

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions, and Orders

IN THE MATTER OF

NOVARTIS CORPORATION, ET AL.

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

Docket 9279. Final Order, May 13, 1999—Modifying Order, July 2, 1999

This order modifies the final order, issued in 1999, by revising Part IV of the order concerning the corrective advertising notice for Doan's. Part IV of the order, as modified, will remain in effect for five additional years.

ORDER MODIFYING ORDER,
DENYING PETITION FOR RECONSIDERATION,
AND DENYING AS MOOT APPLICATION FOR STAY

Respondent Novartis Corporation and Novartis Consumer Health, Inc. (collectively "Novartis") have petitioned the Commission, pursuant to Rule 3.55 of the Commission's Rules of Practice, 16 CFR 3.55, to reconsider and to stay Part IV of our final order in this matter.

Rule 3.55 requires that such a petition "must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission." 16 CFR 3.55. Novartis argues that reconsideration is appropriate because factual developments since the record has been closed undermine certain factual predicates of our corrective advertising order, and because the contours of the corrective advertising requirements imposed in the order raises issues not addressed by the parties. We are not entirely satisfied that relief pursuant to Rule 3.55 is warranted here. Novartis could have introduced the recent factual developments upon which it now relies before this late stage. Moreover, while the parties in their briefs primarily addressed the propriety of the performance-based standard for the duration of corrective advertising urged by complaint counsel, the durational requirements of prior corrective advertising orders might have alerted Novartis that the information it now adduces would be relevant here. *See FTC v. Warner-Lambert Co.*, 562 F.2d 749, 753, 764 (D.C. Cir. 1977)

(imposing durational requirement based upon extent of prior expenditures), *cert. denied*, 435 U.S. 950 (1978).

Despite these reservations, we have, in any event, the power to modify our order on our own initiative pursuant to Rule 3.72(a) of our Rules of Practice. 16 CFR 3.72(a). In light of the issues raised in Novartis' petition, we have determined to exercise our discretion to modify the order.

The corrective advertising requirements imposed in our order of May 13, 1999 were to continue until Novartis expended on Doan's advertising a sum equal to the average spent annually during the eight years of the deceptive advertising campaign, and in any event for no less than one year. Novartis now contends that, in light of its current business plans, the existing order may have the practical effect of imposing requirements lasting many years. Relying upon the declaration of Barry Cohen, Director of Analgesics, Novartis asserts that it has substantially reduced its advertising and other promotional expenditures for Doan's products and plans greatly to reduce, or to stop altogether, such expenditures in the future. Cohen Decl. ¶¶ 5-8. The result of these changed circumstances, claims Novartis, is that our corrective advertising requirement, including the requirement of placing corrective messages on the product label, may remain in effect for a long and indefinite period.

Some of Novartis' other arguments appear to be premised upon a simple misreading of our final order. Novartis seems to believe that only expenditures on advertising containing the corrective message will count toward the minimum expenditure requirement imposed by that order. Pet. at 4 (asserting that the order requires Novartis to "include the corrective notice on all advertising until it has spent \$8 million on advertising *containing the notice*" (emphasis added)). Thus, Novartis concludes that fifteen-second television advertisements, which it has used exclusively in the past and which are exempted from the corrective requirements of the order, would not count toward that minimum. Novartis argues that the use of such commercials would thereby be deterred. Pet. at 5 (arguing that the order "for all practical purposes forces Novartis to use" thirty-second television advertisements). In fact, the terms of the order plainly count all expenditures for the purpose of "Doan's advertising" toward the minimum, regardless of whether such advertising is or is not required to contain the corrective message. Thus, the order will not penalize Novartis for using fifteen-second television advertisements

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if it chooses to do so. To the contrary, the exception of such advertisements from the corrective advertising requirement was designed precisely to permit the use of the fifteen-second advertisement form at that Novartis has historically favored. Op. at 35, 37.

We also reject Novartis' claim that the mere facts that they have reduced advertising expenditures for Doan's and that sales of Doan's products have decreased undermine the need for corrective advertising as a general matter. Pet. at 9-10. The likelihood of lingering consumer misbeliefs based upon Novartis' *past* conduct is what is relevant in order to determine whether corrective advertising is required. Doan's current sales and advertising budget are not directly relevant to that issue.

