

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

MICHIGAN WATCHMAKERS' GUILD, INC.

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

Docket C-3192. Complaint, July 1, 1986—Decision, July 1, 1986

This consent order requires, among other things, a Royal Oak, Mich. trade association to not take any future action to fix or maintain prices or establish suggested prices for cleaning or repair services for watches, clocks, or jewelry.

Appearances

For the Commission: *Seth B. Zimmerman, Johnathan Ferguson and Peter R. Reilly.*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Michigan Watchmakers' Guild, Inc., hereinafter sometimes referred to as respondent or "the Guild," has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

1. Respondent, Michigan Watchmakers' Guild, Inc., is a corporation organized, existing and doing business under the laws of the State of Michigan, with its principal office located at 1202 Catalpa Drive, Royal Oak, Michigan.

2. The Guild, which was incorporated in 1970, is a trade association of approximately 200 members. A majority of the Guild's members are located in Wayne, Oakland, and Macomb Counties in the south-east portion of Michigan. Members of respondent are engaged in the

business of cleaning and repairing watches, clocks, and jewelry for a fee.

3. Except to the extent that competition has been restrained as alleged herein, respondent's members compete among themselves and with other watchmakers.

4. Consumers spend substantial sums each year on the services of respondent's members.

5. Respondent engages in substantial activities which further its members' pecuniary interests. By virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

6. In the course and conduct of its business, respondent has distributed printed copies of suggested minimum price lists for cleaning and repairing watches, clocks, and jewelry through the United States Postal Service in interstate commerce. In addition, respondent's members conduct business in interstate commerce. The acts and practices 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.

7. Respondent has acted as a combination of its members, or in conspiracy with at least some of its members, to restrain price competition among watchmakers in Michigan and increase or maintain the price of cleaning and repairing watches, clocks, and jewelry by establishing and distributing suggested minimum price levels.

8. In furtherance of the aforesaid combination or conspiracy, respondent has held annual general meetings at which suggested minimum prices are determined by a majority vote of all present. In this manner, respondent determines suggested minimums both for the prices that retail watchmakers charge consumers and for the prices that "tradeshop" repair firms charge retail watchmakers. Respondent then prepares and distributes suggested minimum price lists for (1) retail watch cleaning and repair; (2) quartz/digital retail watch cleaning and repair; (3) tradeshop watch cleaning and repair; (4) clock cleaning and repair; (5) grandfather clock cleaning and repair; and (6) retail jewelry cleaning and repair.

9. The purpose or effect and the tendency and capacity of the combination or conspiracy described above has been to restrain price competition and increase or maintain the price of cleaning and repairing watches, clocks, and jewelry.

10. The combination or conspiracy described above constitutes an unfair method of competition and an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The combination or conspiracy, or the effects thereof, are continuing and will continue absent the entry of an order against respondent.

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 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 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 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 a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Michigan Watchmakers' Guild, Inc. (hereinafter "Guild"), is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 1202 Catalpa Drive, Royal Oak, Michigan.

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 respondent Michigan Watchmakers' Guild, Inc., a corporation, its successors and assigns, and respondent's officers, directors, agents, representatives, and employees, directly or indirectly, through any corporation, subsidiary, affiliate, committee, division

or other device, in connection with the conduct of its business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Taking any action the purpose or effect of which is to fix, maintain, stabilize, or increase the price of cleaning or repair services for watches, clocks, or jewelry;

B. Adopting or disseminating suggested prices for the cleaning or repairing of watches, clocks, or jewelry, *provided*, that nothing in this order prohibits the collection or dissemination of information regarding past cleaning or repair prices, so long as such information is aggregated before dissemination in such a way that neither the identity of the parties providing the underlying information nor information relating to specific transactions is disclosed or otherwise reasonably ascertainable.

II.

It is further ordered, That:

A. Within 45 days after this order becomes final, the Guild shall mail to each of its members a copy of this order and a letter in the form shown as Appendix A to this order.

B. For a period of two (2) years after the date of service of this order, the Guild shall also provide a copy of this order and a letter in the form shown as Appendix A hereto to:

1. Each new Guild member at the time the member is accepted into membership; and
2. Each person who makes a request for suggested minimum price lists.

III.

It is further ordered, That, for a period of three (3) years following the effective date of this order, the Guild shall maintain in its files a copy of the minutes of each meeting of its membership and of each meeting of its board of directors and a copy of all correspondence relating to prices for the cleaning or repairing of watches, clocks, and jewelry, and that such copies of minutes and correspondence be made available for inspection by representatives of the Federal Trade Commission upon written request.

IV.

It is further ordered, That, within sixty (60) days after service of this order, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to respondent, require.

V.

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

APPENDIX A

(Respondent's Letterhead)

Dear

As you may be aware, the Federal Trade Commission (FTC) has investigated our practice of annually publishing suggested minimum cleaning and repair prices for watches, clocks, and jewelry.

In all the years we have done our surveys, it was never drawn to our attention that the issuance of such lists is considered illegal. However, under U.S. Supreme Court rulings, the manner in which we have conducted our price surveys could be shown to be an attempt to control prices which, if proven true, would be a violation of the Federal Trade Commission Act.

Therefore, in order to avoid lengthy and costly litigation with the FTC, we have voluntarily entered into an agreement with the Commission which resulted in the issuance by the Commission of a Complaint and the entry of a Consent Order. The Order requires that you be sent a copy of the Order and this letter.

Under the terms of the FTC's Order, the Guild is required to refrain from taking any action whose purpose or effect is to fix, maintain, stabilize, or increase the price of cleaning or repair services for watches, clocks, or jewelry. The Guild is also required to cease and desist from publishing suggested cleaning or repair prices for watches, clocks, and jewelry, but the Order does not prohibit the Guild from publishing statistical information on historical prices.

The agreement is for settlement purposes only and does not constitute an admission by the Guild that the law has been violated as alleged in the Complaint.

A copy of the Order is enclosed.

Yours truly,

Marx E. Cooper
President

Enclosure

IN THE MATTER OF

ELECTRO TECH MANUFACTURING, INC., ET AL.

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

Docket 9202. Complaint, Nov. 1, 1985—Decision, July 9, 1986

This consent order requires a Norcross, Ga. manufacturer and marketer of home energy controlling devices, and its corporate officer, among other things, to cease making claims of energy savings associated with the product "The Energy Computer", or any other energy-control device, without competent and reliable substantiation. Additionally, respondents are prohibited from representing that consumers are eligible for a federal income tax credit with the purchase of their products, unless that is true.

Appearances

For the Commission: *Michael Dershowitz and Sandra N. Hammer.*

For the respondents: *Joseph A. Carragher, Jr., Norcross, Ga.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Electro Tech Manufacturing, Inc., a corporation, and Donald Raposo, individually and as an officer of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Electro Tech Manufacturing, Inc. is a Georgia corporation with its principal office and place of business at 7001 Peachtree Industrial Boulevard, Norcross, Georgia.

(b) Donald Raposo is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporation.

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

PAR. 2. Respondents manufacture, advertise, offer for sale, sell and distribute energy control devices for residential or small commercial use.

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

PAR. 4. In advertisements, respondents have made various statements about the energy savings capability of their energy control devices sold under the brand name "The Energy Computer." Typical and illustrative of these statements, but not all-inclusive thereof, are the following from the advertisements attached hereto as Exhibits A and B:

You'll SAVE 20% on your heating and air conditioning energy bills.

The Energy Computer will . . . save you at least 20% in energy costs.

You realize actual savings, up to 20%, 35%, and even more in some instances.

Pays for itself in less than 2 years.

Qualified for energy tax credits.

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

(1) Use of The Energy Computer energy control device will save consumers at least 20% and possibly, as much as 35% or more on their annual small commercial or home heating and cooling bills.

(2) It will take less than two years for consumers to save enough money on their small commercial or home heating and cooling bills by using The Energy Computer energy control device to recoup the retail cost of The Energy Computer.

(3) The Energy Computer is a qualified energy conservation product according to the U.S. Tax Code, thereby permitting purchasers of the product to obtain a tax credit and reduce their federal income tax liability.

PAR. 6. In truth and in fact:

(1) Consumers will not save 20%, or close to 20%, on their annual small commercial or home heating and cooling bills as a result of using The Energy Computer energy control device.

(2) Few, if any, consumers will save enough money on their small commercial or home heating and cooling bills by using The Energy Computer energy control device to recoup the retail cost of The Energy Computer within two years, or close to two years.

(3) The Energy Computer is not a qualified energy conservation product according to the U.S. Tax Code. Therefore, purchasers of The Energy Computer cannot obtain a tax credit or reduce their federal income tax liability by purchasing the product.

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

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

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

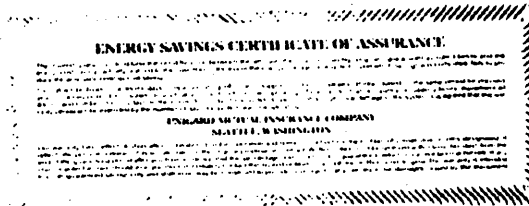
PAR. 9. The acts or practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

EXHIBIT A

THE ENERGY COMPUTER IS...

- A deductible business expense.
- Qualified for energy tax credits.
- A factor in increasing the resale value of your residence or building.

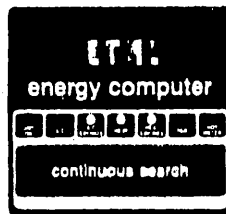
THIS...



THE UNIGARD INSURANCE POLICY

False, misleading, exaggerated claims in energy savings. You've heard them and so has Uncle Sam. So much so that the federal government has had to set up a policing agency! We're all for that. Because The Energy Computer will always do for you what it promises to -- save you at least 20% in energy costs. That's not a claim. It's a fact. The Unigard Mutual Insurance Company guarantees it. And The Energy Computer has it!

AND THIS...



THE ENERGY COMPUTER

Because The Energy Computer is a true computer -- the only one designed for residences and small commercial buildings -- it provides you many advantages. The second most important is the money you save on oil, gas or electric bills. What's the first most important? Comfort. The Energy Computer cuts your costs without cutting your comfort. No "too hot" or "too cold" setback periods. No uncomfortable "cycle off" settings.

HERE'S HOW IT WORKS...

Exhibit "A"

WE JUST DON'T CLAIM YOU'LL
SAVE 20%
 ON YOUR HEATING AND AIR
 CONDITIONING ENERGY BILLS

**WE
 GUARANTEE
 IT!**

WITH...

OTHER FEATURES THAT ADD TO YOUR COMFORT

- Power failure delay. Protects your compressor with an automatic four-minute delay. Also protects against thermostat misuse by children.
- Fail-safe function. In the event of any malfunction, your heating/cooling system will operate normally and safely.
- Hot water heater control capability. Has built-in adjustable controls to duty-cycle your hot water heater for additional efficiency (optional installation required).

**PAYS FOR ITSELF
 IN LESS THAN 2 YEARS.**

FIGURE IT OUT FOR

If Your Monthly Heating and Air Conditioning Bill is...

\$ 85
\$100
\$115
\$130
\$145
\$160
\$175
\$190
\$205

INSTALLED IN 29 MINUTES

Installation is easy and convenient. Our factory-trained electrical contractor installs The Energy Computer in a fast 29 minutes. (Or, to demonstrate exactly how it works, he'll connect it up temporarily in an even faster ten minutes!) Measuring only 8 3/4 inches high by 6 1/2 inches wide by 1 1/2 inches deep, it's installed at the furnace or air handler, between the thermostat and the devices that the thermostat controls: heat relay, air conditioning relay, fan. 100% user satisfaction guaranteed for one year. Warranty for three years on parts.

Complaint

EXHIBIT B

At last!
a computerized energy management system that is a
"thinker" . . . not just a timer.

**INTRODUCING!
THE ENERGY COMPUTER I.M.**

Providing you with:

Continuous Comfort.

No more too-hot or too-cold "set-back" periods.
And no more uncomfortable "cycle-off" settings.
Comfort is *not* sacrificed.

Actual Savings in Energy Costs.

The efficiency of your central heating/cooling system is increased 24 hours each day. You realize *actual* savings, up to 20%, 35%, and even more in some instances. And your savings are not endangered or nullified by "time-of-day" or "demand" billing now being practiced in many utility districts.

Computer based "Continuous Search" Program.

The "secret" of the Energy Computer's advanced effectiveness over timers, set-back thermostats, or cycle selection devices. This amazing capability is explained more fully on the following page.

Many Outstanding Features, including:

- *Power failure delay.* Protects your compressor with an automatic 4 minute delay. (also protects against thermostat misuse.)
- *Fail-Safe.* In the event of any malfunction, your heating/cooling system will operate normally.
- *Hot-water heater control capability.* Has built-in adjustable controls to duty-cycle your hot-water heater for additional efficiency. (Optional installation required.)

Installation.

The Energy Computer operates in series with your existing thermostat, on any applicable 24 volt transformer circuit. The installation and operation manual provided makes it an easy, 30 minute job. No high-voltage dangers. No interference with warranties on your present system.

Guaranteed Satisfaction.

100% user-satisfaction guarantee for a full year.
Conditioned only by product misuse or abuse.

THE ENERGY COMPUTER MONEY BACK GUARANTEE

If after (12) twelve months you do not receive a *Satisfactory Monitored Savings, you may notify the company from which you purchased the unit within (30) thirty days after the (1) one year period, and you will receive a full refund of the purchase price (including cost of installation, monitored savings, and retail price of any promotional items.) The customer agrees to monitor the equipment monthly and make available those results. This guarantee is valid for all energy management systems manufactured by EIM which have not been physically damaged or abused and have been purchased. The Energy Computer is guaranteed for three years on parts and one year on labor.

***Special Note:**

A satisfactory monitored savings will be a minimum combination of (15) fifteen percent KW/EI and MCF reduction during the (12) complete billing cycles after installation using KW/EI, therms, MCF, or gallons, and comparing degree days with the previous year to compare the savings.

Exhibit "B"

Continuous Search Program**All things considered . . .****Many factors affect your energy efficiency:**

- Coefficient between inside and outside temperatures (insulation, etc.)
- Volume of unrecirculated heated or cooled air in duct work
- Amount of residual heating or cooling in furnace or coil.
- Volume of heated or cooled air in unoccupied rooms
- Thermostat inefficiency (demand range beyond comfort settings)

The Energy Computer is able to "consider" all these factors, many of which are constantly changing. It is a programmed system, capable of a continuous search and test pattern, testing-setting-retesting-resetting, an endless combination of energy out-put and fan run-on possibilities.

A minimum of % test setting combinations!

The Energy Computer is constantly searching for the most efficient energy conserving cycle. For example, every fifteen minutes, it will reduce or increase in one minute increments the running time of your compressor or heating element. Because it stored in its memory what happened in the previous fifteen minutes, it is able to think and constantly make decisions. It is always trying to lower the running time of the compressor or heating element with additional use of fan run on time in air conditioning.

An I.F.D. display for status information.

You can constantly know the status of your system by observing the I.F.D. (light emitting diode) display. It's fun — but unnecessary. This computer based system is busily testing each cycle. Keeping you comfortable. With the least energy use. At the lowest possible cost. So relax and let The Energy Computer do the "thinking."

That's why we say,

All things considered . . .

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violations of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

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

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Electro Tech Manufacturing, Inc. is a Georgia corporation with its principal office and place of business at 7001 Peachtree Industrial Boulevard, Norcross, Georgia.

Respondent Donald Raposo is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is 1187 Castle Way, Norcross, Georgia.

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

ORDER

Definitions

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

Energy-related claim means any general or specific, oral or written representation that, directly or by implication, describes or refers to

energy savings, energy cost savings, efficiency or conservation, "pay-back," or "payback" potential.

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

Small commercial heating and cooling systems are similar to residential, central forced air type systems.

Energy control device (sometimes referred to as *duty-cycler* or *cyclic controller*) means any electronic device which is not a setback thermostat, but which:

(a) functions to interrupt a thermostatically-controlled cycle of any single, residential or small commercial, forced air central heating or air conditioning unit; or which

(b) may be incorporated in any other product, such as a setback thermostat, to function in the manner described in (a) above.

PART I

It is ordered, That respondents Electro Tech Manufacturing, Inc., a corporation, its successors and assigns, and its officers, and Donald Raposo, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any energy control device or any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

(1) Consumers will save 20%, or close to 20%, on their annual small commercial or home heating and cooling bills as a result of using The Energy Computer, or any other such energy control device, as defined herein.

(2) More than a few consumers may be able to save enough money on their small commercial or home heating and cooling bills by using The Energy Computer to recoup the approximately \$400 retail cost of The Energy Computer within two years, or close to two years.

(3) More than a few consumers may be able to save enough money on their small commercial or home heating and cooling bills by using any energy control device, as defined herein, costing approximately \$400 to recoup such cost within two years, or close to two years.

(4) Consumers can obtain a federal tax credit or reduce their federal income tax liability, by purchasing The Energy Computer or any other such energy control device, as defined herein, unless such is the case.

B. Making any energy-related claim for any energy control device, or any other product or service, unless at the time that the claim is made, respondents possess and rely upon a competent and reliable test or other objective material which substantiates the claim.

PART II

It is further ordered, That respondents Electro Tech Manufacturing, Inc., a corporation, its successors and assigns, and its officers, and Donald Raposo, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any energy control device or any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, for at least three years from the date of the last dissemination of energy-related claims, maintain and upon request make available to Federal Trade Commission staff for inspection and copying, copies of:

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

PART III

It is further ordered, That respondents shall distribute a copy of this order to each of their operating divisions and to each of their officers, agents, representatives or employees engaged in the preparation or placement of advertisements or other sales materials, and to each of their distributors or dealers: (1) who engaged in the wholesale or retail sale of any energy control device manufactured, offered for sale, sold, or distributed by or for respondents; and (2) who purchased ten or more energy control devices from respondents.

