

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	FILE NO. 942 3036
)	
AAF-McQUAY, INC.,)	AGREEMENT CONTAINING
d/b/a/ AAF International)	CONSENT ORDER TO
a corporation.)	CEASE AND DESIST
)	
)	

The Federal Trade Commission, having initiated an investigation of certain acts and practices of AAF-McQuay, Inc., d/b/a AAF International, a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

IT IS HEREBY AGREED by and between AAF-McQuay, Inc., d/b/a AAF International, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent AAF-McQuay, Inc., d/b/a AAF International, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 215 Central Avenue, Louisville, Kentucky 40208.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

DEFINITIONS

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

1. The term "air cleaning product" or "product" means any device, equipment or appliance designed or advertised to remove, treat or reduce the level of any contaminant(s) in the air.
2. The term "contaminant(s)" refers to one or more of the following: fungal (mold) spores, pollen, lint, tobacco smoke, household dust, animal dander or any other gaseous or particulate matter found in indoor air.

ORDER

I.

IT IS ORDERED that respondent AAF-McQuay, Inc., d/b/a AAF International, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any air cleaning product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

- A. Making any representation, in any manner, directly or by implication, regarding the performance, health or other benefits, or efficacy of such product, unless at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence, that substantiates such representation.
- B. Making any representation, directly or by implication, that any air cleaning product will perform under any set of conditions, including household living conditions, unless at the time of making the representation(s) respondent possesses and relies upon competent and reliable scientific evidence that substantiates such representation(s) either by being related to those conditions or by

having been extrapolated to those conditions by generally accepted procedures.

For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have 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.

II.

IT IS FURTHER ORDERED that respondent AAF-McQuay, Inc., d/b/a AAF International, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of the Dirt Demon, the ElectroKlean, or any other air filter for insertion into household central heating and/or cooling systems, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication that such filter is a HEPA (High Efficiency Particulate Air) filter.

III.

IT IS FURTHER ORDERED that, for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its 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, and complaints or inquiries from governmental organizations.

IV.

IT IS FURTHER ORDERED that respondent AAF-McQuay, Inc., d/b/a AAF International, its successors and assigns, shall:

- A. Within thirty (30) days after the date of service of this order, provide a copy of this order to each of respondent's 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 ten (10) years from the date of service of this order, provide a copy of this order to each of respondent's 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 within three (3) days after the person assumes his or her position.

V.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this order.

VI.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after service of this order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VII.

This order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United

States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; **provided, however,** that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this order that terminates in less than twenty years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 19_____.

AAF-McQUAY,
d/b/a AAF International,
a corporation.

BY: _____
Gerry Boehrs
President,
AAF International

Dennis J. Reinhold
Attorney for respondent
AAF International

FEDERAL TRADE COMMISSION

BY: _____

Michael Milgrom
Attorney
Cleveland Regional Office

Brinley H. Williams
Attorney
Cleveland Regional Office

APPROVED:

PHILLIP L. BROYLES, Director
Cleveland Regional Office

JOAN Z. BERNSTEIN, Director
Bureau of Consumer Protection

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
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AAF-McQUAY, INC.,)
d/b/a AAF International,) DOCKET NO.
a corporation.)
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COMPLAINT

The Federal Trade Commission, having reason to believe that AAF-McQuay, Inc., d/b/a AAF International, a corporation, ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH ONE: Respondent AAF-McQuay, Inc., d/b/a AAF International, is a Delaware corporation with its principal office or place of business at 215 Central Avenue, Louisville, Kentucky 40208.

PARAGRAPH TWO: Respondent has manufactured, labeled, advertised, promoted, offered for sale, sold, and distributed air filters for use in residences under the brand names ElectroKlean and Dirt Demon.

PARAGRAPH THREE: The acts and practices of respondent alleged in this complaint have been in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PARAGRAPH FOUR: Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for the ElectroKlean and Dirt Demon air filters, including but not necessarily limited to the attached Exhibits A through E. These advertisements contain the following statements and depictions:

- A. **ElectroKlean**
ELECTROSTATIC
Permanent Air Filter
Eliminates 95% of Household Dust, Lint and Pollen
.....