We turn now to the question of the duration of the order. A corrective advertising order should not outlast the lingering misconceptions that it is designed to correct. See *Warner-Lambert Co.*, 562 F.2d at 764. In order to ensure that the corrective advertising requirements we impose in this case will not remain in effect beyond the period during which the misbeliefs caused or substantially reinforced by Novartis' deceptive advertising campaign are likely to linger, we will modify the durational provision of the order. Specifically, because Novartis' deceptive advertising campaign lasted for eight years, the corrective advertising order should last no longer than an equivalent number of years after that campaign ended. Three years have already elapsed since June 1996, when Novartis stopped airing the challenged advertisements. Thus, Part IV of the order, as modified, will remain in effect for five additional years. If, as it claims, Novartis will cease its media advertising and consumer promotion expenditures, the order will nonetheless require the corrective message to appear on the product packaging for five years.

Accordingly, *It is ordered*, That the final order in this matter dated May 13, 1999 be, and it hereby is, modified to revise Part IV to read as follows:

It is further ordered, That respondents Novartis Corporation and Novartis Consumer Health, Inc., corporations, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or any device, do forthwith cease and desist from

disseminating or causing the dissemination of any advertisement for Doan's in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, unless the advertising includes the following corrective notice, clearly and prominently, in the exact language that follows:

"Although Doan's is an effective pain reliever, there is no evidence that Doan's is more effective than other pain relievers for back pain."

Provided, that respondents' obligation to include the corrective notice shall not be required for any television or radio advertisement of 15 seconds or less in duration;

Provided further, that respondents' obligation to include the corrective notice in all advertising shall continue until respondents have expended on Doan's advertising a sum equal to the average spent annually during the eight years of the challenged campaign, except the obligation shall continue for at least one year and for no longer than five years after this order becomes effective.

It is further ordered, That Part IV of the final order shall not be effective until the sixtieth day after service of this Order Modifying Order.

It is further ordered, That respondents' petition for reconsideration is denied.

It is further ordered, That Novartis' petition for a stay pending appeal is denied as moot.¹

Commissioner Swindle dissenting.

STATEMENT OF COMMISSIONER ORSON SWINDLE
CONCURRING IN PART AND DISSENTING IN PART

The Commission recently issued a decision in this case in which it concluded that the respondents made the unsubstantiated claim that Doan's is superior to other over-the-counter analgesics in treating back pain. To remedy this deception, the Commission ordered the respondents to make a specified corrective statement in Doan's

¹ Novartis' stay motion was directed solely to Part IV of the original final order, which the Commission has now replaced with the revised Part IV. Novartis may, if it chooses, timely file a motion to stay the effect of this revised Part IV of the final order pending appeal.

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advertising (except radio and television ads of 15 seconds or less in duration), including on product packages. The Order requires that the corrective statement be made "for one year and until respondent has expended on Doan's advertising a sum equal to the average amount spent annually during the eight years of the challenged campaign." I dissented from the imposition of this corrective advertising remedy because, among other things, the evidence did not prove that any false belief created by the deceptive advertising had lingered and was likely to continue to linger until July 2000, that is, until the end of the one-year period during which corrective advertising was required. *Novartis Corporation, et al.*, Dkt. No. 9279 (May 13, 1999) (Statement of Commissioner Orson Swindle, concurring in part and dissenting in part).

The respondents have petitioned the Commission to reconsider the corrective advertising requirement, arguing that basing the duration of the requirement on both a fixed one-year period and the amount of Doan's advertising expenditures will have unintended, adverse consequences. The respondents have submitted a declaration stating that they spent only \$30,000 in 1998 on Doan's advertising and plan to spend nothing in 1999 on such advertising. Given these minimal advertising expenditures, the respondents argue that it will be a very long time until they have spent on Doan's advertising an amount equal to the average amount spent annually during the campaign (\$8 million), especially since the annual sales of the product have declined to only about \$11 million. The respondents claim that they are likely to be required to place the corrective statement on packaging for many years to come -- a corrective requirement that will last far longer than the one year that the Commission originally intended. The Commission has denied the petition for reconsideration, and I concur in the denial because the petition does not raise any new questions about the decision and final order that the respondents did not have an opportunity to address in their appeal to the Commission.

