows

Knees

161

Complaint

Other Joints

With Eez-Away, you'll regain the vitality you once had to enjoy life again with mobility and freedom. Simple pleasures like biking, fishing, tennis, and fun with your family will all return once the pain is gone.

Depiction:

Screen, divided into four quadrants, with pictures of people bicycling, fishing, playing tennis, and swimming

Superimposed text:

Biking

Fishing

Tennis

Just apply Eez-Away to the painful area and soon you'll feel the power, the relief.

Depiction:

Man in locker room applying Eez-Away.

Superimposed text:

Easy to use.

Eez-Away is patented. It has no messy residue or strong medicine smell, and it's not taken internally so it won't upset your stomach like some pain relievers.

Depiction:

Dr. Panicali applying Eez-Away to woman's shoulder in examining room.

Superimposed text:

No mess

No strong smell

And doctors recommend it as safe even for sensitive skin.

Depiction:

Dr. Panicali giving bottle of Eez-Away to patient.

With your order you get two 8 oz. bottles of Eez-Away Relief. That's a full 60 day supply. Plus, when you call we'll also send you this valuable guide to natural arthritis treatment: "The Pain Stops Here." It shows you how exercise, diet, posture and more can fight the affects of arthritis and put you in control again. It's an \$11.95 value, but it can be yours free just for trying Eez-Away.

And once you try Eez-Away, we know you'll want to spread the word. So with your order we'll also send you this additional 8 oz. bottle of Eez-Away to share with a friend or loved

Complaint

119 F.T.C.

one. This "pass-along" bottle makes a great gift and it's yours absolutely free if you call now.

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We're so confident that Eez-Away will work for you that we offer a complete money back guarantee.

Superimposed text: 30 Day Guarantee.

If you're not convinced that Eez-Away is the most effective pain remedy you've ever tried, return it for a full refund and keep the arthritis workbook as our gift to you.

Superimposed text (appears above Guarantee, in smaller type): Individual Results May Vary
So if you have arthritis that won't go away, order Eez-Away now. It's guaranteed, so you have nothing to lose but the pain. Call now.

Superimposed text:

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Graphic:

EEZ-AWAY RELIEF \$29.95 *plus \$5.95 shipping*

10847 Sherman Way *CA residents add sales tax*

Sun Valley, CA 91352

1-800-674-5700

*allow 1-3 weeks delivery
30 day money back guarantee*

Stop the pain. Enjoy life again with Eez-Away. With this special offer, you get two bottles of Eez-Away and a natural care workbook packed with information and exercises to keep you limber and build strength. Call now and get a third bottle free to share. The entire 80 dollar Eez-Away package can be yours for just \$29.95 plus shipping. There's no risk. You have nothing to lose but the pain. Use your credit card and

161

Complaint

call 1-800-647-5700. Or mail check or money order to EEZ-AWAY.

END COMMERCIAL INSERT

Superimposed text:
(displayed during all of the following testimonials)
1-800-674-5700

UNIDENTIFIED WOMAN #2: It's changed my life in the sense where I'm independent again, where I can do for myself, I can tie my shoe, I can put my own stockings on, I don't need help to do that anymore. I can button my own clothes and comb my own hair and it's making me feel like a woman again.

JOHN BOISE: I've been trying a lot of different medications over the past two or three years trying to eliminate arthritis in my joints, and since I used Eez-Away, it just worked and it's like a miracle.

JULIA GABOR: I'm very grateful that somebody told me about it. It's nothing to keep secret.

SCOTT WALTER: Listen, I gotta tell you right now, you'd better line up and you'd better start signing up, because this stuff works.

MARIE GIORDANO: I wish everybody could feel the same relief that I felt 3 weeks ago when I first applied it. It's a wonderful feeling knowing that there is something out there that can work and it does work. It's positive thinking, and I would recommend it to everyone.

VOICE-OVER: We welcome you back to "EEZ-AWAY THE PAIN," with your host, one of daytime TV's most popular stars, Eileen Fulton.