PART IV

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the

creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

PART V

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

PART VI

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

Complaint

108 F.T.C.

IN THE MATTER OF

ROY BROG

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

Docket 9197. Complaint, Sept. 10, 1985—Decision, July 15, 1986

This consent order requires a former chief executive officer of a Salt Lake City, Utah manufacturer and distributor of a dry milk substitute, among other things, to cease making any representations concerning the health benefits or expected shelf life for "Meadow Fresh White", a powdered, dairy-based milk substitute, or other food products, without reliable and competent substantiation. Also, respondent is prohibited from excluding some distributors in computing "average" distributor earnings without proper disclosures concerning the method of computation.

Appearances

For the Commission: *Lawrence M. Hodapp.*

For the respondents: *B.H. Harris and Joseph M. Chambers, Harris, Preston, Gutke & Chambers, Logan, Utah.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Roy Brog, individually and as an officer and director of Meadow Fresh Farms, Inc., ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Roy Brog is an officer and director of Meadow Fresh Farms, Inc. He formulates, directs and controls the acts and practices of said corporation, including the acts and practices alleged in this complaint. His principal office or place of business is in Salt Lake City, Utah.

PAR. 2. Respondent manufactures, offers for sale, and sells food products, including Meadow Fresh, a powdered, dairy-based drink, through a multilevel business opportunity.

PAR. 3. Respondent has caused to be prepared, published and disseminated advertising and promotional material, including, but not limited to, the promotional material referred to herein, to promote the sale of Meadow Fresh and membership in a multilevel business opportunity.

PAR. 4. The acts and practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 5. In the course and conduct of his business, respondent has disseminated and caused the dissemination of advertisements and promotional material for food products, including Meadow Fresh, and for a multilevel business opportunity involving the sale of such food products, by various means in or affecting commerce, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products and business opportunities.

PAR. 6. Typical statements in said advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are the following:

(A) Contains over twenty times less "XO"* than the whole version of the other product.

* "XO" is xanthine oxidase, a major contributor to cardiovascular problems.

(B) Meadow Fresh has an expected dry shelf life of 5 to 10 years.

PAR. 7. Through the use of the statements referred to in Paragraphs Six (A) through Six (B), and other statements contained in other advertisements and promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that:

(A) The use of Meadow Fresh instead of milk will reduce the incidence of cardiovascular disease due to reduced levels of xanthine oxidase.

(B) Xanthine oxidase is a major contributor to cardiovascular problems.

(C) Meadow Fresh has an expected storage life of up to 10 years under reasonable storage conditions.

PAR. 8. Through the use of the statements referred to in Paragraph Six (A) through Six (B), and other statements contained in other advertisements and promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that at the time of initial dissemination of the statements and of each subsequent dissemination, he possessed and relied upon a reasonable basis for the representations set forth in Paragraphs Seven (A) through Seven (C).

PAR. 9. In truth and in fact, at no time has respondent possessed and relied upon a reasonable basis for making the representations set forth in Paragraphs Seven (A) through Seven (C). Therefore, respondent's representation as set forth in Paragraph Eight was, and is, false and misleading.

PAR. 10. In the course and conduct of his business, respondent has disseminated, as previously described, promotional flipcharts upon

which the current average monthly income of each level in the distributor hierarchy is to be entered. (A copy of this flipchart is attached to this complaint as Exhibit A.) These flipcharts are headed "CURRENT AVERAGE INCOMES FOR EACH BONUS LEVEL" and contain blanks following the terms "ADVISOR . . . ; COORDINATOR . . . ; MANAGER . . . ; AMBASSADOR . . ." for income figures to be entered. These flipcharts have represented, and now represent, directly or by implication, that the income figures shown thereon reflect an average which is computed by taking into account the total number of distributors who have advanced to the specified bonus level and the amount of money earned by each of them during the month in question.

PAR. 11. In truth and in fact, the income figures shown on the flipcharts do not reflect an average which is computed by taking into account the total number of distributors who have advanced to the specified bonus level and the amount of money earned by each of them during the month in question. Respondent provides distributors with monthly income figures for use on the flipchart which are computed by taking into account only those distributors who earn some income during the month in question, and the total amount of money earned by them. Because the large majority of distributors earn no income during a given month, this manner of computation results in average income figures which are substantially larger than would be the case if the figures were computed by the method set forth in Paragraph Ten. Therefore, respondent's representation as set forth in Paragraph Ten was, and is, false and misleading.

PAR. 12. The acts or practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

CURRENT AVERAGE INCOMES FOR EACH BONUS LEVEL

- _____
- _____
- _____
- _____
- ADVISOR
- COORDINATOR
- MANAGER
- AMBASSADOR

NOTE: The amounts listed here only reflect rebates, overrides and bonuses, not retail profits.

DECISION AND ORDER

The Federal Trade Commission having issued its complaint charging Roy Brog ("respondent") with violation of Section 5 of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

and
The respondent, his 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Roy Brog is a former officer and director of Meadow Fresh Farms, Inc. His address is 1320 East 2300 North, Logan, Utah.
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 respondent Roy Brog, individually and as a former officer and director of Meadow Fresh Farms, Inc., and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale, or distribution of a powdered, dairy-based drink called "Meadow Fresh" or any other food product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, unless at the

time of such representation respondent possesses and relies upon reliable and competent scientific evidence that substantiates any such representation: (a) any benefit in preventing cardiovascular or other disease through the use of such product; (b) any nutritional or other health related attribute of such product; or (c) any expected shelf life of such product.

Reliable and competent shall mean for purposes of this order those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

II.

It is further ordered, That respondent Roy Brog, individually and as a former officer and director of Meadow Fresh Farms, Inc., and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, 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 representing as an "average," directly or by implication, any computation of income levels, earnings, sales or other payments received by distributors as a whole or by a specified distributor category which is based on less than all distributors in the stated category, unless the fact that some distributors are excluded and the basis for any such exclusion are clearly and prominently disclosed in close proximity to such representation.

Distributor as used in this order shall refer to any person, partnership or corporation which is granted the right to offer, sell or distribute goods or services manufactured, processed, distributed, offered or sold by respondent or to recruit other persons, partnerships or corporations to be distributors of respondent's goods or services.

III.

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

1. All materials relied upon to substantiate any representation covered by this order; and
2. All test reports, studies, surveys, or demonstrations in his posses-

sion or control, or of which he has knowledge, that contradict any representation covered by this order.

IV.

It is further ordered, That respondent shall promptly notify the Commission of the discontinuance of his present business or employment and that, for a period of four years from the date of service of this order, respondent shall promptly notify the Commission of each affiliation with a new business or employment, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

V.

It is further ordered, That respondent shall forthwith distribute a copy of this order to all distributors of products manufactured or marketed by respondent.

VI.

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

IN THE MATTER OF
AMERICAN ACADEMY OF OPTOMETRY, INC.

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

Docket C-3193. Complaint, July 21, 1986—Decision, July 21, 1986

This consent order, among other things, prohibits a Washington, D.C.-based professional association from restricting or declaring unethical any truthful advertising, solicitation of patients or choice of a location to practice.

Appearances

For the Commission: *George R. Bellack.*

For the respondent: *John W. Hazard, Jr., Webster, Chamberlain & Bean, Washington, D.C.*

COMPLAINT

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

PARAGRAPH 1. Respondent American Academy of Optometry, Inc., is a corporation formed pursuant to the laws of the District of Columbia with its mailing address at 5530 Wisconsin Avenue, N.W., Suite 950, Washington, D.C.

PAR. 2. Respondent is a professional association of optometrists. Respondent has approximately 2,700 members.

PAR. 3. Most members of respondent are engaged in the business of providing optometric health care services for a fee and selling eye-care products. Except to the extent that competition has been restrained as herein alleged, members of respondent have been and are now in competition among themselves and with other eye care providers.

PAR. 4. By virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 5. In the conduct of their business, members of respondent

receive and treat patients from other states, receive substantial sums of money from the federal government and from other third party payers for providing optometric services and products, which monies flow across state lines, and use supplies and equipment and sell products that are shipped across state lines. The acts or practices described below are in interstate commerce, or affect the interstate activities of respondent's members, third-party payers, other third parties, and some patients of respondent's members, and are in or affect commerce within the meaning of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

PAR. 6. In selecting an optometrist or purchasing optical products, consumers consider factors such as price and other terms of sale, quality of the service or product offered, convenience, reputation, and experience.

PAR. 7. Most optometric services have traditionally been provided by optometrists practicing from a single, private office location. Most optometrists practicing in this manner also have sold optical products from the same location. Most have engaged in little or no advertising regarding their services or products. Some optometrists do not conduct business in a traditional, private office setting. They may, for example, locate their practices in shopping centers or other locations customarily considered "commercial" in nature. They may practice in, or in proximity to, retail optical stores or retail stores for which optometric services and optical products are not the main line of business. Such practices can increase consumer access to optometric care and achieve operating efficiencies that may lower costs of many optometric services and optical products. These optometrists, or firms with which some of them affiliate, typically engage in more advertising than traditional practitioners. Advertising enables optometrists to inform consumers about factors important to their choice of an optometrist, and can benefit consumers by increasing the information available to them and promoting competition among optometrists.

PAR. 8. Respondent has combined or agreed with at least some of its members to restrain or lessen competition among themselves and with other eye care providers by:

A. Restricting truthful advertising by AAO members or prospective members concerning their prices, products, services, and qualifications;

B. Inducing or attempting to induce individual members or prospective members to cease advertising their prices, products, services, or qualifications, or otherwise cease seeking to solicit patients' business;

C. Withholding membership from prospective members who truthfully advertised their prices, products, services, or qualifications; and

D. Restricting the types of practice locations AAO members or prospective members may use.

PAR. 9. Respondent has engaged in various acts or practices in furtherance of this combination or agreement, including:

A. Enacting and adopting ethical restrictions, standards of conduct, policy statements, and guidelines that, among other things:

1. Require members' public statements, announcements of services, and promotional activities to "emphasize professional services" and prohibit all "direct solicitations" of patients; and

2. Require members to "practice in locations consistent with the majority of other health professionals in the area"; and

B. Interpreting and implementing the above ethical restrictions, standards of conduct, policy statements, and guidelines so as to, among other things:

1. Restrict truthful advertising by its members or prospective members of, among other things, their prices, fees, or charges, types of methods of treatment, professional training and experience, special expertise, and products, such as contact lenses, offered for sale; and

2. Prevent members or prospective members from practicing in commercial locations.

PAR. 10. The purposes or effects, and the tendency and capacity, of the combination or agreement and acts or practices of respondent as described above have been and are to unreasonably restrain competition and affect consumers in one or more of the following ways, among others:

A. Consumers are being deprived of the benefits of vigorous price and service competition among optometrists;

B. Consumers are being deprived of truthful information about optometrists' prices, products, services, and qualifications;

C. Optometrists are being prevented from disseminating truthful information about their prices, products, services, and qualifications; and

D. Consumers may have been deprived of the potential cost savings, convenience, and efficiency benefits of optometric practices located in commercial settings in their purchases of optometric services and optical products.

PAR. 11. The combination or agreement and the acts and practices described above constitute unfair methods of competition and unfair acts or practices which violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Such combination or agreement is continuing and will continue absent the entry against respondent of appropriate relief.

DECISION AND ORDER

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

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

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

1. Respondent American Academy of Optometry, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 5530 Wisconsin Avenue, N.W., Suite 950, in the City of Washington, District of Columbia.

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.

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

A. AAO means respondent American Academy of Optometry, Inc., its officers, councils, committees, representatives, agents, employees, successors, and assigns.

B. *Adverse action* means the revocation or suspension of, or refusal to grant, membership in AAO, or the disciplining or penalizing of any optometrist.

II.

It is ordered, That AAO, directly or indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Restricting, regulating, impeding, declaring unethical, interfering with, or advertising against the truthful, non-deceptive advertising or publishing by any person of the prices, terms, or conditions of sale of optometric services or optical products, or of information about optometrists' services that are offered for sale or made available by optometrists or by any organization with which optometrists are affiliated;

B. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the solicitation, through truthful, non-deceptive advertising or by any other means, of patients, patronage, or contracts to supply optometric services or optical products, by any optometrist or by any organization with which optometrists are affiliated;

C. Restricting, regulating, or interfering with any optometrist's choice of a location at which the optometrist will practice; and

D. Inducing, urging, encouraging, or assisting any optometrist, group of optometrists, or any other non-governmental organization to take any of the actions prohibited by Part II of this order.

Nothing contained in Part II of this order shall prohibit AAO from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that AAO reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients, who, because of their particular circumstances, are vulnerable to undue influence.

III.

It is further ordered, That AAO shall cease and desist from:

A. Taking any adverse action against a person alleged to have violated any rule, policy, guideline, or ethical standard without first

providing such person with written notice of any such allegation, and without providing such person a reasonable opportunity to respond. The notice required by this part shall, at a minimum, clearly specify the rule, policy, guideline, or ethical standard alleged to have been violated, the specific conduct that is alleged to have violated the rule, policy, guideline, or ethical standard, and the reasons the conduct is alleged to have violated the rule, policy, guideline, or ethical standard; and

B. Failing to maintain for five (5) years following the taking of any action referred to in this part, in a separate file segregated by the name of any person against whom such action was taken, any document that embodies, discusses, mentions, refers, or relates to the action taken and any allegation relating to it.

IV.

It is further ordered, That AAO shall:

A. For a period of three (3) years, commencing on the date this order becomes final, provide each applicant for membership in AAO with a copy of the synopsis, attached hereto as Attachment A, of the complaint and this order at the time the applicant files his or her application for membership in AAO;

B. Within sixty (60) days after this order becomes final, send by first-class mail the letter attached hereto as Attachment B, together with a copy of the synopsis, attached hereto as Attachment A, of the complaint and this order to every optometrist who applied for membership in AAO within the last five (5) years but was not accepted for membership, and during whose application review process AAO or any committee or member of AAO raised an issue regarding any practices that are the subject of this order;

C. Within sixty (60) days after this order becomes final, publish the synopsis, attached hereto as Attachment A, of the complaint and this order in the *American Journal of Optometry and Physiological Optics*, or in any successor publication, with the same prominence as regularly published feature articles, and distribute a copy of that issue to each optometrist who is a member of AAO at the time this order becomes final;

D. Within ninety (90) days after this order becomes final, remove from its constitution, bylaws, and any other existing policy statements or guidelines of AAO, any provision, interpretation, or policy statement that is inconsistent with Part II of this order, and within one hundred and twenty (120) days after this order becomes final, publish and distribute, in the manner described in Part IV.C. of this

order, a copy of the revised versions of such documents, statements, or guidelines to each of its members;

E. Within one hundred and twenty (120) days after this order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied and is complying with this order;

F. For a period of five (5) years after this order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II and III of this order, including but not limited to any advice or interpretations rendered with respect to advertising or solicitation involving any optometrist or any entity with which optometrists are affiliated; and

G. Annually for a period of five (5) years after this order becomes final, and commencing twelve (12) months after this order becomes final, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with the activities covered by Parts II, III, and IV of this order, including but not limited to any advice or interpretations rendered with respect to advertising or solicitation involving any optometrist or any entity with which optometrists are affiliated.

V.

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

Chairman Oliver did not participate.

ATTACHMENT A

SYNOPSIS OF CONSENT AGREEMENT BETWEEN AMERICAN ACADEMY OF OPTOMETRY AND FEDERAL TRADE COMMISSION

The American Academy of Optometry ("Academy") has agreed to comply with the terms of a Consent Order issued by the Federal Trade Commission. A Complaint, setting forth the Commission's allegations against the Academy, has also been issued by the Commission. The Academy's agreement to the Consent Order is for settlement purposes only, and does not constitute an admission by the Academy of a law violation. In December 1981, the Academy adopted a set of guidelines that allow advertising by its members, but such guidelines require further amendment.

The Complaint alleges that the Academy maintained and enforced ethical standards

and guidelines and interpreted and implemented standards and guidelines which restricted truthful advertising and solicitation by members or prospective members, and prevented members or prospective members from practicing in commercial locations.

The Consent Order requires that the Academy not restrain advertising of prices, products and services, and other forms of solicitation by any optometrist, or any optometrist's choice of practice location. However, the Consent Order does not prohibit the Academy from adopting reasonable ethical guidelines to prevent false or deceptive advertising or uninvited, in-person solicitations of patients whose particular circumstances make them vulnerable to undue influence. The Consent Order also does not restrict the Academy from maintaining standards on the competency of its members.

The Consent Order requires that the Academy not revoke, suspend, or refuse to grant Academy membership, or discipline or penalize any optometrist, without first providing him or her with written notice of any allegations, and a reasonable opportunity to respond to them.

The Consent Order also requires the Academy to remove from its constitution, bylaws, policy statements, and guidelines any provision that is inconsistent with the Consent Order.

This synopsis is not intended to constitute an official interpretation of the Consent Order or Complaint, or to modify in any way their terms.

ATTACHMENT B

Dear Dr. _____:

This letter is to inform you of a Consent Order entered by the Federal Trade Commission. (A synopsis of the Order and the Complaint issued by the Commission is enclosed.) Under the terms of this Order, the American Academy of Optometry has agreed, without admitting to the non-jurisdictional factual or legal allegations in the Complaint, that we will not prevent or impede any optometrist from engaging in any form of truthful, non-deceptive advertising or solicitation, or interfere with any optometrist's choice of practice location. The Order does not prohibit the Academy from adopting and enforcing reasonable guidelines to prevent advertising that the Academy reasonably believes is false or deceptive, or uninvited, in-person solicitation of patients whose particular circumstances make them vulnerable to undue influence.