The majority, however, has also decided *sua sponte* to reopen the Order and place a five year limitation on the duration of the corrective advertising requirement. The majority concludes that a modification is needed to ensure that the corrective advertising requirement will not outlast whatever lingering false belief the deceptive advertising campaign created. The majority specifically reasons that because the

"deceptive advertising campaign lasted for eight years, the corrective advertising order should last no longer than an equivalent number of years after that campaign ended." *Novartis Corporation, et al.*, Dkt. No. 9279, Order Modifying Order, Denying Petition for Reconsideration, and Denying as Moot Application for Stay at 2 (July 2, 1999). Because the respondents have not run their deceptive advertisements since May 1996, that is, three years ago, the corrective advertising provision "will remain in effect for five additional years." *Id.* The practical effect of the modification is that the respondents very likely will have to make the corrective statement on Doan's packages until five years after the modified Order becomes effective, that is, until September 2004.¹

In support of the conclusion that the false superior efficacy belief is likely to linger until September 2004, the majority has relied exclusively on the general proposition that a false belief is likely to linger for the same period of time after the deceptive advertising has stopped as the period during which the advertising ran. The majority cites nothing in support of this general proposition, nor am I aware of any extrinsic evidence, expert testimony, case law, or other authority that supports it.

The Commission's adoption of this general proposition raises a serious policy question as to how frequently the Commission will order corrective advertising in the future. If false beliefs are to be assumed likely to linger for the same period of time after the deceptive advertising has stopped as the period during which the advertising ran, corrective advertising could be ordered in most deceptive advertising cases. It does not serve the public interest to adopt a new principle for determining lingering effect that could be used to transform corrective advertising from an extraordinary remedy into a commonplace remedy.

The majority deserves credit for its willingness to recognize that the original Order imposed broader relief than intended and to modify the original Order to limit the relief. But the modified Order still imposes what is likely to be a five-year corrective advertising requirement. The evidence in the record does not prove that any false belief is likely to linger in the minds of consumers through the

¹ Absent a stay, the modified Order will take effect in September 1999, sixty days after it is served on the respondents.

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duration of the requirement,² which extends *more than eight years* after the respondents discontinued making their implied deceptive claim. Without proof that any false belief is likely to last this long period of time, the corrective advertising requirement contained in the modified Order serves no remedial purpose and cannot be justified.

I therefore dissent as to the corrective advertising provision included in the modified Order.³

² My separate statement in this case, accompanying the majority's principal opinion, contains a comprehensive discussion of the reasons why the evidence in the record does not prove that a false belief is likely to linger until July 2000, much less September 2004. *Novartis Corporation, et al.*, Dkt. No. 9279 (May 13, 1999) (Statement of Commissioner Orson Swindle, concurring in part and dissenting in part).

³ Because the Commission has modified the original Order, I support the Commission's decision to deny the respondents' motion to stay the original Order since the motion is moot.

IN THE MATTER OF
ROHM AND HAAS COMPANY, ET AL.

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

Docket C-3883. Complaint, July 13, 1999--Decision, July 13, 1999

This consent order, among other things, requires the respondents to divest certain assets, they acquired in the purchase of Morton International, Inc., to GenCorp, Inc.

Participants

For the Commission: *Timothy Feighery, Wallace Easterling, William Baer, Jeremy Bulow and Charles Thomas.*

For the respondents: *Ilene Gotts, Wachtell, Lipton, Rosen & Katz, New York, N.Y. and Stephen Stack, Dechert, Price & Rhoads, Philadelphia, PA.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Rohm and Haas Company has agreed to acquire all of the share capital of Morton International, Incorporated, both corporations subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Rohm and Haas Company ("Rohm & Haas") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 Independence Mall West, Philadelphia, Pennsylvania.

2. Respondent Morton International, Incorporated ("Morton") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 100 North Riverside Plaza, Chicago, Illinois.

3. For purposes of this proceeding, respondents are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. THE ACQUISITION

4. Pursuant to an Agreement and Plan of Merger dated January 31, 1999, Rohm & Haas will acquire all of the issued share capital of Morton for approximately \$4.9 billion ("the Acquisition").

III. THE RELEVANT MARKET

5. For purposes of this complaint, the relevant line of commerce in which to analyze the effect of the proposed Acquisition is the research, development, manufacture and sale of water-based polymers for use in the formulation of floor care products (hereinafter referred to as "Water-Based Floor Care Polymers"). Water-based polymers are essential components of floor care product formulations, such as floor polishes, in that they impart to the floor care product necessary and desired properties such as hardness, gloss, and slip and scuff resistance. There are no economic substitutes for Water-Based Floor Care Polymers to which customers would switch in response to a small but significant price increase in Water-Based Floor Care Polymers.

6. For purposes of this complaint, the relevant geographic area in which to analyze the effects of the proposed Acquisition on competition in Water-Based Floor Care Polymers is North America. Water-Based Floor Care Polymers produced outside North America are not economic substitutes because of the high shipping costs associated with a relatively low-value product consisting largely of water, and because of the delays and uncertainties inherent in long-distance shipping.