Graphic:

Eez-Away the Pain

With

Eileen Fulton

EILEEN FULTON: I'm getting ready to go out, and I'm going to dance all night long with the help of Eez-Away. Not so long ago, I couldn't do that, but now I'm just going to apply Eez-Away. It works so fast and it lasts so long, now I'm going to have a wonderful time. Now let's meet the man who developed this revolutionary pain remedy, Mr. Peter Olsen.

PETER OLSEN:
Developer of Eez-Away
When we first developed Eez-Away, we knew it would relieve a lot of pain, and it has. Even doctors are amazed. As a matter of fact,

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DR. JACKSON:
Cardiologist

JOHN BOISE:

SANDY DUVALL:

DR. PANICALI:
Doctor of Chiropractic

DEE SANCHEZ:

EILEEN FULTON:

COMMERCIAL INSERT

VOICE-OVER:

we're so confident that we actually have a guarantee. Use the product for 30 days. If you're not satisfied, we'll return your money. This medication is safe, topical, and will be able to get around many of the problems that we have not been able to get around before. It's going to make an impact, I believe, in the way we treat arthritis in the future.

Sometimes my hands got so bad that literally I would have to take some time off from work because I couldn't stand the pain in my knuckles. Now there's no problem, I have no pain whatsoever, my hands are fine, and I can go back to work and enjoy it and make a living.

I followed the directions. It was really easy to put on, the smell didn't knock me out. And I used it three or four times the first day. And by the third time I put it on, I had absolutely no pain in my hand at all.

Eez-Away Relief is a perfect example that you should never give up. Patients that suffer from daily pain, there's something out there that can help you. I thank God that this is something that can bring these patients relief. Who knows what my life would have been like I could still be walking around in such pain that's totally unnecessary. So anybody that is watching this, try it, it's worth it.

With this money back guarantee, what are you waiting for? If you have arthritis you simply must try Eez-Away. By not treating your arthritis, you actually may be making it worse. Here again is the information on how to order yours.

Graphic:
Attention! Arthritis Sufferers.
The program that you are now watching features a powerful arthritis treatment called EEZ-AWAY RELIEF.
Attention arthritis sufferers, the program you are now watching features a powerful arthritis remedy called Eez-Away Relief.
This breakthrough pain reliever is so new, so revolutionary, that it's not yet available in stores.

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However, if you or someone you love suffers from chronic aches, pain or stiffness we have wonderful news.

Depiction:

Dr. Panicali rubbing Eez-Away on a woman's hand in the examining room.

Superimposed text on close up of woman's hand:

Aches

Pains

Stiffness

For a limited time only, the makers of Eez-Away are offering this new pain remedy directly to you through this special introductory TV offer.

At last, you won't have to live with that nagging pain in your hands, back, arms, elbows, knees and other joints.

Graphic:

Arm bent at 90 degree angle, with the elbow enhanced in red. A bottle of Eez-Away comes from the right of the screen and tips toward the reddened elbow, the top flips up, the red disappears, the top closes and the bottle comes to stand at the right hand side of the screen.

Superimposed text:

Hands

Back

Elbows

Knees

Other Joints

With Eez-Away, you'll regain the vitality you once had to enjoy life again with mobility and freedom. Simple pleasures like biking, fishing, tennis, and fun with your family will all return once the pain is gone.

Depiction:

Screen, divided into four quadrants, with pictures of people bicycling, fishing, playing tennis, and swimming

Superimposed text:

Biking

Fishing

Tennis

Just apply Eez-Away to the painful area and soon you'll feel the power, the relief.

Depiction:

Man in locker room applying Eez-Away.

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Superimposed text: Easy to use.

Eez-Away is patented. It has no messy residue or strong medicine smell, and it's not taken internally so it won't upset your stomach like some pain relievers.

Depiction:

Dr. Panicali applying Eez-Away to woman's shoulder in examining room.

Superimposed text:

No mess

No strong smell

And doctors recommend it as safe even for sensitive skin.