Under the Consent Order, we must ensure that our Constitution, Bylaws, policy statements and other ethical guidelines comply with the terms of the Order. In addition, if we take adverse action against a person alleged to have violated any of our ethical standards, we must provide that person with written notice of the allegations and a reasonable opportunity to respond to them.

We are sending copies of the enclosed synopsis of the Consent Order and Complaint, as it is published in the American Journal of Optometry and Physiological Optics, to you as an optometrist who applied for membership in the Academy within the last five years, but were not accepted for membership. Transmittal of this notice to you does not reflect an admission by the Academy that your non-acceptance for membership in the Academy was the result of any activity of the Academy now prohibited by the Consent Order. However, you are free, if you desire, to contact the Academy regarding either the submission of a new application for membership, or reconsideration of a previous application.

A copy of the Complaint and Consent Order are freely available upon request.

Sincerely,

(Name and Title)
American Academy of Optometry

Enclosure

IN THE MATTER OF
LITHIUM CORPORATION OF AMERICA

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

Docket C-3194. Complaint, July 22, 1986—Decision, July 22, 1986

This consent order prohibits, among other things, a Gastonia, North Carolina chemical company from entering into any agreements fixing prices or restricting sales of any lithium product. Additionally, respondent is prohibited from acting as an agent for any lithium producer when such action might unreasonably restrain competition.

Appearances

For the Commission: *Allee A. Ramadhan.*

For the respondent: *David L. Foster, Willkie, Farr & Gallagher,*
New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that Glithco Energy Corporation (Glithco), formerly Lithium Corporation of America, a wholly owned subsidiary of Gulf Resources and Chemical Corp., a corporation subject to the jurisdiction of the Commission has violated the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

I. DEFINITION

1. *Lithium product(s)* means any lithium chemical mined, extracted or milled from a natural resource including but not limited to: (a) lithium ore (petalite, lepidolite or spodumene); (b) lithium carbonate; (c) lithium hydroxide; (d) lithium chloride; and (e) lithium sulfate.

II. RESPONDENT

2. Lithium Corporation of America (LCA) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware maintaining its principal place of business at 449 North Cox Road, Gastonia, North Carolina.

3. On or about July 19, 1985, LCA acquired substantially all of the

assets of Glithco Energy Corporation, formerly Lithium Corporation of America, a wholly owned subsidiary of Gulf Resources and Chemical Corporation.

III. JURISDICTION

4. LCA is and, during all times relevant herein Glithco, was engaged in the business of mining, extracting and milling of lithium chemicals from a natural resource and selling lithium products in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44. LCA is subject to the jurisdiction of the Federal Trade Commission.

IV. CONDUCT

5. Since at least 1980 and continuing up to at least June 1984, Glithco, China Metallurgical Import and Export Corporation (CMIEC) and Xinjiang Non-Ferrous Metals Corporation (XNMC) were engaged in an agreement, combination and conspiracy in unreasonable restraint of lithium products trade and commerce. Said unlawful agreement, combination and conspiracy were to the prejudice and injury of the public and of Glithco's customers and competitors and constituted an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act. There exists the cognizable danger that the unfair method of competition as alleged herein may resume and continue in the absence of the relief requested.

6. The unlawful combination and conspiracy has consisted of an agreement, understanding and concert of action between Glithco and CMIEC and XNMC, the effect of which has been to restrain trade in lithium hydroxide and/or other lithium products by Glithco's purchase of lithium hydroxide manufactured by XNMC and sold by CMIEC; and Glithco's actions to restrict or limit supplies of lithium hydroxide by soliciting an agreement with CMIEC that CMIEC would refuse to deal with chemical traders seeking to purchase lithium.

V. EFFECTS AND VIOLATION

7. The conduct, hereinabove alleged, has had the following effects, among others:

A. Competition between Glithco, CMIEC and XNMC in the sale of lithium hydroxide and other lithium products has been reduced or eliminated;

B. Competition between Glithco and other chemical traders of lithium hydroxide and other lithium products has been reduced or eliminated as a result of Glithco's exclusive distribution agreement with

CMIEC and Glithco's actions to ensure that CMIEC would refuse to deal with such traders;

C. Buyers of lithium hydroxide and other lithium products have been deprived of free and open competition in the purchase of such lithium products by Glithco's actions to ensure that CMIEC would refuse to deal with chemical traders; and

D. The importation of lithium hydroxide and other lithium products into the United States has been restrained.

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, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent Lithium Corporation of America (LCA) is organized, existing and doing business under and by virtue of the laws of the State of Delaware maintaining its principal offices at 449 North Cox Road, Gastonia, North Carolina.

2. On or about July 19, 1985, respondent acquired substantially all of the assets of Glithco Energy Corporation, formerly Lithium Corporation of America, a wholly owned subsidiary of Gulf Resources and Chemical Corporation.

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

ORDER

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

1. *LCA* means Lithium Corporation of America, as well as its officers, employees, divisions, subsidiaries, successors, assigns and the officers or employees of LCA's divisions, subsidiaries, successors and assigns.

2. *Lithium product(s)* means any lithium chemical mined, extracted or milled from a natural resource including but not limited to: (a) lithium ore (petalite, lepidolite or spodumene); (b) lithium carbonate; (c) lithium hydroxide; (d) lithium chloride; and (e) lithium sulfate.

3. *Person* means any natural person, corporate entity (including subsidiaries thereof), partnership, joint venture, trust, association, governmental or other legal entity whether foreign or domestic.

4. *Lithium seller* means any person engaged in the mining, extracting, milling or sale of any lithium product.

5. *Lithium producer* means any person engaged in the production of any lithium product by mining, extracting, or milling of such product from a natural resource, or the exclusive or substantially exclusive agent or distributor of such person in the sale or distribution of such lithium product. Lithium producer does not include any joint venture between LCA and other persons none of which is engaged in the production by mining, extracting or milling of any lithium product or is the exclusive or substantially exclusive agent or distributor of such person in the sale or distribution of such lithium product.

6. *Nonpublic information* means trade secrets or commercial or financial information which is confidential and has not been disseminated to the public.

7. *Sub-HSR transaction* means acquiring, directly or indirectly, the stock, share capital or assets of or any other interest in any lithium seller that is not reportable under the provisions of Section 7A of the Clayton Act, 15 U.S.C. 18a, and the rules promulgated thereunder but would be reportable if:

A. the Size-of-the-Parties Test as set forth in Section 7A(a)(2) of the Clayton Act were deemed inapplicable; and

B. five (5) million dollars were substituted for fifteen (15) million dollars in the size of transaction test set forth in Section 7A(a)(3)(B) as well as The Minimum Dollar Value Exemption set forth in Rule 200.20(a).

8. *Tolling* means the secondary-recovery of any lithium chemical by a person for which such services are compensated.

I.

It is ordered, That LCA shall cease and desist, directly or indirectly, or through any corporate or other device in connection with the offering for sale, sale or distribution of any lithium product in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, from, directly or indirectly:

A. Entering into, cooperating in or carrying out any agreement, combination, conspiracy, understanding or planned common course of action between or among itself and any lithium producer to:

1. Adopt, establish, fix or maintain, directly or indirectly, the price, terms or conditions of sale for the sale of any lithium product to any third person; or

2. Refuse to deal with any third person seeking to purchase any lithium product from any lithium producer.

B. Soliciting, inducing, coercing, intimidating or compelling any lithium producer to refuse to deal with any person seeking to purchase any lithium product.

C. Taking any action to communicate, furnish, exchange, receive or discuss, directly or indirectly, with any lithium producer any nonpublic information relating to:

1. The price, terms or conditions of sale for any lithium product;

2. The costs of mining, extracting, milling, or selling any lithium product;

3. Forecasts of sales or supply of any lithium product; or

4. Plans for marketing any lithium product.

Provided, however, That nothing contained in Subparagraph C of this Paragraph shall prohibit LCA from:

Providing to or receiving from any lithium producer such information as is reasonably necessary for and solely related to the good faith negotiating for, entering into, or carrying out (a) a purchase, sale or tolling arrangement of any lithium product between LCA and such lithium producer; (b) acquisition of LCA or a substantial portion of its business or the acquisition by LCA of all or a substantial part of any lithium producer; and (c) any joint venture involving another lithium producer that is not reportable under Paragraph IV of this order.

II.

It is further ordered, That LCA shall cease and desist, directly or indirectly, or through any corporate or other device in connection with the offering for sale, sale or distribution of any lithium product in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, from purchasing from any lithium producer and reselling, or acting as an agent for any lithium producer in the sale of, any lithium product where such purchase, resale or agency unreasonably restrains competition.

III.

Paragraphs I and II of this order do not prohibit conduct that is permitted by the Export Trading Company Act of 1982, 15 U.S.C. 4001-4021 (1982), or the Webb-Pomerene Act, 15 U.S.C. 61-66 (1982), or any amendments thereto, or conduct to which Subsection (a) of Section 5 of the Federal Trade Commission Act does not apply under the Foreign Trade Antitrust Improvements Act of 1982, Public Law 97-290, Title IV, or any amendments thereto. If within five (5) years from the date this order becomes final, an application is made by LCA under Title III of the Export Trading Company Act of 1982 for an Export Trade Certificate of Review relating to any lithium product, copies of the application and all documents filed by LCA in support thereof shall be filed simultaneously with the Commission.

IV.

It is further ordered, That for a period of five (5) years from the date this order becomes final, LCA shall within twenty (20) days after entering into any sub-HSR transaction provide the Federal Trade Commission written notification of such transaction and provide such information for LCA and the acquired party as required by the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended.

V.

It is further ordered, That LCA shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order. LCA also shall submit such further written reports as the staff of the Commission may from time to time request in writing to assure compliance with this order.

VI.

It is further ordered, That LCA shall notify the Commission at least thirty (30) days prior to any proposed corporate 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 that may affect compliance with the obligations arising out of this order.

Chairman Oliver and Commissioner Strenio did not participate.

Set Aside Order

108 F.T.C.

IN THE MATTER OF

UNITED BRANDS COMPANY

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT*Docket 8835. Order, May 14, 1974—Set Aside Order, July 29, 1986*

The Federal Trade Commission has set aside a 1974 order (83 F.T.C. 1614) that required respondent to file special reports with the FTC about the company's access to land commercially suitable for lettuce cultivation. The Commission ruled that any competitive issues that might be raised do not exist since respondent is no longer in the lettuce business.

ORDER REOPENING AND SETTING ASIDE ORDER
REQUIRING FILING OF SPECIAL REPORT ISSUED ON MAY 14, 1974

By a petition filed on April 29, 1986, United Brands Company ("UBC") requests that the Commission reopen the proceeding in Docket No. 8835 and modify the Order Requiring Filing of Special Report issued by the Commission on May 14, 1974. Pursuant to Section 2.51 of the Commission's Rules of Practice, UBC's petition was placed on the public record for comment. No comments were received.

Upon consideration of UBC's petition and supporting materials, and other relevant information, the Commission now finds that changed conditions of fact and the public interest warrant reopening the proceeding and setting aside the Order Requiring Filing of Special Report. The record demonstrates that the competitive concerns the order intended to address no longer exist and termination of the order to relieve UBC of compliance costs is in the public interest.

Accordingly,

It is ordered, That this matter be, and hereby is, reopened and that the Commission's Order Requiring Filing of Special Report be, and hereby is, set aside.

IN THE MATTER OF
BLUE LUSTRE HOME CARE PRODUCTS, INC.

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

Docket C-3195. Complaint, Aug. 1, 1986—Decision, Aug. 1, 1986

This consent order requires, among other things, an Indianapolis, Ind. manufacturer and marketer of chemical products and equipment for home and car care, to cease making unsubstantiated efficacy claims for "Rinsenvac 5", a carpet cleaning fluid sold to retailers in connection with the sale of rental do-it-yourself carpet cleaning machines.

Appearances

For the Commission: *Toby M. Levin and Joel C. Winston.*

For the respondent: *John R. Thornburgh, Ice, Miller, Donadio & Ryan, Indianapolis, Ind.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Blue Lustre Home Care Products, Inc., a corporation, ("Blue Lustre" or "respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Blue Lustre is an Indiana corporation, with its offices and principal place of business at 7950 Castleway Drive, Indianapolis, Indiana.

PAR. 2. Respondent manufactures, advertises, offers for sale, and sells chemical products and equipment for the home and car care markets, including Rinsenvac 5 carpet cleaning product.

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

PAR. 4: Typical of respondent's advertisements for Rinsenvac 5, but not necessarily all-inclusive thereof, are attached hereto as Exhibits A through D. The aforesaid advertisements contain the following statements:

(a) Independent laboratory tests of detergent effectiveness (ASTM D 3050-75) proved

Rinsenvac 5 in hot water removed more than 3X as much dirt from fibers as Rug Doctor or Thermax. Rinsenvac 5 in cold water did too. (Exhibit A)

(b) RINSENVAC loves a challenge! And so when we were asked to submit our new RINSENVAC 5 Cleaner to an independent laboratory to test detergent effectiveness, we jumped at the opportunity. Using hot water and following the recommended mixing procedures, RINSENVAC 5 went head to head with RUG DOCTOR and THERMAX. And we won. RINSENVAC 5 removed over three times as much dirt as Rug Doctor and three and a half times as much dirt as Thermax. Even when RINSENVAC 5 was used in cold water, we outcleaned the competition by a wide margin. (Exhibit B)

(c) And lab tests prove it cleans *better* in cold water than other steam carpet cleaners do in hot. (emphasis in original) (Exhibit C)

(d) New RINSENVAC 5 actually cleans carpets better in cold water than other cleaners do in hot. Independent laboratory tests prove it! (Exhibit D)

PAR. 5: Through the use of the statements referred to in Paragraph Four and other statements in advertisements not specifically set forth herein, respondent has represented, directly or by implication, that:

(a) Rinsenvac 5 cleans carpets better in cold water than other steam cleaners do in hot water.

(b) Rinsenvac 5 removes over three times as much dirt from carpets as Rug Doctor brand carpet cleaner and three and one half times as much dirt as Thermax brand carpet cleaner.

PAR. 6: Through the use of the statements and representations set forth in Paragraphs Four and Five, and others not specifically set forth herein, respondent has represented, directly or by implication, that it possessed and relied upon a reasonable basis for said representations at the time it made the representations.

PAR. 7: In truth and in fact, at such times respondent did not possess and rely upon a reasonable basis for making such representations because (a) the testing standard respondent relied upon, American Society for Testing and Materials (ASTM) D 3050-75, is not intended for comparative product ranking and is not an appropriate test standard for comparing cleaning effectiveness of carpet cleaning products, and (b) other carpet cleaning products outperformed Rinsenvac 5 in the tests relied upon by respondent. Therefore, respondent's representation as set forth in Paragraph Six was, and is, false and misleading.

PAR. 8: Through the use of the statements set forth in Paragraph Four, and others not specifically set forth herein, respondent has represented, directly or by implication, that an independent laboratory test proves that Rinsenvac 5 cleans carpets better in cold water than other steam cleaners do in hot water.

PAR. 9: In truth and in fact for the reasons stated in Paragraph Seven, an independent laboratory test does not prove that Rinsenvac 5 cleans carpets better in cold water than other steam cleaners do in hot water. Therefore, respondent's representation as set forth in Paragraph Eight was, and is, false and misleading.

PAR. 10: The acts or practices of respondent as alleged in this complaint constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

108 F.T.C.

EXHIBIT A

In Hot or Cold Water New Rinsenvac 5 Outcleans the Others!

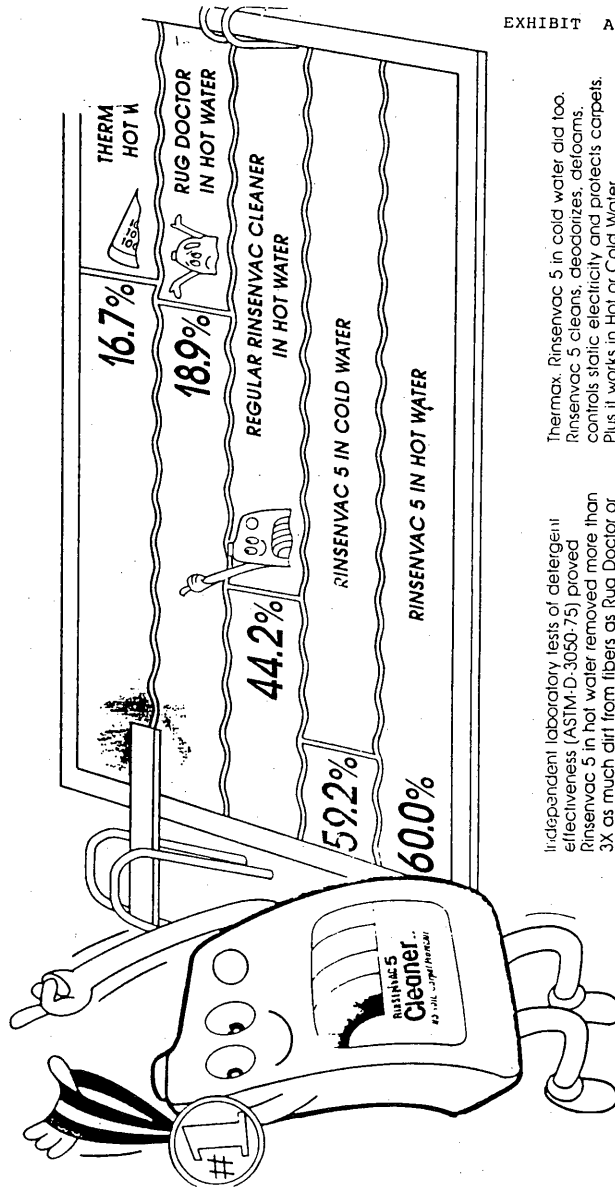


EXHIBIT A

Independent laboratory tests of detergent effectiveness (ASTM-D-3050-75) proved Rinsenvac 5 in hot water removed more than 3X as much dirt from fibers as Rug Doctor or

Therm. Rinsenvac 5 in cold water did too. Rinsenvac 5 cleans, deodorizes, deloams, controls static electricity and protects carpets. Plus it works in Hot or Cold Water.