7. The relevant market set forth in paragraphs five and six is highly concentrated, whether measured by the Herfindahl-Hirschman Index ("HHI") or by two-firm and four-firm concentration ratios. Rohm & Haas and Morton are two of the three leading sellers of Water-Based Floor Care Polymers in North America.

8. Entry into the relevant market requires significant sunk costs and would not be timely, likely and sufficient to deter or counteract the adverse competitive effects described in paragraphs nine and ten because of, among other things, the length of time and expense necessary to build appropriate chemical production facilities, the difficulty in acquiring the technical expertise necessary to produce the polymers, and the difficulty in gaining recognition in a marketplace in which customers are reluctant to change from proven suppliers. Thus, it is unlikely that a new entrant not already in the Water-Based Floor Care Polymers business could enter successfully so as to counteract a small but significant price increase.

IV. EFFECTS OF THE ACQUISITION

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

- a. By eliminating direct actual competition between Rohm & Haas and Morton;
- b. By increasing the likelihood that the firm created by the merger of Rohm & Haas and Morton will unilaterally exercise market power;
- c. By increasing the likelihood of coordinated interaction between the remaining competitors in the relevant market;
- d. By increasing the likelihood that purchasers of Water-Based Floor Care Polymers in the relevant market will be forced to pay higher prices;
- e. By increasing the likelihood that technical and sales services provided to purchasers of Water-Based Floor Care Polymers will be reduced; and
- f. By increasing the likelihood that innovation will be reduced.

10. All of the above increase the likelihood that the Acquisition would result in increased prices or reduced services in the near future and in the long term.

V. VIOLATIONS CHARGED

11. The acquisition agreement described in paragraph four constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by Rohm and Haas Company of Morton International, Incorporated (collectively referred to as "respondents") and respondents having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violations of the Clayton Act and Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, 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 Rohm & Haas is a corporation organized, existing and doing business under and by virtue of the laws of the State of

Delaware, with its executive offices located at 100 Independence Mall West, Philadelphia, Pennsylvania.

2. Respondent Morton is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 100 North Riverside Plaza, Chicago, Illinois.

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

ORDER

I.

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

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

B. "*Rohm & Haas*" means Rohm and Haas Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Rohm and Haas Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "*Morton*" means Morton International, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Morton International, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. "*Acquisition*" means the acquisition by Rohm & Haas of more than fifty (50) percent of the common stock of Morton.

E. "*Respondents*" means Morton and Rohm & Haas, individually and collectively.

F. "*GenCorp*" means GenCorp, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the state of Ohio, with its office and principal place of business located in Fairlawn, Ohio.

G. "*New Acquirer*" means the entity to whom the Divestiture Trustee shall divest the Assets To Be Divested pursuant to paragraph IV. of this order.

H. "*Acquirer*" means GenCorp, the New Acquirer, and the acquirer approved by the Commission pursuant to paragraph II.B. of this order.

I. "*GenCorp Agreement*" means the Asset Purchase Agreement dated April 8, 1999 and the First Amendment To Asset Purchase Agreement dated April 11, 1999, by and between GenCorp and Morton.

J. "*Divestiture Agreement*" means, as applicable under the terms of this order, the following:

1. The GenCorp Agreement,
2. The agreement for the sale of the Assets To Be Divested to the New Acquirer pursuant to paragraph IV. of this order, or
3. The agreement for the sale of the Assets To Be Divested to an acquirer approved by the Commission pursuant to paragraph II.B. of this order.

K. "*Water-Based Polymers For Floor Care Applications*" means water-based polymers used in the formulation of floor care products.

L. "*Water-Based Polymers For Other Applications*" means water-based polymers used for applications other than the formulation of floor care products.

M. "*Water-Based Polymer Unit of Morton*" means the existing business unit of Morton that is part of Morton's Adhesives and Polymers Group and that develops, produces, markets, and sells Water-Based Polymers For Floor Care Applications and Water-Based Polymers For Other Applications.

N. "*Morton Floor Care Products*" means

1. Any Water-Based Polymers For Floor Care Applications,
2. Any products that enhance the performance of Water-Based Polymers For Floor Care Applications, and
3. Any other products or services that have been sold, or intended to be sold, to customers that purchase Water-Based Polymers For Floor Care Applications, by Morton employees who sell Water-Based Polymers For Floor Care Applications, that, at any time during the two (2) years immediately preceding the Acquisition, have been manufactured, distributed, or sold by Morton, or have been the subject of research or development by Morton, anywhere in the world.