Depiction:

Dr. Panicali giving bottle of Eez-Away to patient.

With your order you get two 8 oz. bottles of Eez-Away Relief. That's a full 60 day supply. Plus, when you call we'll also send you this valuable guide to natural arthritis treatment: "The Pain Stops Here." It shows you how exercise, diet, posture and more can fight the affects of arthritis and put you in control again. It's an \$11.95 value, but it can be yours free just for trying Eez-Away.

And once you try Eez-Away, we know you'll want to spread the word. So with your order we'll also send you this additional 8 oz. bottle of Eez-Away to share with a friend or loved one. This "pass-along" bottle makes a great gift and it's yours absolutely free if you call now.

When you order you'll get two 8 oz. bottles of Eez-Away plus the free "pass-along" bottle for a total of three bottles of Eez-Away Relief. That's a 90 day supply. Plus, you also get the arthritis care workbook, "The Pain Stops Here," absolutely free.

The entire package including all this would cost over 80 dollars if sold separately, but now through this special TV offer, it can be yours for \$29.95. That's a savings of over 50 dollars. Now save money while you stop the pain just pennies a day for Eez-Away Relief.

We're so confident that Eez-Away will work for you that we offer a complete money back guarantee.

Superimposed text:

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30 Day Guarantee.

If you're not convinced that Eez-Away is the most effective pain remedy you've ever tried, return it for a full refund and keep the arthritis workbook as our gift to you.

Superimposed text (appears above Guarantee, in smaller type) Individual Results May Vary

So if you have arthritis that won't go away, order Eez-Away now. It's guaranteed, so you have nothing to lose but the pain. Call now.

Superimposed text: The program you are watching is a paid advertisement for EEZ-AWAY RELIEF.

Graphic:

EEZ-AWAY RELIEF \$20.95 *plus \$5.95 shipping,*

10847 Sherman Way *CA residents add sales tax*

Sun Valley, CA 91352

1-800-674-5700

allow 1-3 weeks delivery

30 day money back guarantee

Stop the pain. Enjoy life again with Eez-Away. With this special offer, you get two bottles of Eez-Away and a natural care workbook packed with information and exercises to keep you limber and build strength. Call now and get a third bottle free to share. The entire 80 dollar Eez-Away package can be yours for just \$29.95 plus shipping. There's no risk. You have nothing to lose but the pain. Use your credit card and call 1-800-647-5700. Or mail check or money order to EEZ-AWAY.

END COMMERCIAL INSERT

EILEEN FULTON:

Well, I certainly hope you've enjoyed our show today. I have had a good time doing it for you. And I hope we've helped you realize you don't have to sit still for arthritis pain anymore, not now that we have Eez-Away. So yes, yes, you can fight back, so do. It's your life.

Superimposed text (from here until end):

1-800-647-5700

Don't feel old before your time. If you have pain, try Eez-Away right now. Boy you'll be so glad you did. Well, I have to go, so good luck to you and bye.

Depiction:

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Eileen Fulton getting into limousine and driving away from mansion.

Superimposed text:

Presented by Olsen Labs, Inc.

Produced by New Look Production.

Copyright 1993. Olsen Labs, Inc.

Graphic:

This program is a paid for advertisement by Olsen Labs, Inc.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 Olsen Laboratories, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 11088 Alhambra Street, Leawood, Kansas.

Respondent Richfield Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 11088 Alhambra Street, Leawood, Kansas.

Respondent Peter F. Olsen is an officer and director of Olsen Laboratories, Inc. and Richfield Distributors, Inc. He formulates, directs and controls the acts and practices of Olsen Laboratories, Inc.

and Richfield Distributors, Inc., and his address is the same as that of said corporations.

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

ORDER

I.

It is ordered, That respondents, Olsen Laboratories, Inc. and Richfield Distributors, Inc., corporations, their successors and assigns, and their officers; and Peter F. Olsen, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Eez-Away Relief or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that the product is a new or unique method of treatment for arthritis pain or is a breakthrough in the treatment of arthritis pain.