EXHIBIT B

In Hot or Cold Water, New RINSENVAC 5[®] Outcleans the Others!

EXHIBIT B

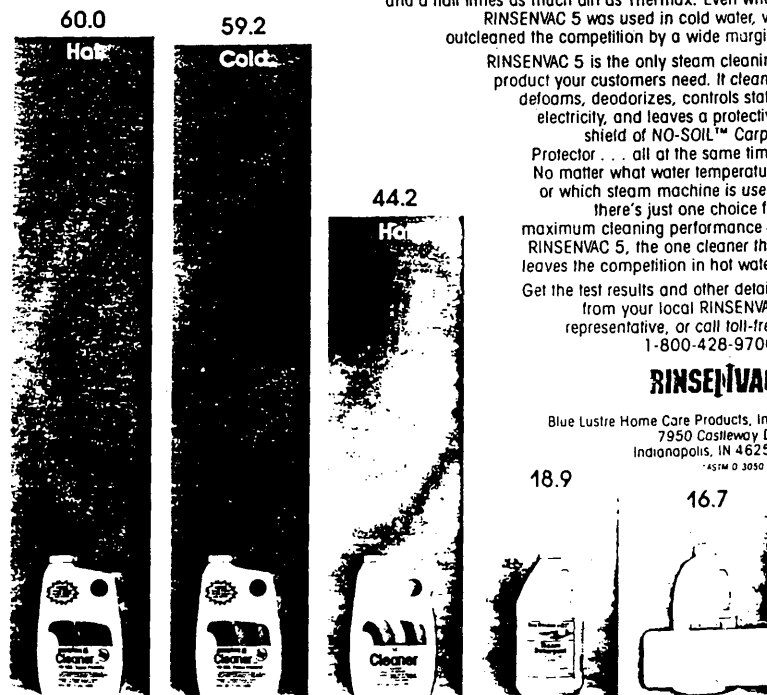
stock up and leave your competition in hot water

RINSENVAC loves a challenge! And so when we were asked to submit our new RINSENVAC 5 Cleaner to an independent laboratory to test detergent effectiveness,* we jumped at the opportunity. Using hot water and following the recommended mixing procedures, RINSENVAC 5 went head to head with RUG DOCTOR[®] and THERMAX[®]. And we won. RINSENVAC 5 removed over three times as much dirt as Rug Doctor and three and a half times as much dirt as Thermax. Even when RINSENVAC 5 was used in cold water, we outcleaned the competition by a wide margin.

RINSENVAC 5 is the only steam cleaning product your customers need. It cleans, defoams, deodorizes, controls static electricity, and leaves a protective shield of NO-SOIL™ Carpet Protector . . . all at the same time! No matter what water temperature or which steam machine is used, there's just one choice for maximum cleaning performance — RINSENVAC 5, the one cleaner that leaves the competition in hot water! Get the test results and other details from your local RINSENVAC representative, or call toll-free 1-800-428-9700.

RINSENVAC

Blue Lustr Home Care Products, Inc.
7950 Castleway Dr.
Indianapolis, IN 46250
*ASTM D 3050 75



Complaint

108 F.T.C.

EXHIBIT C

EXHIBIT C

True Value
HARDWARE STORES®



RADIO SPOT

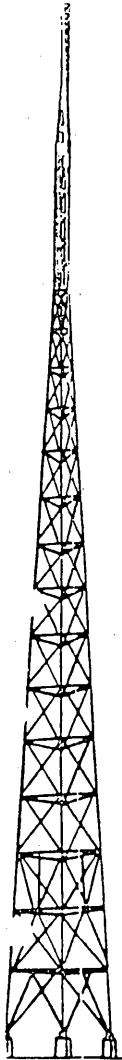
CATEGORY : NETWORK
SCRIPT # : 3BLO4
TITLE : BLUE LUSTRE
AIR DATE : SEPT./OCT. '84
LENGTH : 30 SECONDS

ITEM DESCRIPTION : RINSENVAC 5 CLEANER
MFR. NUMBERS : 40581

1 2 3 4 5 6 7 8 9 10

- 1 If you're still scrubbing carpets on your hands and knees
- 2 because you're afraid steam cleaning will cause shrinkage or
- 3 color damage, try Rinsenvac 5 cleaner from True Value
- 4 Hardware Stores. Hi, Pat Summerall to say this cleaner
- 5 works well in hot or cold water. An: lab tests prove it
- 6 cleans better in cold water than other steam carpet cleaners
- 7 do in hot. You'll find a 1/2-gallon bottle of Rinsenvac 5
- 8 for just \$8.99 and low rental prices on steam cleaning
- 9 machines at participating True Value Hardware Stores and
- 10 Home Centers.

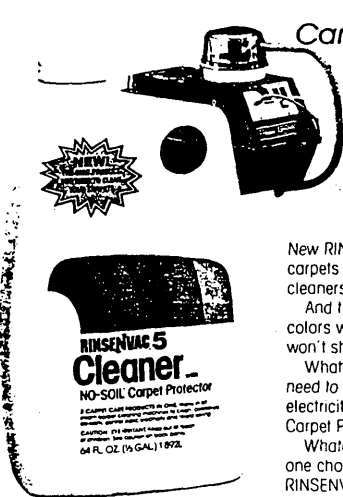
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Complaint

EXHIBIT D

These Famous Brands Now...



**EXHIBIT D
Carpet Cleaning Breakthrough!**

**NEW RINSEVAC 5
WORKS IN COLD
WATER FOR "STEAM"
CLEANING WITHOUT
WORRY!**

New RINSEVAC 5 actually cleans carpets better in cold water than other cleaners do in hot. Independent laboratory tests prove it! And that means worry-free carpet cleaning, because colors won't fade as with hot water. Stains won't set. Carpets won't shrink.

What's more, RINSEVAC 5 is the only product you need to buy. It cleans. Defoams. Deodorizes. Controls static electricity. Even leaves a protective shield of NO-SOIL™ Carpet Protector. And works in any steam cleaning machine. Whatever water temperature you choose, there's just one choice for maximum cleaning performance. New RINSEVAC 5.

**GREAT FALL
HARDWARE SALE** 

GREAT VALUES Save now on national brands. Special prices and special offers on famous names and high quality products.

GREAT PRIZES Enter the big sweepstakes and win one of hundreds of prizes. Use coupon on first page of this special section.

GREAT RETAILERS Visit your local participating hardware store or home center. Deposit your sweepstakes coupon and find savings plus help for all your do-it-yourself, fix-up projects.

NRHA National Retail Hardware Association

DECISION AND ORDER

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

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

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

ORDER

I.

It is ordered, That respondent Blue Lustre Home Care Products, Inc., a corporation, its successors and assigns, and respondent's officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any carpet cleaning product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

B. Representing in any manner, directly or by implication, any

performance characteristic, including any comparative performance of any carpet cleaning product, unless at the time of such representation respondent possesses and relies upon a reasonable basis for such representation, consisting of competent and reliable evidence which substantiates such representation; *provided, however*, that to the extent such evidence consists of any test, experiment, analysis, research, study or other evidence based on the expertise of any professional, such evidence shall be "competent and reliable" only if the test, experiment, analysis, research, study or other evidence is conducted and evaluated in an objective manner by a person qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results; and *provided further*, that for the purposes of this paragraph, testing conducted in accordance with the protocol ASTM D 3050-75 of the American Society of Testing and Materials shall not constitute competent and reliable evidence to substantiate any performance representation for any carpet cleaning product.

II.

It is further ordered, That for three years from the date that the representations are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

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

B. All test reports, studies, surveys or other materials in its possession or control that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation.

III.

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

IV.

It is further ordered, That the respondent shall, within sixty (60) days after service of this order upon it and at such other times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form in which it has complied or intends to comply with this order.

IN THE MATTER OF
BASS BROTHERS ENTERPRISES, INC., ET AL.

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

*Docket 9178. Complaint, * May 8, 1984—Decision, Aug. 6, 1986*

This consent order requires, among other things, a Fort Worth, Tex. producer of carbon black to obtain prior FTC approval for the acquisition of securities or assets of any company over a certain size in the U.S. carbon black industry.

Appearances

For the Commission: *Steven B. Feirman* and *Edward F. Glynn, Jr.*

For the respondents: *Charles E. Koob, Simpson, Watcher & Bartlett,*
New York City.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

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

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of

* Complaint previously published at 107 F.T.C. 303.

its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Bass Brothers Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2700 First City Bank Tower, 201 Main Street, in the City of Forth Worth, State of Texas.

2. Respondent Sid Richardson Carbon & Gasoline Co. is a corporation organized, and existing under the laws of the State of Texas with its corporate headquarters at 2700 First City Bank Tower, 201 Main Street, in the City of Fort Worth, State of Texas.

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

ORDER

Definitions

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

Carbon black means furnace-process and thermal-process carbon black, whether used for rubber or other applications.

Bass Brothers means Bass Brothers Enterprises, Inc., as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of its parents, divisions, subsidiaries, successors and assigns.

SRCG means Sid Richardson Carbon & Gasoline Co., as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of its parents, divisions, subsidiaries, successors and assigns.

Ashland means Ashland Oil, Inc., as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of its parents, divisions, subsidiaries, successors and assigns.

Production capacity means the practical annual productive capacity of all units, including units currently in operation and units that could be put into operation with or without time delay or additional investment.

I.

It is ordered, That, unless Bass Brothers and SRCG have already done so, they will, not later than fourteen (14) days after this order

becomes final, terminate any agreement that provides for or contemplates the acquisition of Ashland's carbon black business by Bass Brothers or SRCG, including but not limited to the letter of intent signed on or about November 15, 1983, withdraw the premerger notification filing submitted to the Federal Trade Commission with respect to that letter of intent, return or destroy all documents containing or recording confidential information provided to Bass Brothers or SRCG by Ashland, and recover from Ashland all documents containing or recording confidential information provided to Ashland by Bass Brothers and SRCG, in connection with acquisition negotiations or agreements. Nothing herein contained shall relieve Bass Brothers or SRCG from any obligation of confidentiality imposed by agreement among Bass Brothers, SRCG and Ashland.

II.

It is further ordered, That for a period of five (5) years from the date this order becomes final, neither Bass Brothers nor SRCG shall acquire, directly or indirectly, without the prior approval of the Commission, any part of the United States carbon black business of any other person or corporation, whether represented by securities or assets, other than products or securities obtained in the regular course of business, if as a result of such acquisition Bass Brothers or SRCG would cumulatively increase its United States carbon black production capacity by more than 130 million pounds.

III.

It is further ordered, That while Paragraph II of this order is effective, Bass Brothers or SRCG shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment of substantially all assets, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries in the United States, that may affect compliance obligations arising out of this order.

IV.

It is further ordered, That Bass Brothers or SRCG shall, within thirty (30) days after making an acquisition of United States carbon black production capacity permitted under this order while Paragraph II of this order is effective, file with the Commission a written report describing such acquisition.

V.

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

IN THE MATTER OF
DETROIT AUTO DEALERS ASSOCIATION, INC., ET AL.

Docket 9189. Interlocutory Order, Aug. 6, 1986.

NOTICE OF INTENT TO RELEASE CONFIDENTIAL INFORMATION

This is to advise the parties to this proceeding that the Commission intends to order placement on the public record of Complaint Counsel's Motion to Dismiss the Complaint with Respect to Certain Respondents and Request for Certification of Motion to the Commission.

In making a determination to release *in camera* material in the course of an adjudicative proceeding, the Commission must balance the potential harm of such release to the protected party against the substantial interest in the public having available the factual background of a Commission decision. Public knowledge of such information permits both improved evaluation of the fairness and wisdom of a given Commission decision, and provides clearer guidance to affected parties. *See, RSR Corp.*, 88 F.T.C. 734 (1976).

Here we have concluded that no competitive or other harm would result from release of this information. Accordingly, release of this information will occur no sooner than ten (10) calendar days following service of this notice.

Modifying Order

108 F.T.C.

IN THE MATTER OF

THE J.B. WILLIAMS COMPANY, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2037. Consent Order, Sept. 9, 1971—Modifying Order, Aug. 20, 1986*

The Federal Trade Commission has modified a 1971 order with respondents (79 F.T.C. 410) by terminating a perpetual obligation that the company submit advertising and labeling to the FTC at six month intervals to demonstrate compliance with the order. The FTC concluded that it was in the public interest to relieve respondents of the costs of compliance with this provision.

ORDER REOPENING AND MODIFYING CEASE AND DESIST ORDER
ISSUED ON SEPTEMBER 9, 1971

On February 19, 1986, Beecham, Inc., on behalf of itself and its wholly-owned subsidiary, J.B. Williams Company, Inc., petitioned the Commission to reopen the proceeding in Docket No. C-2037 and modify the order against J.B. Williams issued by the Commission on September 9, 1971. Pursuant to Section 2.51 of the Commission's Rules of Practice, Beecham's petition was placed on the public record for comment. No comments were received.

Summary of Order

The order prohibits certain product effectiveness representations in advertising the product, "Proslim", or "any other purported weight reducing or weight control product".

In addition, the order prohibits the dissemination of any advertising which, in any manner, makes reference to scientific or medical tests or studies as substantiating any representation or claim as to the effectiveness or performance of any consumer product, unless such scientific tests or studies do, in fact, substantiate such representation or claim. The order further imposes the continuing obligation on the respondent to submit to the Commission samples of all advertising and labeling every six months to show continued compliance.

*Request That Provision Requiring Substantiation
For Product Claims Be Set Aside*

Beecham first requests that Part II of the order, which requires substantiation for product claims, be deleted from the order on the basis of changed conditions of fact and public interest considerations.

Beecham bases its request that Part II be deleted from the order

primarily on changed conditions of fact. First, it states that the weight control products that were the subject of the order are no longer being manufactured, advertised or sold. Secondly, it states that J.B. Williams, the "bad actor" involved in the conduct leading to the order, no longer effectively exists. Therefore, Beecham argues that, since the products that were the subject of the order and the transgressor whose conduct led to the order no longer effectively exist, it is in the public interest to eliminate such a fencing-in provision.

In support of its argument that these changed conditions of fact require that Part II be deleted from the order, Beecham cites cases involving appellate review of orders with fencing-in provisions and competition cases where the Commission removed fencing-in provisions from orders because changing market conditions rendered the fencing-in provisions unnecessary. Beecham, however, fails to cite authority for the relief that it is requesting.

The Commission rejects Beecham's argument that the discontinuance of the products that were the subject of the complaint or that corporate personnel changes are changed conditions of fact requiring that the order be modified by deleting Part II from the order. The sale and advertising of weight control products may be resumed. More importantly, Part II is applicable to "any consumer product", not just to weight control preparations. In its April 11, 1984 letter to Beecham denying its prior petition to vacate this order in its entirety, along with others, the Commission rejected Beecham's argument that corporate personnel changes is a sufficient changed condition of fact to justify the relief requested in that petition. No new arguments have been advanced that would establish that this changed condition of fact warrants the modification requested herein. Furthermore, Beecham has cited no authority for its argument that the two asserted factual changes taken together, rather than considered separately, warrant the deletion of a fencing-in provision of an order.

Part II of the order is a limited and reasonable substantiation provision that should not impose unnecessary burdens on Beecham, and Beecham has not shown that it does impose such burdens. Simply stated, Part II merely requires that medical tests or studies do, in fact, substantiate effectiveness or performance claims if Beecham makes reference in advertising to such medical tests or studies. If Beecham does not have medical tests or studies to substantiate such claims, it may not make reference to such medical tests or studies. *See Pfizer, Inc.*, 81 F.T.C. 23 (1972).

*Request That, If Part II Is Not Deleted From Order,
It Be Qualified By The Addition Of A Second Paragraph.*

If the Commission declines to delete Part II from the order, Beecham asks that the following paragraph be inserted in the order as the second paragraph in Part II of the order:

Provided, however, That such scientific or medical tests or studies shall be deemed to substantiate any such representation or claim where competent scientific or medical persons retained or employed by respondent have a reasonable good faith belief that such substantiation in fact exists regardless of whether some other scientific or medical person or persons may or do have a belief to the contrary.

The request that the order be modified to place the above paragraph in the order is based on changed conditions of law and public interest considerations. Beecham says that Commission law was changed with *Pfizer, Inc., supra*, in 1972. It argues that Part II of the order may be interpreted by staff acting unreasonably as an "absolute basis" standard, rather than a "reasonable basis" standard. An "absolute basis" standard, according to Beecham, may require that its substantiation be "free from all uncertainties or good faith differences among competent scientists, medical personnel and other experts."

Beecham further argues that the substantiation standard in Part II is ambiguous and that it is "fundamentally unfair" not to provide Beecham with clear guidance on the applicable standard which must be met under Part II.

Arguing that the public interest requires that the order be reopened and modified by the addition of its proposed paragraph, Beecham cites *General Motors Corporation*, 104 F.T.C. 511 (1984), as an order which was modified "to avoid any unintended restriction on the dissemination to the public of information material to purchasing decisions." The *General Motors* approach is equally appropriate here, Beecham argues, "[to] eliminate the ambiguities in the advertising substantiation standards applicable under the Proslim order and to permit Beecham to make representations for which it has a reasonable basis and which consumers may wish to hear."