O. "*Patents*" means any patents and patent rights, patent applications, patents of addition, re-examinations, reissues, extensions, granted supplementary protection certificates, substitutions, confirmations, registrations, revalidations, revisions, additions and the like, of or to said patents and patent rights and any and all continuations and continuations-in-part and divisionals.

P. "*Intellectual Property*" means any form of intellectual property, including, but not limited to, trademarks, Patents, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technology, know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, formulas, customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, quality control data, books, records, and files.

Q. "*Permits and Approvals*" means licenses, permits, registrations or other governmental approvals.

R. "*Non-Technical Documents*" means documents that do not contain any technical information concerning Morton Floor Care Products and Water-Based Polymers For Floor Care Applications.

S. "*Assets To Be Divested*" means:

1. All rights, titles, and interest in and to Intellectual Property relating in any way to the research, development, manufacture, or sale of Morton Floor Care Products anywhere in the world, regardless of whether such Intellectual Property relates exclusively to such purposes;

2. All rights, title, and interest in and to inventory of Morton Floor Care Products;

3. All rights, title, and interest in and to agreements, express or implied, relating in any way to the research, development, manufacture, or sale of Morton Floor Care Products anywhere in the world, regardless of whether such agreements relate exclusively to such purposes, including, but not limited to, warranties, guarantees, and contracts with joint venture partners, suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees, and customers;

4. All rights, title and interest in and to Permits and Approvals relating in any way to the research, development, manufacture, or sale of Morton Floor Care Products anywhere in the world, regardless of

whether such Permits and Approvals relate exclusively to such purposes, to the extent permitted by law; and

5. All rights, title, and interest in and to businesses and assets, tangible and intangible, of the Water-Based Polymer Unit of Morton relating in any way to the research, development, manufacture, or sale of Morton Floor Care Products, regardless of whether such business and assets are used exclusively for such purposes.

Provided that the definition of "Assets To Be Divested" shall not include:

- (i) Real property, buildings, and improvements to real property or buildings, whether owned or leased;
- (ii) Manufacturing equipment;
- (iii) Quality control equipment;
- (iv) Accounts receivable;
- (v) Office equipment, including telephones, copiers, typewriters, facsimile machines, cellular telephones, and pagers;
- (vi) Office furniture, including desks, chairs, tables, and lamps;
- (vii) Office supplies;
- (viii) Computer hardware, including personal computers, laptop computers, printers, modems, and other computer peripherals;
- (ix) Nonproprietary personal computer software, including Microsoft Windows, Microsoft Word, and Microsoft Excel;
- (x) Automobiles, whether owned or leased;
- (xi) Non-Technical Documents, and portions of such documents, that do not relate to Morton Floor Care Products or to Water-Based Polymers For Floor Care Applications and that contain proprietary information;
- (xii) The trademarks "Morton," "Morez," "Morcryl," and Morton Globe design;
- (xiii) Intellectual Property (other than the trademark "Conrez") relating exclusively to the Conrez, Morcryl, and Morez resins;
- (xiv) Any substandard/off spec finished goods inventory, and any Conrez inventory not in a container packaged for sale;
- (xv) Raw materials used in the production of Morton Floor Care Products;
- (xvi) Laboratory equipment, other than (a) James machines, (b) Jablonski III machines, and (c) laboratory equipment relating

exclusively to the research, development, manufacture, or sale of Morton Floor Care Products;

(xvii) Agreements with public and private warehouses for the storage of finished products;

(xviii) Agreements with common and contract carriers;

(xix) Raw material supply contracts;

(xx) Contracts or non-contractual arrangements with sales representatives, distributors, or agents; provided, however, that respondents shall not take any action to prohibit or impede Acquirer from entering into any contract or non-contractual arrangements relating to the sale or distribution of Morton Floor Care Products with any sales representative, distributor or agent currently offering for sale Morton Floor Care Products; and

(xxi) Cash or cash equivalents.