Helps reduce sources of allergy problems by eliminating microscopic airborne particles, including pet dander. [Depiction of cat and dog]
Stops pollen, molds, dust and lint from recirculating through-out your home. [Depiction of flowers releasing pollen].
Special filter material is noticeably better than ordinary air filters in purifying the air you breathe. [Depiction of cigarette releasing smoke]

* * * *

Treated with EPA Registered Intersept Antimicrobial

Special additive makes ElectroKlean superior to ordinary filters, helps to significantly improve indoor air quality.

Inhibits growth of odor-causing bacteria, mold, mildew and other organisms that can quickly multiply in your heating and cooling system.

* * * *

**Breathe cleaner air all the time with ElectroKlean.
Eliminate 95% of household dust, lint and pollen.**

* * * *

What is Intersept Antimicrobial?

The ElectroKlean Air Filter is treated with Intersept Antimicrobial, a special additive that inhibits the growth and build up of bacteria, mold, mildew and other organisms in your heating and cooling system. This means you're breathing cleaner and healthier air!

* * * *

I have allergies. Will this filter help?

It should. ElectroKlean removes most of the contaminants that aggravate your condition. It eliminates 95% of household dirt, lint, animal danders, pollen and other irritants.

* * * *

Is this filter considered an allergy relief aid?

It can be. Your doctor may actually prescribe a special home air filter to help eliminate the sources (dust, pollen, etc.) of your allergies. The purchase price of this filter may be tax deductible. (Exhibit A)

- B. **DIRT DEMON**
High Efficiency
Pleated Air Filter
6 TIMES BETTER THAN STANDARD AIR FILTERS
REMOVES 95% OF HOUSEHOLD DIRT, DUST, POLLEN & LINT
HELPS RELIEVE ALLERGY SYMPTOMS

* * * *

Stops pollen, molds, dust and lint from recirculating throughout your home. [Depiction of flowers releasing pollen]

* * * *

Special filter material and pleated design are noticeably better than ordinary air filters in purifying the air you breathe. [Depiction of cigarette releasing smoke] (Exhibit B)

- C. **ElectroKlean**
ELECTROSTATIC
Permanent Air Filter
● Removes 95% of household dust, dirt, lint and pollen
● Inhibits growth of bacteria, molds and mildews that effect [sic] allergy sufferers (Exhibit C)

- D. **DIRT DEMON**
HIGH EFFICIENCY PLEATED AIR FILTER
REMOVES 95% OF HOUSEHOLD DIRT, DUST, POLLEN & LINT.
HELPS RELIEVE ALLERGY SYMPTOMS (Exhibit D)

- E. **DIRT DEMON**
High Efficiency Pleat *with Intersept*
Extraordinary pleated design removes up to 95% of lint, dust and pollen passing through the filter. Keeps air throughout the house cleaner and easier to breathe in any season.

* * * *

Intersept Antimicrobial

Air filters can be a source of microbial contamination. AmericanAirFilter products treated with Intersept will keep the filter from being a potential incubator of mold, mildew, fungi and bacteria. Intersept inhibits the growth of these microorganisms in the filter media,

thereby removing it as a potential source of contamination.

* * * *

The filter effectively removes airborne dust mite allergens [Depiction of dust mite (magnified)]
Reduces pollen, molds, mildew, bacteria, fungi, dust and lint [Depiction of pollen grain (magnified)]
Helps reduce aggravating particles such as pet dander [Depiction of cat]
Special media is more effective in reducing pollutants in the air you breathe. [Depiction of cigarette smoker exhaling smoke] (Exhibit E)

PARAGRAPH FIVE: Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through E, respondent has represented, directly or by implication, that:

- A. Use of the ElectroKlean and Dirt Demon filters will substantially reduce the incidence of allergies caused by indoor allergens under household living conditions.
- B. The ElectroKlean and Dirt Demon air filters remove 95 percent of airborne contaminants from the air that people breathe under household living conditions.
- C. The Dirt Demon traps 95% of the lint, dust and pollen from the household air passing through it.
- D. The Dirt Demon filter is six times as efficient at removing pollutants as a standard air filter.
- E. The addition of Intersept antimicrobial to the ElectroKlean makes air cleaner and healthier than it would otherwise be under household living conditions.
- F. The addition of Intersept antimicrobial to the ElectroKlean inhibits the growth of microbes in household heating and cooling systems.
- G. The addition of Intersept antimicrobial to the Dirt Demon removes the filter as a potential source of contamination of household air.