The Commission does not view Part II of the order as imposing on Beecham an "absolute basis" standard requiring unanimity of all scientists and medical personnel. If Beecham refers to medical tests or studies in its advertising, such tests or studies must substantiate such claim. The ultimate determination of whether Beecham's substantiation does, in fact, substantiate its claim is not made by staff, but it is made by the district court in an enforcement action. On the other hand, the paragraph that Beecham wishes to be placed in the order would, in the Commission's opinion, create an absolute stan-

dard. It would establish that the "reasonable good faith belief that such substantiation exists" possessed by "competent scientific or medical persons retained or employed" by Beecham is absolute "regardless of whether some other scientific or medical person or persons may or do have a belief to the contrary." There is no justification for the substantiation standard proposed by Beecham.

As to the public interest argument, the Commission has found that Beecham has failed to demonstrate that the public interest requires modification. The current situation is not comparable to the factual situation in *General Motors*. In *General Motors*, the modification was considered to be in the public interest because it permitted the flow of information to consumers concerning normal and ordinary handling characteristics of General Motors' vehicles which would have been impossible under the order.

Request That Product Coverage Be Limited

If the Commission declines to delete Part II from the order, Beecham requests that product coverage in Part II be limited to:

Products intended for consumer use which are (a) sold under a trademark in use by J.B. Williams at the time that J.B. Williams was acquired by Beecham, (b) sold for the same uses as J.B. Williams sold such preparations at such time and (c) composed of substantially the same constituents as were in such products at such time.

The petition notes that the Commission's letter to Beecham of April 11, 1984, denying its request that this order and three other orders be set aside, also advised Beecham that it is bound by this order and the other J.B. Williams orders with respect to its advertising of the J.B. Williams consumer products. Changes in the products make it imperative, according to Beecham, that the Commission provide a more specific definition of which products are J.B. Williams consumer products and which are Beecham consumer products.

The reformulation of Beecham products is said to be a changed condition of fact requiring the product coverage modifications. With reformulations, Beecham asserts that it becomes increasingly difficult to determine whether any such product is still a "preparation of substantially similar composition" or possesses "substantially similar properties" to the old product.

Next, the integration of the J.B. Williams manufacturing facilities with those of Beecham is stated to be a changed condition of fact. Since a J.B. Williams product may be manufactured at a Beecham facility, and a Beecham product may be manufactured at a J.B. Williams facility, Beecham says that the products may be confused.

A final changed condition of fact, according to Beecham, is the

dismissal of almost all J.B. Williams management personnel after Beecham's acquisition of that company. None of those responsible for the illegal conduct prohibited by the Proslim order are currently employed by Beecham.

Beecham also argues that adoption of the product coverage modifications is in the public interest "as giving Beecham guidance on precisely which products are and are not" J.B. Williams consumer products "covered by the order."

The changed conditions of fact and public interest considerations recited in the petition do not justify the relief requested. Product reformulations, the integration of J.B. Williams manufacturing facilities with those of Beecham, management turnover, and the development of new products do not, in the opinion of the Commission, render J.B. Williams consumer products less identifiable. The Commission has previously determined that the order in Docket No. C-2037 only governs the advertising of J.B. Williams' consumer products. J.B. Williams' products and Beecham products are clearly distinguishable. J.B. Williams products would include any products manufactured by J.B. Williams at the time of the acquisition, and modifications thereto, sold and promoted under the same or substantially similar brand names, and any derivative products, *e.g.*, Sominex II, Geritol Complete, etc. However, to the extent that identification of J.B. Williams products is an issue, a determination may be made on a case-by-case basis.

Request That Perpetual Reporting Requirement Be Eliminated

The last modification requested by Beecham would delete from Part IV of the order a requirement that samples of all advertising, labels and labeling for weight control products and all advertisements for any consumer product that refer to scientific or medical tests or studies must be submitted every six months to demonstrate compliance with the order.

Upon consideration of Beecham's petition and other relevant information, the Commission now finds that the public interest warrants reopening the proceeding and modifying Part IV of the order. The record demonstrates that termination of the perpetual periodic obligation to submit advertising and labeling to the Commission to relieve respondent of compliance costs is in the public interest.

It is therefore ordered, That this matter be, and hereby is reopened and that the last paragraph of Part IV of the Commission's order be, and hereby is modified to read as follows:

It is further ordered, That respondents submit to the Commission

labels and labeling, for "Proslim" or "Proslim 7 Day Reducing" wafers, diet drink mix, or any other purported weight reducing or weight control product, and all advertisements for any consumer product which in any manner make reference to scientific or medical tests or studies as allegedly substantiating any representation or claim as to the effectiveness or performance of any such product, to show the manner of compliance with this order.

Complaint

108 F.T.C.

IN THE MATTER OF

SAGA INTERNATIONAL, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3196. Complaint, Aug. 20, 1986—Decision, Aug. 20, 1986*

This consent order, among other things, requires a Compton, Calif. manufacturer and seller of ultrasonic pest-control devices to refund the full purchase price of its "Home Free" pest-control product to any consumer who bought the device after Dec. 31, 1983. Additionally, respondent is required to provide signs for retailers to post about the availability of refunds and advertise their availability through newspaper ads. Further, respondent is prohibited from making any performance or efficacy claims about any ultrasonic pest-control product unless it possesses and relies upon competent and reliable evidence that substantiates its claims.

Appearances

For the Commission: *Harrison J. Sheppard.*

For the respondents: *Vicki E. Baer, Holme, Roberts & Owen, Denver, Colo.*

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 Saga International, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Saga International, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its offices and principal place of business located at 1220 West Walnut Street, Compton, California.

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

PAR. 3. Respondent, advertises, offers for sale, sells and distributes ultrasonic pest control devices under the brand name of "Home Free".

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of the Home Free ultrasonic pest control product, respondent has disseminated, directly and through its marketers and distributors, various promotional materials, including suggested advertisements, sales brochures and promotional pamphlets, which contain statements respecting the performance of the Home Free ultrasonic pest control product. Examples of such promotional materials, which include the Home Free package, are attached hereto as Exhibits A through J.

PAR. 5: Typical statements in said promotional materials, but not necessarily inclusive thereof, are:

A. Ultrasonic sound waves repel rats, mice, and many insects from your home . . . repels . . . roaches, flies, fleas, mosquitos, bedbugs, spiders, and ticks.

B. Electronically drives away insects and pests, with powerful pulsating blasts of sound waves. . . in a safe effective way!

C. Safe. . . eliminates dangerous poisons from your home.

D. It has been found effective on a wide range of pests including fleas, flies, mosquitos, crickets, roaches, rats, and mice. The HOME FREE, when properly used, sends out an ultrasonic signal that irritates the super sensitive auditory nerves of insects and rodents, and thereby forces them to leave the area protected by it's [sic] sound.

E. Rodents. . . will leave the area right away and results will be apparent almost at once.

F. It may take up to 4-6 weeks before the insect army is gone.

G. HOME FREE keeps your home free from bugs, insects, rats, and mice. . .

H. HOME FREE combined science and electronics to create a pest control system that is effective, and easy to use.

PART I

Pest Elimination Claims

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four and Five are incorporated by reference herein.

PAR. 6. Through the use of statements referred to in Paragraph Five and others not specifically set forth therein, respondent has represented, and is now representing, directly or by implication, that use of the Home Free:

a. Eliminates rats, mice, cockroaches, and other pests from a purchaser's home or place of business.

b. Eliminates rodents and insects from a purchaser's home or place of business within four to six weeks or sooner.

c. Prevents rodents and insects from remaining in or entering an area in a purchaser's home or place of business where the Home Free device is in use.

PAR. 7. In truth and in fact, use of the Home Free:

- a. Does not eliminate rats, mice, cockroaches, and other pests from a purchaser's home or place of business.
- b. Does not eliminate rodents and insects from a purchaser's home or place of business within four to six weeks or sooner.
- c. Does not prevent rodents or insects from remaining in or entering an area in a purchaser's home or place of business where the Home Free device is in use.

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

PART II

Pest Control Claims

Alleging further violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraph One, Two, Three, Four and Five are incorporated by reference herein.

PAR. 8. Through the use of the statements referred to in Paragraph Five, and others not expressly set out therein, respondent has represented, and is now representing, directly or by implication, that use of the Home Free:

- a. Effectively controls rats and mice in the home or place of business.
- b. Effectively controls insects, such as cockroaches, in the home or place of business.
- c. Eliminates the need to use, in the home or place of business, alternative rodent or insect control products such as traps, powders, sprays or other chemicals.

PAR. 9. In truth and in fact, use of the Home Free:

- a. Does not effectively control rats and mice in the home or place of business. Any reaction by rodents to the Home Free would, at best, only be of short duration. Rodents habituate to ultrasound and will return to their chosen nesting or feeding habitats even in the presence of such ultrasonic products.
- b. Does not effectively control insects, such as cockroaches, in the home or place of business.
- c. Does not eliminate the need to use, in the home or place of business, alternative rodent or insect control products such as traps, powders, sprays, or other chemicals.

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

PART III

Reasonable Basis—Substantiation

Alleging further violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four and Five are incorporated by reference herein.

PAR. 10. Through the use of the statements referred to in Paragraph Five, and others not expressly set out therein, respondent has represented and is now representing, directly or by implication, that at the time of making the representations set forth in Paragraphs Six and Eight respondent possessed and relied upon a reasonable basis for those representations.

PAR. 11. In truth and in fact, at such times, respondent did not possess and rely upon a reasonable basis for making those representations.

Therefore, the representation set forth in Paragraph Ten was, and is, false and misleading.

PAR. 12. The use by respondent of the aforesaid representations as set forth in Parts I - III, and the placement, in the hands of distributors and retailers, of promotional materials through which others may have conveyed those representations, have had the tendency and capacity to mislead consumers and to induce the purchase of respondent's ultrasonic pest control products.

PAR. 13. The acts and practices of respondent, as herein alleged, constituted, and now constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

Complaint

EXHIBIT A

66

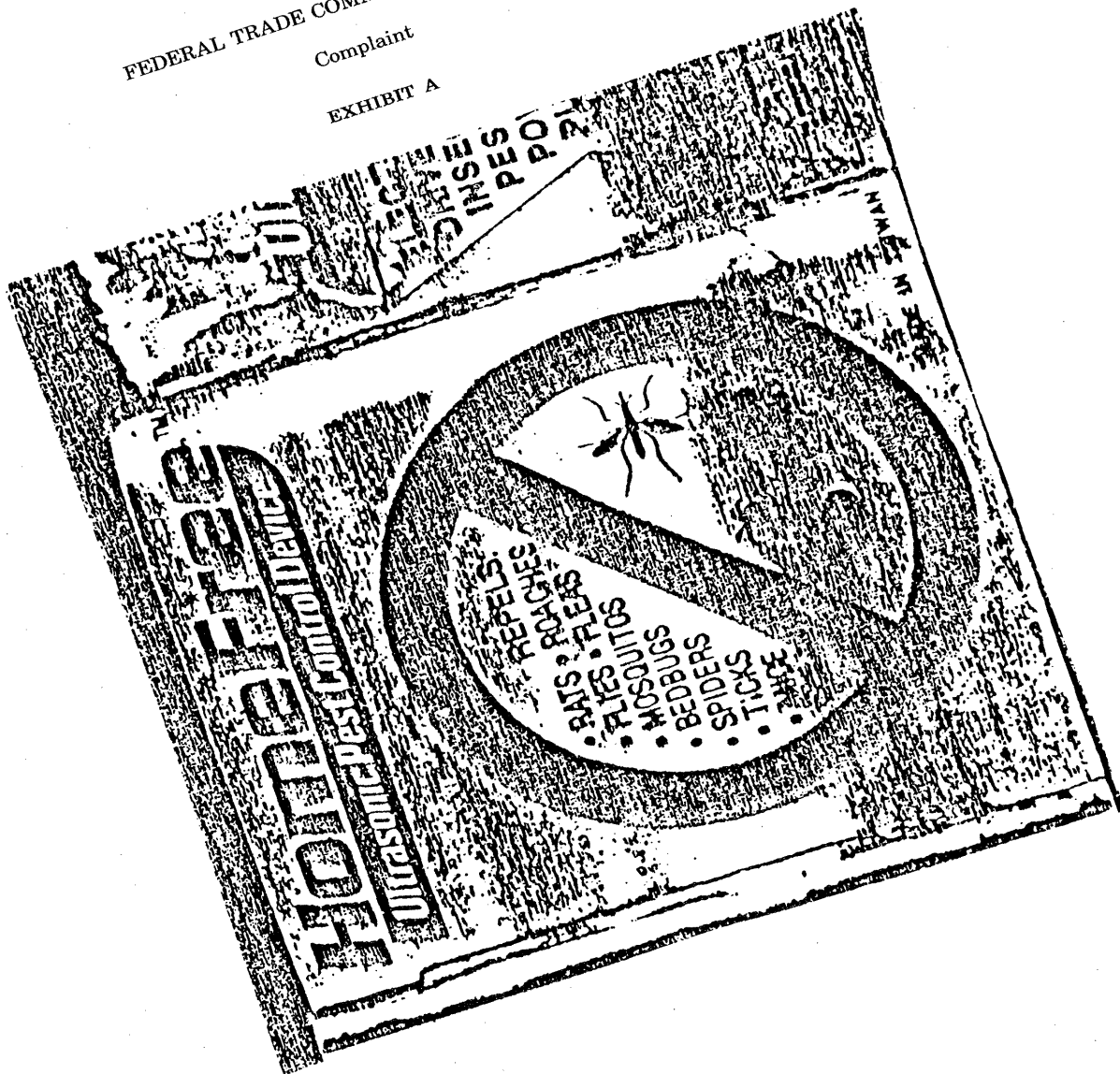



EXHIBIT B

Ultrasonic Pest Control Device

**ELECTRONICALLY
DRIVES AWAY
INSECTS AND
PESTS WITH
POWERFUL
PULSATING
BLASTS OF
SOUND WAVES**

**PERFECT FOR HOME, RESTAURANT,
OFFICE, anywhere INDOORS!**



**SAFE AND EFFECTIVE WAY
TO GET RID OF PESTS
(No poisons included)**

**PERFECT FOR HOME, RESTAURANT,
OFFICE, anywhere INDOORS!**

EXHIBIT C

EDMARTERTM
Ultrasonic Pest Control Device

EPA EST. NO. 50769 TTY-DI

SAFE: ELIMINATES DANGEROUS POISONS IN YOUR HOME.

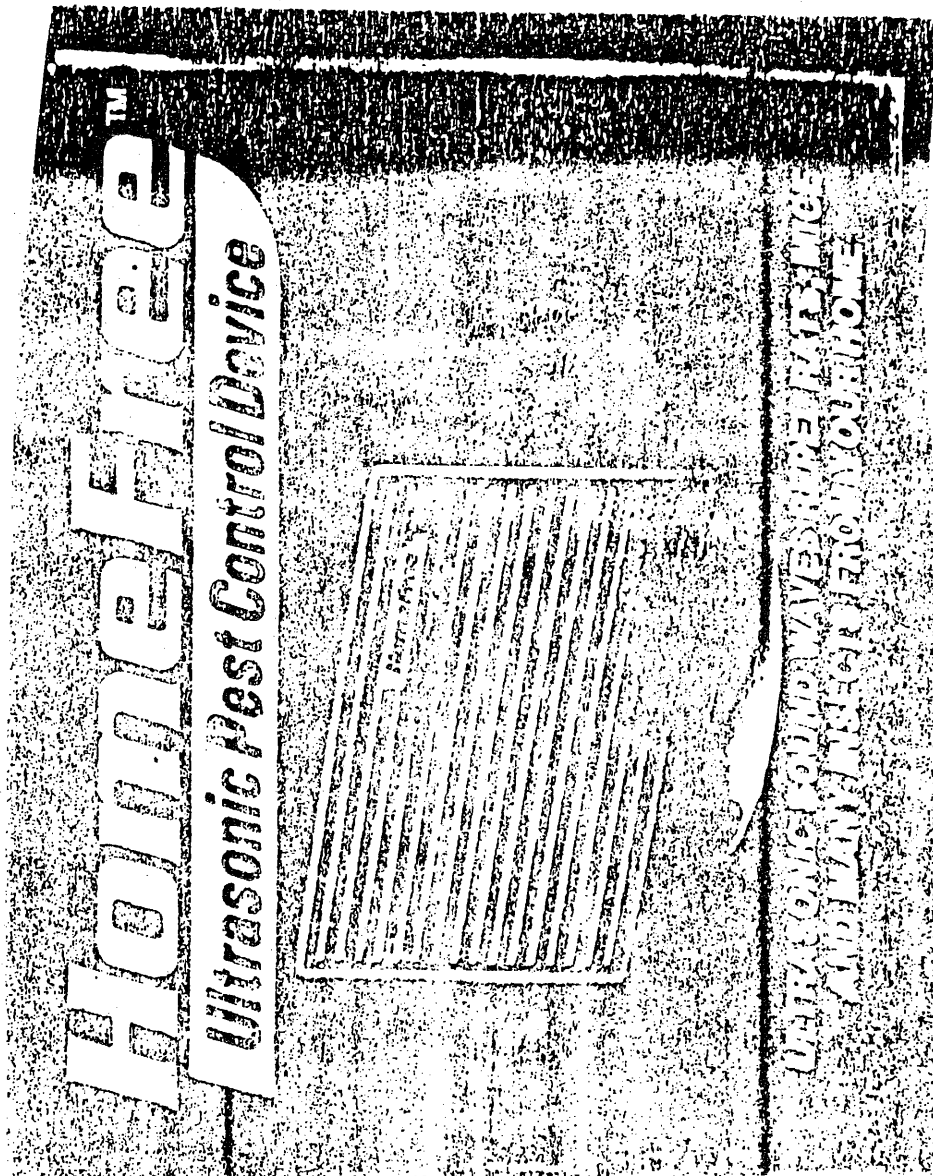
EASY TO INSTALL: JUST PLUG IT IN OR WALL MOUNT.