For purposes of this provision, "substantially similar product" shall mean any external analgesic that contains menthol as the active ingredient.

II.

It is further ordered, That respondents, Olsen Laboratories, Inc. and Richfield Distributors, Inc., corporations, their successors and assigns, and their officers; and Peter F. Olsen, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any drug in or affecting commerce, as "drug" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. The product rapidly eliminates severe pain and physical disabilities suffered by those persons with arthritis or other similar conditions; or

B. The product provides long-term pain relief; or

C. The product increases the range of motion in the affected joints of those persons with arthritis or other similar conditions; or

D. The product is more effective than other products in relieving pain or in treating the symptoms of those persons with arthritis or other similar conditions; or

E. The product relieves the pain of those persons with arthritis or other similar conditions by penetrating through the skin to the affected joint;

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

Provided that, with respect to any representation covered by subparts A, B and D of this Part and any representation covered by subpart C of this Part other than a representation that the product may temporarily increase the range of motion in the affected joints of people with arthritis by temporarily relieving minor pain in those joints, "competent and reliable scientific evidence" shall mean adequate and well-controlled, double-blind clinical testing conforming to acceptable designs and protocols and conducted by a person or persons qualified by training and experience to conduct such testing.

III.

It is further ordered, That respondents, Olsen Laboratories, Inc. and Richfield Distributors, Inc., corporations, their successors and assigns, and their officers; and Peter F. Olsen, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any corporation,

subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service for personal or household use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the health or medical benefits of any such product or service unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this provision, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

IV.

It is further ordered, That respondents, Olsen Laboratories, Inc. and Richfield Distributors, Inc., corporations, their successors and assigns, and their officers; and Peter F. Olsen, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that such product or service is a new or unique method of treatment for any disease or condition, or is a breakthrough in the treatment of any disease or condition.

V.

It is further ordered, That respondents, Olsen Laboratories, Inc. and Richfield Distributors, Inc., corporations, their successors and assigns, and their officers; and Peter F. Olsen, individually and as an officer and director of said corporations; and respondents' agents,

representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

VI.

It is further ordered, That respondents, Olsen Laboratories, Inc. and Richfield Distributors, Inc., corporations, their successors and assigns, and their officers; and Peter F. Olsen, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service for personal or household use, 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 endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of such product or service represents the typical or ordinary experience of members of the public who use such product or service, unless respondents, at the time of making such representation, possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For purposes of this provision, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Provided, however, that respondents may use such endorsements if the statements or depictions that comprise the endorsements are true and accurate, and if respondents disclose clearly and prominently and in close proximity to the endorsement what the generally expected performance would be in the depicted

circumstances or the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

VII.

It is further ordered, That respondents, Olsen Laboratories, Inc. and Richfield Distributors, Inc., corporations, their successors and assigns, and their officers; and Peter F. Olsen, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling, or disseminating:

A. Any advertisement that misrepresents, directly or by implication, that it is not a paid advertisement;

B. Any commercial or video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, in a clear and prominent manner and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"THE PROGRAM YOU ARE WATCHING IS A PAID
ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product or service shall be deemed to be a presentation of ordering instructions so as to require the display of the disclosure provided herein.

VIII.

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

IX.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

X.

It is further ordered, That respondents Olsen Laboratories, Inc. and Richfield Distributors, Inc. shall notify the Commission at least thirty (30) days prior to any proposed change in their corporate structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other corporate change that may affect compliance obligations arising out of this order.

XI.

It is further ordered, That respondents Olsen Laboratories, Inc. and Richfield Distributors, Inc. shall:

A. Within thirty (30) days of service of this order, provide a copy of this order to each of their current principals, officers, directors and

managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of five (5) years from the date of entry of this order, provide a copy of this order to each of their principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order who are associated with it or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position.

XII.

It is further ordered, That respondent Peter F. Olsen shall, for a period of seven (7) years from the date of entry of this order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XIII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Azcuenaga recused.