

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Robert Pitofsky, Chairman
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III
Christine A. Varney

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| In the Matter of |) | |
| |) | |
| AAF-McQUAY, INC., |) | DOCKET NO. C-3703 |
| d/b/a AAF International, |) | |
| a corporation. |) | DECISION AND ORDER |
| |) | |
| |) | |

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent, AAF-McQuay, Inc., and the respondent having been furnished thereafter with a copy of a draft of the complaint which the Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

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

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

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 on January 6, 2017, 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.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: January 6, 1997