Provided further that respondents may retain from the Assets To Be Divested:

(xxii) A non-exclusive, perpetual, royalty-free right to the use of Intellectual Property (other than the trademark "Morglo") used by Morton prior to the Acquisition in research, development, manufacture or sale of products other than Morton Floor Care Products, provided that such right is limited to use in connection with products other than Morton Floor Care Products and other than Water-Based Polymers For Floor Care Applications;

(xxiii) A non-exclusive, perpetual, royalty-free right to the use of Permits and Approvals used by Morton in the research, development, manufacture or sale of products other than Morton Floor Care Products, provided that such right is limited to products other than Morton Floor Care Products and other than Water-Based Polymers For Floor Care Applications and that respondents' use of any such Permits and Approvals does not diminish or jeopardize in any way the right of the Acquirer to use such Permits and Approvals; and

(xxiv) A right to continue contractual and non-contractual relationships currently in effect with Morton's sales representatives, distributors, and agents with respect to products other than Morton Floor Care Products, provided that respondents' continuation of such relationships does not diminish or jeopardize in any way the ability or willingness of such sales representatives, distributors, and agents

to serve the Acquirer in the sale of Morton Floor Care Products and Water-Based Polymers For Floor Care Applications.

T. "*Additional Assets To Be Divested*" means:

1. The Morton manufacturing facility located in Greenville, South Carolina, including, but not limited to:

(a) All real property, buildings, production facilities and storage facilities, whether owned or leased,

(b) All fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property, excluding equipment used solely and exclusively in the production of the Conrez, Morez, and Morcryl products, provided that the removal of such equipment does not diminish or jeopardize in any way the acquirer's ability to use the Additional Assets To Be Divested,

(c) All permits and approvals relating to the production of Morton Floor Care Products, and

(d) All inventory and storage capacity; and

2. All raw material supply contracts to the extent permitted by such contracts; provided, however, that respondents may continue such contractual relationships with respect to the purchase of raw materials for the manufacture of products other than Morton Floor Care Products to the extent that respondents' continuation of such contractual relationships does not diminish or jeopardize in any way the ability or willingness of such suppliers to supply the New Acquirer with raw materials for the manufacture of Morton Floor Care Products and Water-Based Polymers for Floor Care Applications.

U. "*Supply Agreements*" means the agreements required by paragraphs II.C.1. and II.C.2. of this order.

V. "*Divestiture Trustee*" means the trustee(s) appointed pursuant to paragraph IV. of this order, as applicable.

W. "*Interim Trustee*" means the trustee(s) appointed pursuant to paragraph III. of this order, as applicable.

X. "*Commercial Capability to Manufacture and Sell*" means the manufacture and sale during a six (6) month time period of seventy (70) percent of the quantity (measured in wet pounds) of Morton Floor Care Products manufactured and sold by Morton during the six (6) months immediately preceding the Acquisition.

Y. "*Reimbursable Costs*" means the reasonable, direct, out-of-pocket expenses incurred by respondents in providing referenced assistance.

II.

It is further ordered, That:

A. No later than ten (10) days after the date on which the Acquisition is consummated, respondents shall divest, absolutely and in good faith, the Assets To Be Divested as a competitively viable, on-going product line to GenCorp. The purpose of the divestiture of the Assets To Be Divested is to ensure the continued research, design, development, manufacture, marketing and sale of Morton Floor Care Products and to remedy the lessening of competition resulting from the Proposed Acquisition as alleged in the Commission's complaint.

B. If respondents have divested the Assets To Be Divested to GenCorp pursuant to the GenCorp Agreement prior to the date this order becomes final, and if the Commission notifies respondents that GenCorp is not an acceptable acquirer or that the GenCorp Agreement is not an acceptable manner of divestiture, then respondents shall rescind the transaction with GenCorp, and shall divest the Assets To Be Divested, and such of the Additional Assets To Be Divested as appropriate to assure that the purpose of the divestiture, as set forth above, is likely to be achieved, within five (5) months of the date respondents receive such notice from the Commission, absolutely and in good faith, at no minimum price, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. The Divestiture Agreement shall include, and respondents shall comply with, the following provisions:

1. For a period not to exceed two (2) years from the date of the divestiture, respondents shall manufacture and deliver to the Acquirer who purchases the Assets To Be Divested or the Additional Assets To Be Divested, in a timely manner, under reasonable terms and conditions, and at prices equal to or below those agreed and set forth in the GenCorp Agreement, a supply of those Morton Floor Care Products that Morton does not purchase for resale. Respondents shall supply no less than Acquirer's full requirement of Morton Floor Care Products except to the extent a lesser amount is requested by the Acquirer. In the event that the Acquirer does not choose to purchase

one or more Morton Floor Care Products from respondents because the Acquirer does not require such supply in order to manufacture or sell the Morton Floor Care Products in a competitive manner, respondents shall not be required to supply those Morton Floor Care Products that the Acquirer does not require.