ECONOMICAL: USES LITTLE ENERGY WHILE GIVING 24 HR. PROTECTION.

WARRANTY: We warrant the product to be free from defects in material or workmanship for a period of 90 days from date of original purchase. Seaga International, Inc. will repair or replace the unit free of charge during this period. If necessary, we will refund the purchase price.

MODEL 5500

EXHIBIT D



Complaint

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EXHIBIT E


LIMITED WARRANTY

SAGA INTERNATIONAL INC. the makers of HOME FREE warrant the unit to be free of defects in material or workmanship for 90 days from date of original purchase. If you experience a problem, send the HOME FREE prepaid to the address below with proof of purchase from the store and we will repair or replace it free of charge and send it back to you freight prepaid.

This warranty does not cover damage of any kind of mis handling or misuse. Be sure to pack any returns carefully so damage does not occur.


SAGA

SAGA INTERNATIONAL INC.
1220 WEST WALNUT ST.
COMPTON, CALIFORNIA 90220
U. S. A.



- Repels Rats, Mice and many insects from your home.
- Ultra Sonic Sound Waves can't be heard by humans or most pets.
- Economical, uses only 4 Watts of power, costs only pennies a day.
- Eliminates the need for costly and dangerous pest killing chemicals.
- Gives long lasting relief after 4-6 weeks of operation.

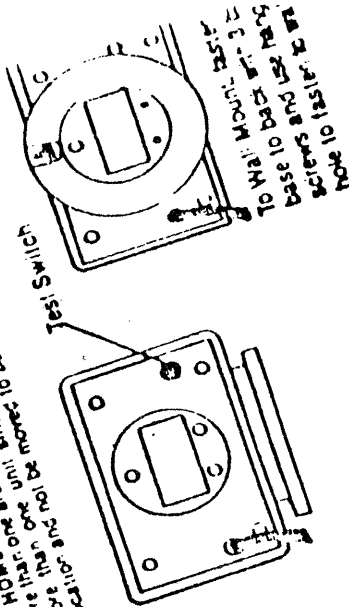
Model _____
1600 _____



Complaint

EXHIBIT F

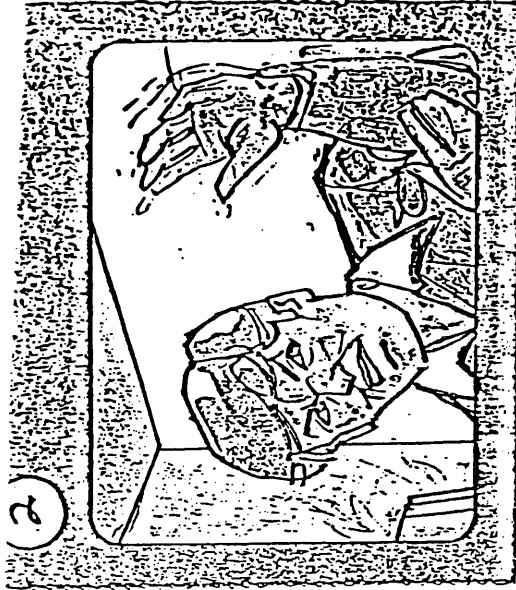
The red indicator light tells you your HOME FREE ultrasonic pest control device is working. Turn it off by pressing the button on the back of the device. The indicator light will flash when the device is working. The HOME FREE ultrasonic pest control device is designed to be used in your home continuously. It is safe for you, your family, and your pets. The HOME FREE ultrasonic pest control device is designed to be used in your home continuously. It is safe for you, your family, and your pets. The HOME FREE ultrasonic pest control device is designed to be used in your home continuously. It is safe for you, your family, and your pets.



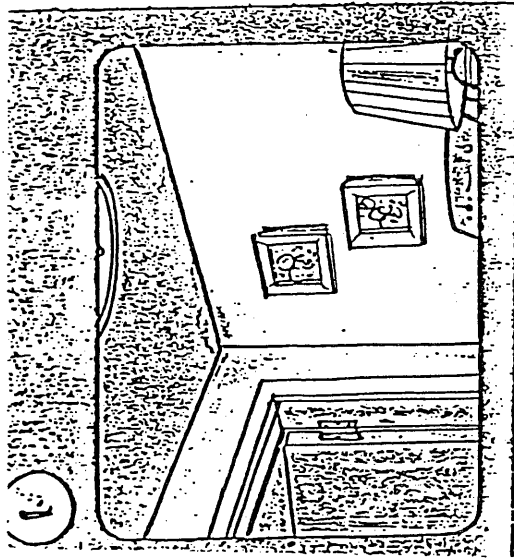
HOME FREE™

HOME FREE is an ultrasonic pest control device that kills insects and rodents including fleas, ticks, lice, and mites. The HOME FREE ultrasonic pest control device is designed to be used in your home continuously. It is safe for you, your family, and your pets. The HOME FREE ultrasonic pest control device is designed to be used in your home continuously. It is safe for you, your family, and your pets. The HOME FREE ultrasonic pest control device is designed to be used in your home continuously. It is safe for you, your family, and your pets.

EXHIBIT G

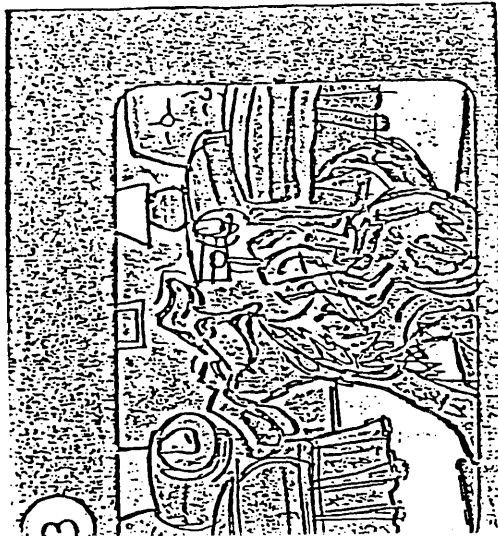


SFX: Loud buzzing...then SLAP!



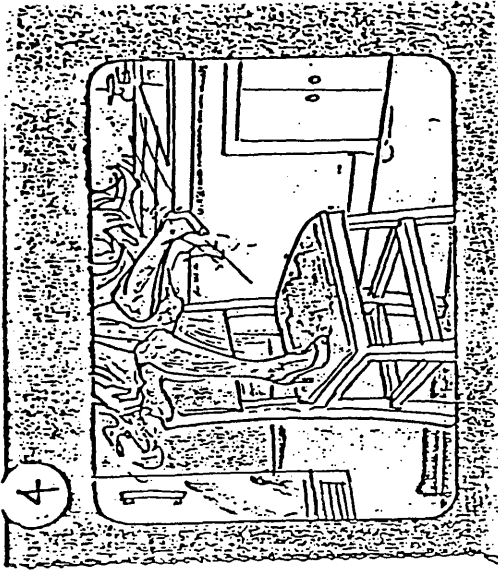
VIDEO: CLOSE-UP of man, eyes rolling,

EXHIBIT G



NCR: "Tired of being bugged by bugs?
 Fight back with the new electronic
 pest control that gets rid of fleas,
 flies, bugs, and..."

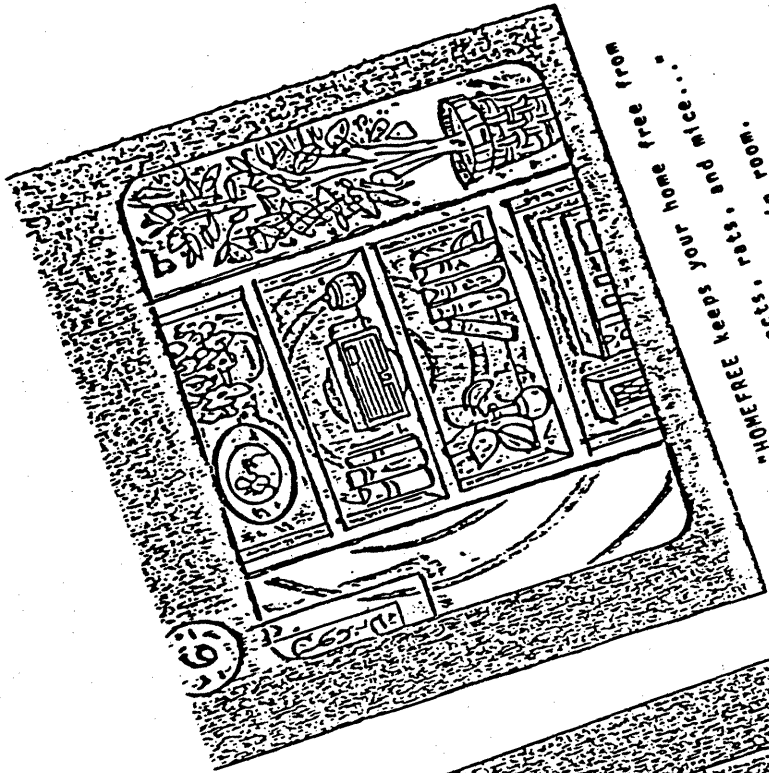
IDEQ: Camera catches a dog scratching;
 man next to dog (also scratching)



SFX: woman's screeching.

ANCR: "...even rats and mice."

VIDEO: Woman on chair



VIDEO: "HOMEFREE keeps your home free from bugs, insects, rats, and mice."

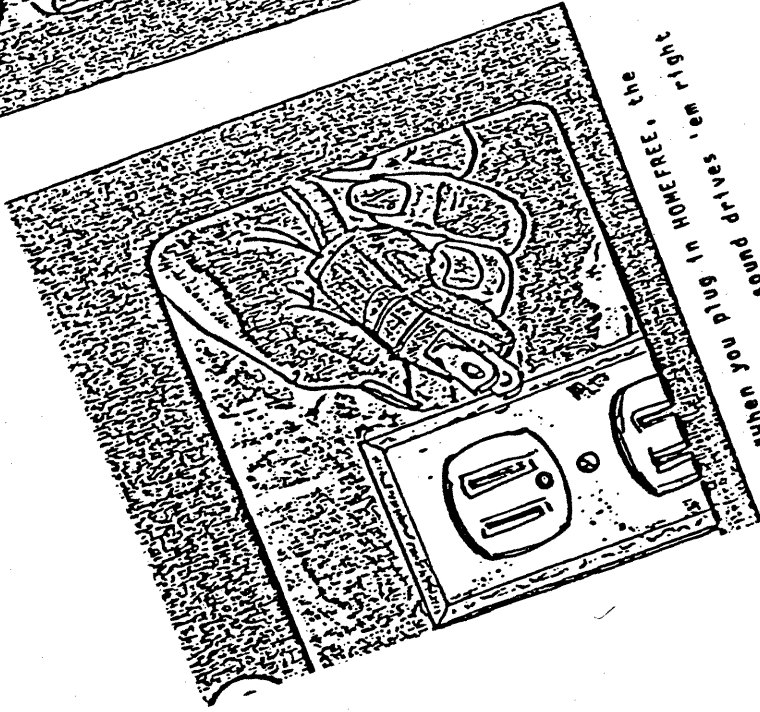
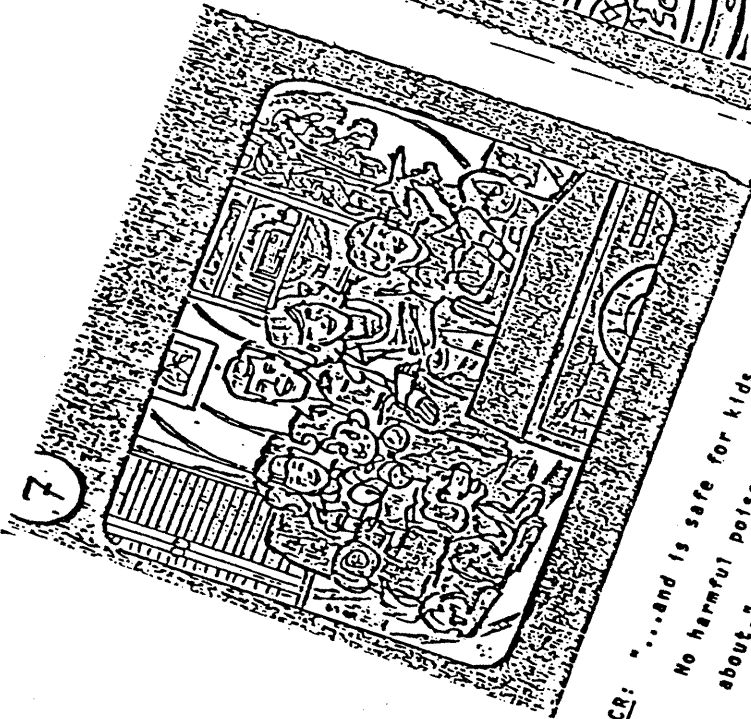


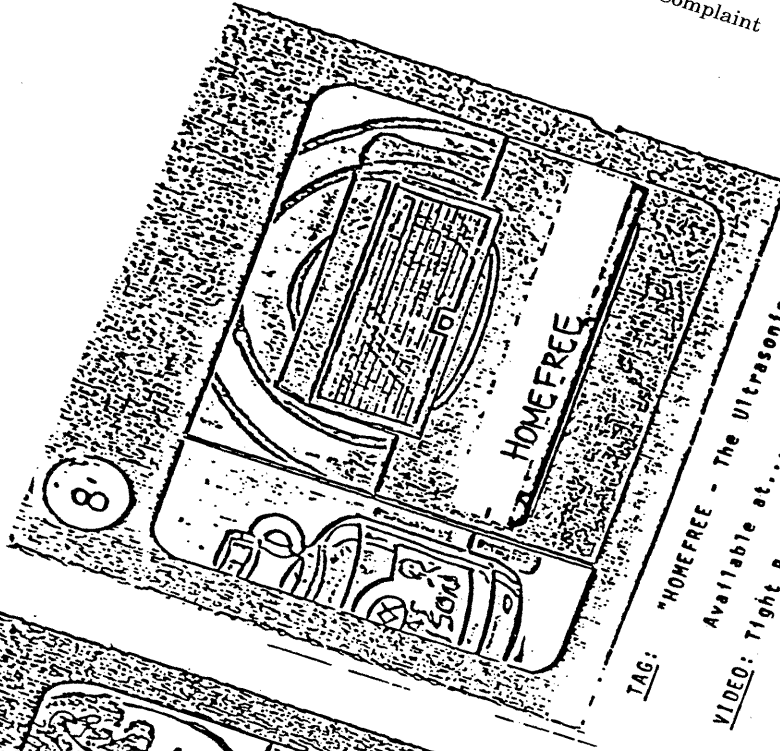
FIG. 1: "When you plug in HOMEFREE, the ultrasonic sound drives 'em right out of your house."

FIG. 2

Complaint



INCR: "...and is safe for kids and pets. No harmful poisons or sprays to worry about."
deo: Family enjoying their peace in the room.
IPER: 100% non-toxic



TAG: "HOMEFREE - The Ultrasonic Pest Control Available at..."
VIDEO: Tight Beauty Shot, list of stores.

Complaint

108 F.T.C.

EXHIBIT H

HOMEFREE :55/:05

LISTEN CAREFULLY.

YOU ARE ABOUT TO HEAR THE SOUND OF A REVOLUTION IN HOME
PEST CONTROL. THE SOUND OF ULTRASONIC WAVES UNLEASHED BY
THE HOMEFREE ULTRASONIC PEST CONTROL WYWTEM.

ARE YOU LISTENING?

HERE WE GO:

(THREE-FOUR SECONDS SILENCE)

YOU DIDN'T HEAR IT, DID YOU?

YOU WON'T. AND YOUR KIDS AND PETS WON'T.

BUT FLEAS, FLIES, BUGS, EVEN RATS AND MICE WILL.

AND THAT SOUND WE CAN'T HEAR, WILL DRIVE THEM

CRAZY, AND OUT OF YOUR HOUSE FOR GOOD.

THE HOMEFREE BLANKETS YOUR HOME WITH HIGH

FREQUENCY ULTRASONIC SOUND ONLY PESTS, BUGS, AND RODENTS CAN
HEAR

HOMEFREE COMBINED SCIENCE AND ELECTRONICS TO CREATE A PEST
CONTROL SYSTEM THAT IS EFFECTIVE, AND EASY TO USE.

ALL YOU DO IS PLUG IT IN.

AND REMEMBER, YOU CAN'T HEAR IT WORK.

YOU CAN ONLY SEE THE RESULTS!

HOMEFREE ULTRASONIC.

(:05 TAG)

EXHIBIT I

HOMEFREE :55/:05

LISTEN VERY CAREFULLY.

YOU ARE ABOUT TO HEAR THE SOUND OF THE HOMEFREE ULTRASONIC
PEST CONTROL SYSTEM HARD AT WORK, DRIVING BUGS AND RODENTS
CRAZY, AND OUT OF YOUR HOUSE FOR GOOD.

ARE YOU LISTENING?

HERE IT IS:

(THREE-FOUR SECONDS SILENCE)

YOU DIDN'T HEAR IT, DID YOU?

YOU WON'T.

AND YOUR KIDS AND PETS WON'T.

BUT FLEAS, FLIES, BUGS, EVEN RATS AND MICE WILL.