PARAGRAPH SIX: Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through E, respondent has represented, directly or by implication, that at the time it made the representations set forth in PARAGRAPH FIVE, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH SEVEN: In truth and in fact, at the time it made the representations set forth in PARAGRAPH FIVE, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in PARAGRAPH SIX was, and is, false and misleading.

PARAGRAPH EIGHT: Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits B, D, and E, respondent has represented, directly or by implication, that the Dirt Demon is a HEPA (High Efficiency Particulate Air) filter.

PARAGRAPH NINE: In truth and in fact the Dirt Demon is not a HEPA filter according to industry standards. Therefore, the representation set forth in PARAGRAPH EIGHT was, and is, false and misleading.

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

THEREFORE, the Federal Trade Commission this _____ day of _____, 19____, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

[Exhibits A-E attached to paper copies, but not available in electronic format.]

**ANALYSIS OF PROPOSED CONSENT ORDER
TO AID PUBLIC COMMENT
(AAF-MCQUAY, INC.)**

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from AAF-McQuay, Inc., d/b/a AAF International (AAF). AAF manufactures and sells air filters for use in residential heating systems, under the brand names ElectroKlean and Dirt Demon, among others. The proposed consent order has been placed on the public record for sixty (60) days to receive the comments of interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that AAF deceptively advertised that 1) use of the Dirt Demon or ElectroKlean filter will substantially reduce the incidence of allergies caused by indoor allergens under household living conditions; 2) the ElectroKlean and Dirt Demon remove 95% of the airborne contaminants from the air people breathe under household conditions; 3) the Dirt Demon traps 95% of the lint, dust and pollen from the household air passing through it; 4) the Dirt Demon is six times as efficient at removing pollutants as a standard air filter. The complaint charges that AAF lacked substantiation for these claims.

The complaint also charges that AAF lacked substantiation for claims that 1) the addition of Intersept antimicrobial to the ElectroKlean makes air cleaner and healthier than it otherwise would be under household living conditions; 2) the addition of Intersept antimicrobial to the ElectroKlean inhibits the growth of microbes in household heating and cooling systems; and 3) the addition of Intersept antimicrobial to the Dirt Demon removes the filter as a potential source of contamination of household air.

The complaint also charges that AAF represented the Dirt Demon to be a HEPA (High Efficiency Particulate Air) filter when, according to industry standards, it is not.

The proposed order contains provisions designed to prevent misrepresentations related to these specific matters and others. Paragraph I of the proposed order prohibits AAF from making any representation regarding the performance, health or other benefits, or efficacy of any air cleaning product (which is defined) unless it can substantiate the claims with competent and reliable evidence. If the representation states or implies a level of performance under household conditions, then the evidence that substantiates the representation must either be related to such conditions or must have been extrapolated to household conditions by generally accepted procedures.

Paragraph II prohibits AAF from misrepresenting that any air filter for insertion into household central heating systems is a HEPA (High Efficiency Particulate Air) filter.

Paragraphs III, IV, V, and VI are compliance and reporting provisions that require AAF to maintain for five (5) years the records on which it relies to substantiate any representation

covered by the order, to provide copies of the order to certain employees, to notify the Commission in the event of changes in the corporation that may affect compliance obligations arising out of the order, and to file a compliance report with the Commission within sixty (60) days after the order becomes final.

Paragraph VII provides that the order will terminate automatically twenty years from the date it becomes final unless the Commission has brought an action in federal court alleging a violation of the order. In that case, the order will terminate twenty years from the date that the federal court action is filed.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.