2. For a period not to exceed four (4) years from the date of the divestiture, respondents shall manufacture and deliver to the Acquirer who purchases the Assets To Be Divested or the Additional Assets To Be Divested, in a timely manner, under reasonable terms and conditions, and at prices equal to or below those agreed and set forth in the GenCorp Agreement, a supply of Conrez, Morcryl, and Morez resin. Respondents shall supply no less than Acquirer's full requirement of Conrez, Morcryl, and Morez resin for floor care applications.

3. Commencing at such time as respondents commence delivery of the Morton Floor Care Products to the Acquirer pursuant to the Divestiture Agreement, respondents shall produce the Morton Floor Care Products only for sale to the Acquirer.

4. Respondents shall make representations and warranties that the products supplied pursuant to the Supply Agreement (i) were produced in accordance with the applicable recipes, (ii) meet all applicable product specifications, and (iii) are merchantable so as to pass without objection in the trade under the product description and the product trademark. Respondents shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses resulting from the failure of the products supplied by respondents to the Acquirer to comply with such representations and warranties. Respondents may condition this obligation upon the Acquirer giving respondents prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting respondents to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel; provided, however, any such defense and/or settlement shall be consistent with the obligations assumed by respondents under this order. This obligation shall not require respondents to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by respondents to the Acquirer.

5. Respondents shall make representations and warranties that respondents will hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure by respondents to deliver products in a timely manner as required by the Supply Agreements unless respondents can demonstrate that such failure was entirely beyond the control of respondents and was in no part the result of negligence or willful misconduct on respondents' part.

6. During the term of the Supply Agreements, upon request by the Acquirer or the Interim Trustee, respondents shall make available to the Interim Trustee all records that relate to the manufacture and delivery of the Morton Floor Care Products, Conrez, Morcryn, and Morez resins.

7. Upon reasonable notice and request from the Acquirer to respondents, respondents shall provide in a timely manner: (a) assistance to the Acquirer as necessary to enable the Acquirer to obtain the Commercial Capability to Manufacture and Sell the Morton Floor Care Products; and (b) consultation with knowledgeable employees of respondents and training, at the request of and at the facility of the Acquirer's choosing, until the Acquirer has the Commercial Capability to Manufacture and Sell the Morton Floor Care Products or abandons its efforts to obtain the Commercial Capability to Manufacture and Sell such products, reasonably sufficient to satisfy the management of the Acquirer that its personnel are adequately trained in the manufacture of the Morton Floor Care Products. Such assistance shall, at the Acquirer's request, include on-site inspections of any of respondents' facilities that relate to the Supply Agreements required by paragraph II.C.1. of this order, or that otherwise relate to the research, development, manufacture, or sale of Morton Floor Care Products. Respondents may require reimbursement from the Acquirer for all their Reimbursable Costs incurred in providing the services required by this paragraph II.C.7.

8. The Divestiture Agreement shall require the Acquirer to submit to the Commission and to the Interim Trustee periodic verified written reports, setting forth in detail the efforts of the Acquirer to sell the Morton Floor Care Products obtained pursuant to the Divestiture Agreement and the efforts of the Acquirer to obtain the Commercial Capability to Manufacture and Sell such products. The Divestiture Agreement shall require the first such report to be submitted 60 days from the date the Divestiture Agreement is accepted for public comment by the Commission and every 60 days thereafter until the

Acquirer has obtained the Commercial Capability to Manufacture and Sell such products. The Divestiture Agreement shall also require the Acquirer to report the following events to the Commission and to the Interim Trustee within ten (10) days of their occurrence: the Acquirer ceasing the sale in the United States of Morton Floor Care Products for any time period exceeding sixty (60) days, the Acquirer abandoning its efforts to sell the Morton Floor Care Products, or the Acquirer abandoning its efforts to obtain the Commercial Capability to Manufacture and Sell Morton Floor Care Products. The Acquirer shall provide the Interim Trustee access to all records and all facilities that relate to its efforts, pursuant to the Divestiture Agreement, to sell or manufacture the Morton Floor Care Products.

9. The Divestiture Agreement shall provide that if it is terminated, the Assets To Be Divested shall revert back to respondents and that the Assets To Be Divested and the Additional Assets To Be Divested shall be divested to an acquirer pursuant to the provisions of paragraph II.B. of this order.

D. During the pendency of any Patent dispute that: (1) challenges or seeks to render invalid any of the Patents divested pursuant to paragraphs II.A., II.B. or IV. of this order; and (2) could affect the manufacture or sale of the Morton Floor Care Products, respondents shall cooperate, at their own expense, in the defense of rights they have transferred to the Acquirer.