AND THAT SOUND WE CAN'T HEAR, IRRITATES THEM

SO MUCH, THEY LEAVE YOUR HOME IN DROVES.

THE HOMEFREE BLANKETS YOUR HOME WITH HIGH FREQUENCY

ULTRASONIC SOUND WAVES ONLY PESTS, BUGS AND RODENTS CAN HEAR.

BY COMBINING SCIENCE AND ELECTRONICS, HOMEFREE HAS MADE

PEST CONTROL EFFECTIVE, AND EASY TO USE.

NO CHEMICALS, ODORS, OR SPILLS.

ALL YOU DO IS PLUG IT IN.

AND REMEMBER, YOU CAN'T HEAR IT WORK.

YOU CAN ONLY SEE THE RESULTS.

HOMEFREE ULTRASONIC.

(:05 TAG)

Home Free

Ultrasonic Pest Control Device



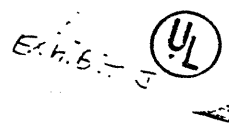
REPELS RODENTS AND INSECTS ELECTRONICALLY
HARMLESS TO HUMANS AND MOST PETS

WALL MOUNT
(1 1/2 inch)

- Repels Rats, Mice and many insects from your home.
- Ultrasonic soundwaves can't be heard by humans or most pets.
- Economical, uses only 4 watts of power costs only pennies a day.
- Eliminates the need for costly and dangerous pest killing chemicals.

MODEL	DESCRIPTION	PACK	WT.
1600	ULTRA SONIC PEST CONTROL DEVICE	12-inner Display 24-Master Ctn.	9 oz.

SAGA
SAGA INTERNATIONAL INC.
COMPTON, CA 90220



HomeFree

Ultrasonic Pest Control Device



**Repels Rodents and Insects Electronically,
Harmless to Humans and most Pets!**

- Repels rats, mice and many insects from your home.
- Ultrasonic soundwaves can't be heard by humans or most pets.
- Economical, uses only 4 watts of power, costs only pennies a day.
- Eliminates the need for costly and dangerous killing chemicals.

Available at these fine Retailers:

Logos for retailers: Home Depot, Target, Wal-Mart, Kmart, Home Depot, and others.

Exhibit 4

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 the 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 respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and also containing 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 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 the Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Saga International, Inc., is a California corporation with its offices and principal place of business located at 1220 West Walnut Street, Compton, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent Saga International, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the "Home Free" ultrasonic pest control device or any other ultrasonic pest control product or device in

or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that the Home Free or any other ultrasonic pest control product will:

(1) eliminate cockroaches, rats, mice or other pests from a home or place of business;

(2) eliminate rodents or insects from a home or place of business within four to six weeks, or within any other specified period of time;

(3) protect an area where said product is in use in a home or place of business from rodents or insects, or will cause an area to be free of rodents or insects; or

(4) serve as an effective alternative to the use of conventional products such as sprays, powders, traps or other chemicals in providing protection from insect and rodent infestation.

B. Representing, directly or by implication, any performance characteristic of any ultrasonic pest control product, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence which substantiates the representation. Evidence in the form of tests, experiments, analyses, research studies, or other evaluations shall be competent and reliable only if they are conducted in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant professions or sciences to yield accurate, reliable, and reproducible results.

C. Representing, directly or by implication, that any ultrasonic pest control product is effective in providing protection from insect or rodent infestation in a home or place of business, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence which either directly relates to such home or place of business use conditions, or which can properly be applied to such conditions. Evidence in the form of tests, experiments, analyses, research studies, or other evaluations shall be competent and reliable only if they are conducted in an objective manner by persons qualified to do so, using procedure generally accepted in the relevant professions or sciences to yield accurate, reliable, and reproducible results.

II.

It is further ordered, That respondent, its successors and assigns, and its officers, employees, agents and representatives shall provide consumer refunds in accordance with the provisions of this paragraph to any retail purchaser of the Home Free device who purchased the

Home Free device from any retail outlet at any time on or after January 1, 1984.

A. Notification of Consumers

1. Respondent shall:

(a) Within sixty (60) days from the date of service of this order, cause to be distributed to each of respondent's distributors, and to each retail outlet which is known by respondent or its distributors to have purchased the Home Free device for resale to the public, the "Notice" set out in Attachment A to this order, to which respondent shall cause to be affixed in tablet format (in sufficient quantities to anticipate foreseeable consumer demand) the form set out in Attachment B to this order;

(b) Within sixty (60) days from the date of service of this order, cause to be disseminated to each retail outlet identified in response to Paragraph II A.1(a), a request that said retail outlet prominently display said "Notice" and tablet forms;

(c) Within sixty (60) days from the date of service of this order, as to those retail outlets which together have accounted for at least 75% of respondent's sales of the Home Free device, take all steps necessary to cause said "Notices" to be placed in public areas within each such retail outlet where such "Notices" are most likely to be seen by customers, particularly past purchasers of the Home Free device; and take all steps necessary to cause such "Notices" to remain in said public areas for a continuous period of six months from the date on which such "Notices" are first placed in each such retail outlet; and

(d) Within ninety (90) days from the date of service of this order, but no sooner than respondent has complied with the provisions of Paragraphs II.A.1.(a), (b) and (c), cause to be published, clearly and prominently, the text of the "Notice" set out in Attachment A of this order, in display advertising format in the weekend or Sunday edition of each local newspaper in which each retailer identified in Paragraph II.A.1.(c) regularly advertises.

2. The "Notice" referred to in Paragraph II.A.1. above shall consist of a free standing sign or mounted wall poster of at least (8-½ by 11 inches) in dimension, on which is written, *verbatim*, in clear and prominent print of no less than 24 point print, the text as shown in Attachment A to this order.

3. Respondent shall, within ninety (90) days from the date of service of this order, cause to be published the text of the "Notice" set out in Attachment A to this order in each market area in which respondents caused newspaper, magazine, radio, or television advertisements for the Home Free to be placed at any time from January 1, 1983 to the

date of service of this order. The text of the "Notice" shall be published in a clear and prominent form in display advertising format in the newspaper of greatest general circulation in the market area in which each such advertisement appeared.

B. Consumer Refund Procedures

1. Any purchaser of the Home Free shall be entitled to a refund in accordance with the provisions of this order upon: (a) return of a Home Free device to any retailer who has sold the Home Free on or after January 1, 1984, and submission of either a sales receipt for the device issued by that retailer and dated on or after January 1, 1984, or a signed "affidavit" (as hereinafter defined and described); Or (b) shipment of the Home Free device to respondent with either a sales receipt for purchase of the device issued by a retailer and dated on or after January 1, 1984, or a signed "affidavit" (as hereinafter defined and described).

2. The "affidavit" referred to in Paragraph II.B.1. shall consist of either: (a) the form affixed in tablet format to the Notices furnished to all retailers in accordance with paragraph II.A.1.(a) above, or (b) at the discretion of the person claiming the refund, a substantially equivalent written and signed statement.

3. Where a consumer returns the purchased Home Free device(s) to respondent or to a participating retailer for refund(s), and the claim for refund is accompanied by some statement other than the affidavit form referred to herein (as permitted by Paragraph II.B.2.(b) above), and respondent or a participating retailer rejects the alternate statement as not "substantially equivalent" to the affidavit, respondent shall immediately provide the consumer, or shall cause the consumer to be provided, with an affidavit form so that the consumer may promptly obtain the refund to which the consumer is entitled under the provisions of this order.

C. Respondent's Consumer Redress Obligations

Respondent or its successors or assigns shall: (1) cause consumer refunds to be made by retailers to any purchaser of the Home Free device who returns the device and submits to the retailer either (a) a sales receipt issued by a retailer and dated on or after January 1, 1984, or (b) a signed affidavit (or its equivalent) as described in Paragraph II.B.2. above; and (2) make direct consumer refunds, including the cost of postage, to any purchaser of the Home Free device who returns the device and submits either (a) a sales receipt issued by the retailer and dated on or after January 1, 1984, or (b) a signed affidavit (or its equivalent) as described in Paragraph II.B.2. above. Any claim in compliance with Part II of this order shall be valid if made within

one calendar year of the date of service of this order and, when made directly to respondent, shall be honored by respondent within thirty (30) days of receipt of the claim.

D. Amount of Individual Refund

Any consumer shall be entitled to a refund of the full amount of the purchase price paid for each Home Free device purchased as proven by a sales receipt issued by a retailer. In the absence of such a receipt, consumers shall be entitled to a refund of no more than \$19.95 plus postage if the device has been shipped to respondent at the consumer's expense.

E. Respondent's Reporting Requirements

Respondent shall report to the Federal Trade Commission the status of the consumer redress program required by this agreement in accordance with the following schedule:

(1) One hundred and twenty (120) days from the date of service of this order, respondent shall advise the Commission, in writing, of the number and location (by retail establishment address) of notices placed as required by Paragraph II.A.1. of this agreement and shall provide the Commission with a sample of each advertisement caused by respondent to be disseminated in accordance with the provisions of Paragraphs II.A.1.(d) and II.A.3. of this order, along with the schedule of publication of such advertisements; and

(2) Fifteen (15) months from the date of service of this order, respondent shall provide the Commission with a summary report of the consumer redress program which shall include, but shall not necessarily be limited to, a tabulation, on a total cumulative basis, of the number of former purchasers of the Home Free who have claimed a refund as authorized by this agreement, the dollar amount of consumer refunds given (either by respondent directly or by retailers), and the number, name, and last known address of each claimant, if any, whose claim for refund has been denied by respondent.

F. Respondent's Record-Keeping Requirements

Respondent shall for at least two (2) years after service of this order, maintain and upon requests make available to the Federal Trade Commission at a place it designates for inspection and copying, sufficient records to identify:

(1) The name and last known address of each purchaser of the Home Free who received reimbursement and the amount of such reimbursement; and

(2) The name and last known address of each purchaser of the Home

Free who requested reimbursement and was refused, and the reason for each refusal to reimburse.

III.

It is further ordered, That for a period of three (3) years after the last date of dissemination of any representation concerning the performance characteristics or efficacy of any product covered by this order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of all materials relied upon to substantiate such representation, and copies of all documents in respondent's possession that contradict, qualify, or otherwise call into question said representation, including complaints from consumers.

IV.

It is further ordered, That respondent shall for a period of three (3) years distribute, or cause to be distributed, a copy of this order to all present and future managerial employees, distributors, independent sales agents, and former, present, and future direct purchasers from respondent of any product covered by this order.

V.

It is further ordered, That for a period of ten years:

A. Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent that may affect compliance obligations arising out of this order, such as dissolution, assignment of the ultrasonic pest control business, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

VI.

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

Decision and Order

108 F.T.C.

ATTACHMENT A

REFUND ANNOUNCEMENT
FOR PURCHASERS OF THE

"HOME FREE" PEST CONTROL DEVICE

UNDER THE TERMS OF A FEDERAL TRADE COMMISSION ORDER, YOU ARE ENTITLED TO A REFUND FOR ANY "HOME FREE" PEST CONTROL DEVICE BOUGHT ON OR AFTER JANUARY 1, 1984, UPON RETURN OF THE PRODUCT AT ANY TIME UNTIL [Date to Be Supplied: One Year From Date of Service of Order by Commission Upon Respondent]. THE FEDERAL TRADE COMMISSION HAS CHARGED THAT SUCH DEVICES ARE NOT EFFECTIVE FOR THE PURPOSES ADVERTISED. SEE YOUR RETAILER ABOUT OBTAINING THE REFUND OR CALL 1-800-624-3083 (if you are in California) or 1-800-344-4522 (if you are outside of California).

ATTACHMENT B

STATEMENT OF PURCHASE

TO OBTAIN A REFUND FROM A PARTICIPATING RETAILER, YOU MUST RETURN THE "HOME FREE" TO THE RETAILER AND SUBMIT EITHER (1) A DATED SALES RECEIPT OR (2) THIS FORM, COMPLETED AND SIGNED.

I purchased a HOME FREE pest control device from

_____ on or after
January 1, 1984. Name of Retailer

On penalty of perjury I certify that all of the above information is true and correct to the best of my knowledge. (See 28 *United States Code* §1746 (1985).

Date

Signature

Address

IF YOUR RETAILER IS NOT A PARTICIPATING RETAILER, OR YOU ARE UNABLE TO OBTAIN A REFUND FROM THE RETAILER FOR ANY REASON, YOU MAY OBTAIN A REFUND FROM THE MANUFACTURER BY SUBMITTING A DATED SALES RECEIPT OR THIS FORM (COMPLETED AND SIGNED) AND SHIPPING THE HOME FREE TO: 2055 University Drive, Compton, CA 90220, ATTN: Customer Service Department. YOU MAY SHIP THE DEVICE C.O.D. OR THE MANUFACTURER WILL REIMBURSE YOU FOR THE COST OF SHIPMENT. EACH REFUND FOR A HOME FREE PURCHASE IS LIMITED TO \$19.95 UNLESS YOU SUBMIT A SALES RECEIPT SHOWING YOU PAID A HIGHER PRICE.

IN THE MATTER OF
INDEPENDENT INSURANCE AGENTS OF AMERICA, INC.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3197. Complaint, Aug. 25, 1986—Decision, Aug. 25, 1986

This consent order, among other things, prohibits a New York City-based insurance agent association from encouraging its members to refuse to deal with companies based on the companies' sales policies.

Appearances

For the Commission: *Michael E. Antalics.*

For the respondent: *Mark F. Horning, Steptoe & Johnson, Washington, D.C.*

COMPLAINT

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

Definition

PARAGRAPH 1. For purposes of this complaint, the term *direct marketing* shall mean attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, servicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

Respondent

PAR. 2. Respondent Independent Insurance Agents of America, Inc. is a corporation organized and existing under the laws of the State of

New York, with its mailing address at 100 Church Street, New York, New York.

PAR. 3. Respondent is a national trade association established to promote and represent the common business interests of its members. Respondent operates in substantial part for the economic benefit of its members and is a corporation within the meaning of Section 4 of the Federal Trade Commission Act.

PAR. 4. Members of respondent are engaged in the business of marketing property and casualty insurance for insurance companies. Members of respondent are not employees of the insurance companies they represent, and members typically represent more than one insurance company.

Jurisdiction

PAR. 5. In the course of their businesses, members of respondent receive substantial sums of money as commissions for the writing of insurance policies for the insurance companies they represent, which money flows across state lines. Respondent, communicating with its members throughout the United States, utilizes telephonic and mail communications which flow across state lines. The acts and practices described herein are in interstate commerce, or affect the interstate activities of respondent's members, insurance companies, and consumers who purchase insurance, and are in or affecting commerce within the meaning of the Federal Trade Commission Act.

PAR. 6. The anticompetitive acts and practices alleged herein constitute an "agreement to boycott, coerce, or intimidate" or an "act of boycott, coercion, or intimidation" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. 1013(b).

Competition in the Sale of Insurance

PAR. 7. Property and casualty insurance is marketed to consumers through a variety of channels. Certain insurance companies employ sales personnel; others use independent agents; and some use both employees and independent agents. When a company uses employees to market coverages similar to those marketed through independent agents, the employees, in effect, compete with independent agents for policy sales.

PAR. 8. Certain insurance companies that have traditionally used independent agents have begun to experiment with direct marketing approaches to reduce costs and achieve operating efficiencies in the sale of policies to consumers. The Hartford Insurance Company, for example, developed a direct marketing program under which it would provide coverage to members of the American Association of Retired Persons, an organization to which many elderly Americans belong.

Anticompetitive Acts and Practices

PAR. 9. Respondent, acting as a conspiracy of at least some of its members or by combining or conspiring with some of its members, has undertaken acts to frustrate or deter insurance companies in their efforts to develop and implement direct marketing programs. Among other things, respondent has combined or conspired, through or with its members, to engage in threatened or actual refusals to deal with insurance companies that have proposed or adopted direct marketing programs.

PAR. 10. In furtherance of this combination or conspiracy, respondent, through or with its members, has engaged in various acts and practices, including among other things:

a. recommending, inducing, encouraging, urging or advising association members, through speeches and other means, to refuse to deal with insurance companies that have proposed or adopted direct marketing programs that compete with the sales efforts of independent agents; and

b. collecting and disseminating information on actual or threatened refusals to deal by independent insurance agents to coerce insurance companies that have proposed or adopted direct marketing programs that compete with the sales efforts of independent agents.

Anticompetitive Effects

PAR. 11. The purposes or effects, and the tendency and capacity, of the combination or conspiracy and acts or practices of respondent as described in Paragraphs Nine and Ten above have been and are to unreasonably restrain competition and injure consumers in one or more of the following ways, among others:

a. insurance companies have been or are likely to be frustrated or deterred in their efforts to reduce costs, achieve efficiencies, and provide consumers with alternatives to purchasing insurance through independent agents;

b. consumers have been deprived of the benefits of competition among sellers of insurance, including the availability of insurance policies marketed directly by insurance companies; and

c. competition among marketers of insurance has been or is likely to be adversely affected.

PAR. 12. The combination or conspiracy and the acts and practices alleged herein constitute unfair methods of competition or unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. This combination or

conspiracy is continuing and will continue unless the Commission enters appropriate relief against respondent.

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 a complaint which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act, as amended; and

Respondent, Independent Insurance Agents of America, Inc. ("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 amended 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 considered the matter 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, the Commission hereby makes the following jurisdictional findings and enters the following order:

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

ORDER

I.

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

A. *IIAA* means Independent Insurance Agents of America, Inc., its officers, employees, directors, committee and task force members, its successors and assigns;

B. *Independent insurance agents* means persons who are engaged in the business of selling insurance as agents for insurance companies and who are not employees of such insurance companies; and

C. *Direct marketing* means attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, servicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

II.

It is further ordered, That IIAA, individually or in concert with any other person, directly or indirectly, or through any corporate or other device, in connection with IIAA's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Requesting, requiring, advocating, advising, recommending, or publishing statements that recommend that independent insurance agents cancel agency contracts with, permanently or temporarily transfer or withhold business from, or otherwise refuse to deal with, any insurance company because of any direct marketing methods, practices or policies chosen by that company;

B. Coercing, compelling, inducing, or intimidating by means of threatened refusals to deal, or attempting to coerce, compel, induce, or intimidate by means of threatened refusals to deal, any insurance company into (1) abandoning or refraining from adopting any direct marketing method, practice or policy; or (2) adopting or continuing any method, practice or policy of selling insurance through independent insurance agents;

C. Publishing or circulating surveys or other information on actual or threatened refusals to deal by independent insurance agents with any insurance company because of that company's direct marketing methods, practices or policies; or

D. Aiding or assisting any affiliate of IIAA or any member of IIAA in engaging in any of the acts prohibited by this Part II.

III.

It is further ordered, That the provisions of Part II of this order shall not be construed to prevent IIAA from: (1) participating, in good faith, in any legislative, judicial or administrative proceedings; (2) providing information or views to any insurance company or insurance compa-

ny trade group; (3) providing factual information to its members; or (4) adopting policy statements or expressing views on subjects relevant to the direct marketing of insurance, provided that none of the above enumerated actions are undertaken to invite, initiate, encourage, or facilitate any actual or threatened refusal to deal.

IV.

It is further ordered, That IIAA shall:

A. At the first regularly-scheduled meeting of the IIAA National Board of Directors, but in no event later than 120 days after this order becomes final, repeal the Dual Marketing Task Force report;

B. Within sixty days from the date this order becomes final, mail a copy of this order, and a letter specifying any changes made pursuant to Paragraph A of this Part, to every IIAA state affiliate; and

C. Within sixty days from the date this order becomes final and annually thereafter for three years, in the first issue following the anniversary date of this order, publish this order in *Independent Agent* in the same type size normally used for articles that are published in *Independent Agent*.

V.

It is further ordered, That IIAA shall:

A. Within ninety days from the date this order becomes final, file a written report with the Commission, setting forth in detail the manner and form in which it has complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to IIAA, require;

B. For a period of three years from the date this order becomes final, maintain in its files for a period of three years a copy of all correspondence referring or relating to the direct marketing of insurance, and received from, or sent to, insurance companies, independent insurance agents, or IIAA affiliates or members, and make such copies available for inspection by representatives of the Federal Trade Commission upon written request; and

C. Notify the Commission at least thirty days prior to any proposed change in IIAA's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change which may affect compliance with this order.

IN THE MATTER OF
INDEPENDENT INSURANCE AGENTS AND BROKERS OF
CALIFORNIA, INC.

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

Docket C-3198. Complaint, Aug. 25, 1986—Decision, Aug. 25, 1986

This consent order, among other things, prohibits a San Francisco-based insurance agent association from encouraging its members to take action against insurance companies who use direct marketing.

Appearances

For the Commission: *Michael E. Antalics.*

For the respondent: *Mark F. Horning, Steptoe & Johnson, Washington, D.C.*

COMPLAINT

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

Definition

PARAGRAPH 1. For purposes of this complaint, the term *direct marketing* shall mean attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, servicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

Complaint

108 F.T.C.

Respondent

PAR. 2. Respondent Independent Insurance Agents and Brokers of California, Inc. is a corporation organized and existing under the laws of the State of California, with its mailing address at 465 California Street, Suite 600, San Francisco, California.

PAR. 3. Respondent is a trade association established to promote and represent the common business interests of its members. Respondent operates in substantial part for the economic benefit of its members and is a corporation within the meaning of Section 4 of the Federal Trade Commission Act.

PAR. 4. Members of respondent are engaged in the business of marketing property and casualty insurance for insurance companies. Members of respondent are not employees of the insurance companies they represent, and members typically represent more than one insurance company.

Jurisdiction

PAR. 5. In the course of their businesses, members of respondent receive substantial sums of money as commissions for the writing of insurance policies for the insurance companies they represent, which money flows across state lines. The acts and practices described herein are in interstate commerce, or affect the interstate activities of respondent's members, insurance companies, and consumers who purchase insurance, and are in or affecting commerce within the meaning of the Federal Trade Commission Act.

PAR. 6. The anticompetitive acts and practices alleged herein constitute an "agreement to boycott, coerce, or intimidate" or an "act of boycott, coercion, or intimidation" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. 1013(b).

Competition in the Sale of Insurance

PAR. 7. Property and casualty insurance is marketed to consumers through a variety of channels. Certain insurance companies employ sales personnel; others use independent agents; and some use both employees and independent agents. When a company uses employees to market coverages similar to those marketed through independent agents, the employees, in effect, compete with independent agents for policy sales.

PAR. 8. Certain insurance companies that have traditionally used independent agents have begun to experiment with direct marketing approaches to reduce costs and achieve operating efficiencies in the sale of policies to consumers. Reliance Insurance Company, for example, through its United Pacific Insurance Company subsidiary, devel-

oped a direct marketing program under which it would provide low priced insurance coverage to policyholders based on reduced costs and operating efficiencies.

Anticompetitive Acts and Practices

PAR. 9. Respondent, acting as a conspiracy of at least some of its members or by combining or conspiring with some of its members, has undertaken acts to frustrate or deter insurance companies in their efforts to develop and implement direct marketing programs. Among other things, respondent has combined or conspired, through or with its members, to engage in threatened or actual refusals to deal with insurance companies that have proposed or adopted direct marketing programs.

PAR. 10. In furtherance of this combination or conspiracy, respondent, through or with its members, has engaged in various acts and practices, including among other things:

a. recommending, inducing, encouraging, urging or advising association members, through speeches and other means, to refuse to deal with insurance companies that have proposed or adopted direct marketing programs that compete with the sales efforts of independent agents; and

b. collecting and disseminating information on actual or threatened refusals to deal by independent insurance agents to coerce insurance companies that have proposed or adopted direct marketing programs that compete with the sales efforts of independent agents.

Anticompetitive Effects

PAR. 11. The purposes or effects, and the tendency and capacity, of the combination or conspiracy and acts or practices of respondent as described in Paragraphs Nine and Ten above have been and are to unreasonably restrain competition and injure consumers in one or more of the following ways, among others:

a. insurance companies have been or are likely to be frustrated or deterred in their efforts to reduce costs, achieve efficiencies, and provide consumers with alternatives to purchasing insurance through independent agents;

b. consumers have been deprived of the benefits of competition among sellers of insurance, including the availability of insurance policies marketed directly by insurance companies; and

c. competition among marketers of insurance has been or is likely to be adversely affected.

PAR. 12. The combination or conspiracy and the acts and practices alleged herein constitute unfair methods of competition or unfair or

deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. This combination or conspiracy is continuing and will continue unless the Commission enters appropriate relief against respondent.

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 a complaint which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act, as amended; and

Respondent, Independent Insurance Agents and Brokers of California, Inc. ("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 amended 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 considered the matter 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, the Commission hereby makes the following jurisdictional findings and enters the following order:

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

ORDER

I.

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

A. *IIABC* means Independent Insurance Agents and Brokers of California, Inc., its officers, employees, directors, committee and task force members, its successors and assigns;

B. *Independent insurance agents* means persons who are engaged in

the business of selling insurance as agents for insurance companies and who are not employees of such insurance companies; and

C. *Direct marketing* means attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, servicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

II.

It is further ordered, That IIABC, individually or in concert with any other person, directly or indirectly, or through any corporate or other device, in connection with IIABC's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Requesting, requiring, advocating, advising, recommending, or publishing statements that recommend that independent insurance agents cancel agency contracts with, permanently or temporarily transfer or withhold business from, or otherwise refuse to deal with, any insurance company because of any direct marketing methods, practices or policies chosen by that company;

B. Coercing, compelling, inducing, or intimidating by means of threatened refusals to deal, or attempting to coerce, compel, induce, or intimidate by means of threatened refusals to deal, any insurance company into (1) abandoning or refraining from adopting any direct marketing method, practice or policy; or (2) adopting or continuing any method, practice or policy of selling insurance through independent insurance agents;

C. Publishing or circulating surveys or other information on actual or threatened refusals to deal by independent insurance agents with any insurance company because of that company's direct marketing methods, practices or policies; or

D. Aiding or assisting any affiliate of IIABC or any member of IIABC in engaging in any of the acts prohibited by this Part II.

III.

It is further ordered, That the provisions of Part II of this order shall not be construed to prevent IIABC from: (1) participating, in good

faith, in any legislative, judicial or administrative proceedings; (2) providing information or views to any insurance company or insurance company trade group; (3) providing factual information to its members; or (4) adopting policy statements or expressing views on subjects relevant to the direct marketing of insurance, provided that none of the above enumerated actions are undertaken to invite, initiate, encourage, or facilitate any actual or threatened refusal to deal.

IV.

It is further ordered, That IIABC shall:

A. Within sixty days from the date this order becomes final, mail a copy of this order, to every IIABC local affiliate; and

B. Within sixty days from the date this order becomes final and annually thereafter for three years, in the first issue following the anniversary date of this order, publish this order in *NEWS 'N VIEWS* in the same type size normally used for articles that are published in *NEWS 'N VIEWS*.

V.

It is further ordered, That IIABC shall:

A. Within ninety days from the date this order becomes final, file a written report with the Commission, setting forth in detail the manner and form in which it has complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to IIABC, require;

B. For a period of three years from the date this order becomes final, maintain in its files for a period of three years a copy of all correspondence referring or relating to the direct marketing of insurance, and received from, or sent to, insurance companies, independent insurance agents, or IIABC affiliates or members, and make such copies available for inspection by representatives of the Federal Trade Commission upon written request; and

C. Notify the Commission at least thirty days prior to any proposed change in IIABC's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change which may affect compliance with this order.

IN THE MATTER OF
INDEPENDENT INSURANCE AGENTS ASSOCIATION OF
MONTANA, INC.

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

Docket C-3199. Complaint, Aug. 25, 1986—Decision, Aug. 25, 1986

This consent order, among other things, prohibits a Helena, Montana-based insurance agent association from encouraging its members to refuse to deal with companies based on the companies' sales policies.

Appearances

For the Commission: *Michael E. Antalics.*

For the respondent: *Mark F. Horning, Steptoe & Johnson, Washington, D.C.*

COMPLAINT

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

Definition

PARAGRAPH 1. For purposes of this complaint, the term *direct marketing* shall mean attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, servicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

Complaint

108 F.T.C.

Respondent

PAR. 2. Respondent Independent Insurance Agents Association of Montana, Inc. is a corporation organized and existing under the laws of the State of Montana, with its mailing address at P.O. Box 5593, Helena, Montana.

PAR. 3. Respondent is a trade association established to promote and represent the common business interests of its members. Respondent operates in substantial part for the economic benefit of its members and is a corporation within the meaning of Section 4 of the Federal Trade Commission Act.

PAR. 4. Members of respondent are engaged in the business of marketing property and casualty insurance for insurance companies. Members of respondent are not employees of the insurance companies they represent, and members typically represent more than one insurance company.

Jurisdiction

PAR. 5. In the course of their businesses, members of respondent receive substantial sums of money as commissions for the writing of insurance policies for the insurance companies they represent, which money flows across state lines. The acts and practices described herein are in interstate commerce, or affect the interstate activities of respondent's members, insurance companies, and consumers who purchase insurance, and are in or affecting commerce within the meaning of the Federal Trade Commission Act.

PAR. 6. The anticompetitive acts and practices alleged herein constitute an "agreement to boycott, coerce, or intimidate" or an "act of boycott, coercion, or intimidation" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. 1013(b).

Competition in the Sale Of Insurance

PAR. 7. Property and casualty insurance is marketed to consumers through a variety of channels. Certain insurance companies employ sales personnel; others use independent agents; and some use both employees and independent agents. When a company uses employees to market coverages similar to those marketed through independent agents, the employees, in effect, compete with independent agents for policy sales.

PAR. 8. Certain insurance companies that have traditionally used independent agents have begun to experiment with direct marketing approaches to reduce costs and achieve operating efficiencies in the sale of policies to consumers. The Hartford Insurance Company, for example, developed a direct marketing program under which it would

provide coverage to members of the American Association of Retired Persons, an organization to which many elderly Americans belong.

Anticompetitive Acts And Practices

PAR. 9. Respondent, acting as a conspiracy of at least some of its members or by combining or conspiring with some of its members, has undertaken acts to frustrate or deter insurance companies in their efforts to develop and implement direct marketing programs. Among other things, respondent has combined or conspired, through or with its members, to engage in threatened or actual refusals to deal with insurance companies that have proposed or adopted direct marketing programs.

PAR. 10. In furtherance of this combination or conspiracy, respondent, through or with its members, has engaged in various acts and practices, including among other things:

a. recommending, inducing, encouraging, urging or advising association members, through speeches and other means, to refuse to deal with insurance companies that have proposed or adopted direct marketing programs that compete with the sales efforts of independent agents; and

b. collecting and disseminating information on actual or threatened refusals to deal by independent insurance agents to coerce insurance companies that have proposed or adopted direct marketing programs that compete with the sales efforts of independent agents.

Anticompetitive Effects

PAR. 11. The purposes or effects, and the tendency and capacity, of the combination or conspiracy and acts or practices of respondent as described in Paragraphs Nine and Ten above have been and are to unreasonably restrain competition and injure consumers in one or more of the following ways, among others:

a. insurance companies have been or are likely to be frustrated or deterred in their efforts to reduce costs, achieve efficiencies, and provide consumers with alternatives to purchasing insurance through independent agents;

b. consumers have been deprived of the benefits of competition among sellers of insurance, including the availability of insurance policies marketed directly by insurance companies; and

c. competition among marketers of insurance has been or is likely to be adversely affected.

PAR. 12. The combination or conspiracy and the acts and practices alleged herein constitute unfair methods of competition or unfair or deceptive acts or practices in or affecting commerce in violation of

Section 5 of the Federal Trade Commission Act. This combination or conspiracy is continuing and will continue unless the Commission enters appropriate relief against respondent.

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 a complaint which, if issued by the Commission would charge respondent with violation of Section 5 of the Federal Trade Commission Act, as amended; and

Respondent, Independent Insurance Agents Association of Montana, Inc. ("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 amended 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 considered the matter 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, the Commission hereby makes the following jurisdictional findings and enters the following order:

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

ORDER

I.

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

A. *IJAAM* means Independent Insurance Agents Association of Montana, Inc., its officers, employees, directors, committee and task force members, its successors and assigns;

B. *Independent insurance agents* means persons who are engaged in

the business of selling insurance as agents for insurance companies and who are not employees of such insurance companies; and

C. *Direct marketing* means attempts by insurance companies to sell insurance directly to consumers, together with any other insurance company actions—including but not limited to attempts by insurance companies to acquire or obtain a controlling interest in an independent agency, attempts by insurance companies to obtain exclusive agency agreements with independent agents or agencies, or other insurance company efforts to limit the independent agent's role in counselling insureds, servicing accounts, or controlling expirations—to facilitate the sale of insurance directly to consumers.

II.

It is further ordered, That IIAAM, individually or in concert with any other person, directly or indirectly, or through any corporate or other device, in connection with IIAAM's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Requesting, requiring, advocating, advising, recommending, or publishing statements that recommend that independent insurance agents cancel agency contracts with, permanently or temporarily transfer or withhold business from, or otherwise refuse to deal with, any insurance company because of any direct marketing methods, practices or policies chosen by that company;

B. Coercing, compelling, inducing, or intimidating by means of threatened refusals to deal, or attempting to coerce, compel, induce, or intimidate by means of threatened refusals to deal, any insurance company into (1) abandoning or refraining from adopting any direct marketing method, practice or policy; or (2) adopting or continuing any method, practice or policy of selling insurance through independent insurance agents;

C. Publishing or circulating surveys or other information on actual or threatened refusals to deal by independent insurance agents with any insurance company because of that company's direct marketing methods, practices or policies; or

D. Aiding or assisting any affiliate of IIAAM or any member of IIAAM in engaging in any of the acts prohibited by this Part II.

III.

It is further ordered, That the provisions of Part II of this order shall not be construed to prevent IIAAM from: (1) participating, in good

faith, in any legislative, judicial or administrative proceedings; (2) providing information or views to any insurance company or insurance company trade group; (3) providing factual information to its members; or (4) adopting policy statements or expressing views on subjects relevant to the direct marketing of insurance, provided that none of the above enumerated actions are undertaken to invite, initiate, encourage, or facilitate any actual or threatened refusal to deal.

IV.

It is further ordered, That IIAAM shall:

A. Within sixty days from the date this order becomes final, mail a copy of this order, to every IIAAM local affiliate; and

B. Within sixty days from the date this order becomes final and annually thereafter for three years, in the first issue following the anniversary date of this order, publish this order in *Montana TAGS* in the same type size normally used for articles that are published in *Montana TAGS*.

V.

It is further ordered, That IIAAM shall:

A. Within ninety days from the date this order becomes final, file a written report with the Commission, setting forth in detail the manner and form in which it has complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to IIAAM, require;

B. For a period of three years from the date this order becomes final, maintain in its files for a period of three years a copy of all correspondence referring or relating to the direct marketing of insurance, and received from, or sent to, insurance companies, independent insurance agents, or IIAAM affiliates or members, and make such copies available for inspection by representatives of the Federal Trade Commission upon written request; and

C. Notify the Commission at least thirty days prior to any proposed change in IIAAM's organization or operations, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change which may affect compliance with this order.