E. On or before the date the Divestiture Agreement is signed, respondents shall provide the Acquirer with a complete list of all employees engaged at any time on or after April 8, 1999, in the research, development or sale of Morton Floor Care Products, and shall supplement that list on the date this order is accepted for public comment with the names of any additional employees who at such time fall within the above description. If the Additional Assets To Be Divested are required to be divested, the list(s) to be provided shall include all employees engaged in the manufacture of Morton Floor Care Products at Morton's Greenville, South Carolina manufacturing facility. Such list(s) shall state each such individual's name, position, address, business telephone number, or if no business telephone number exists, a home telephone number, if available and with the consent of the employee, and a description of the duties and work performed by the individual in connection with the Assets To Be

Divested and, if applicable, the Additional Assets To Be Divested. Respondents shall provide the Acquirer the opportunity to enter into employment contracts with such individuals provided that such contracts are contingent upon the Commission's approval of the Divestiture Agreement. With respect to individuals who accept employment with the Acquirer, respondents shall not enforce any confidentiality or non-compete restrictions relating to Water-Based Polymers for Floor Care Applications or to Morton Floor Care Products.

F. Within no more than five (5) business days after the respondents and the Acquirer have signed the Divestiture Agreement and subject to the consent of the employees, respondents shall provide the Acquirer with an opportunity to inspect the personnel files and other documentation relating to the individuals identified pursuant to paragraph II.E. of this order to the extent possible under applicable laws. For a period of two (2) months following the divestiture, respondents shall provide the Acquirer with a further opportunity to interview such individuals and to negotiate employment contracts with them.

G. Respondents shall provide each employee identified in Schedule A of this order, and to other similarly experienced Morton employees reasonably acceptable to the Acquirer, with reasonable financial incentives to continue in his or her employment position prior to the divestiture, and to accept employment with the Acquirer at the time of the divestiture. Such incentives shall include, but not be limited to:

1. Vesting of all pension benefits under the Morton pension plan and Morton's 401(k) Employees Savings and Investment Plan;
2. Continuation of all employee benefits offered by Morton until the Divestiture is completed;
3. A bonus equal to one hundred (100) percent of the targeted FY 1999 bonus from Morton, payable upon the beginning of employment by Acquirer;
4. A bonus equal to thirty (30) percent of the employee's annual base salary at the time of divestiture, provided that the employee remains in the employ of the Acquirer for a one (1) year period, payable upon the completion of one-year's employment with the Acquirer;
5. For Michael Virostek only, an additional bonus equal to thirty (30) percent of Mr. Virostek's annual base salary at the time of

divestiture, provided that Mr. Virostek remains in the employ of the Acquirer for a two (2) year period, payable upon the completion of two-year's employment with the Acquirer; and

6. A severance payment if, less than 12 months after the date on which such employee commences employment with the Acquirer, the Acquirer terminates the employment of such employee for reasons other than cause. The amount of such severance payment shall be equal to the payment that such employee would have received had he or she remained in the employ of Morton and been terminated at such time, less any severance payment actually paid by the Acquirer.

H. For a period of one (1) year commencing on the date of an individual's employment by the Acquirer, respondents shall not solicit for employment any of the individuals identified pursuant to paragraph II.E. of this order who accept employment with the Acquirer, unless such individual has been separated from employment by the Acquirer against that individual's wishes.

I. Prior to divestiture, respondents shall not transfer, without consent of the Acquirer, any of the individuals identified pursuant to paragraph II.E. of this order to any other position.

J. Until respondents have satisfied the obligations imposed by paragraphs II.A., II.B., or IV. of this order and while respondents are in possession of any of the Assets To Be Divested and any of the Additional Assets To Be Divested, respondents shall take such actions as are necessary to maintain the viability and marketability of those Assets To Be Divested and Additional Assets To Be Divested, and to prevent the destruction, removal, wasting, deterioration or impairment of those Assets To Be Divested and Additional Assets To Be Divested, except for ordinary wear and tear.

K. Respondents may use information relating to Morton Floor Care Products, to the Assets To Be Divested, or to the Additional Assets To Be Divested, only to fulfill their obligations under this order and under the Divestiture Agreement, shall not otherwise use such information, and shall not disclose such information to anyone inside or outside respondents' businesses, except as necessary to fulfill respondents' obligations under this order and under the Divestiture Agreement; provided, however, that respondents may use and disclose such information relating to rights, titles, interests and licenses for such assets as this order permits respondents to retain.

III.

It is further ordered, That at any time after respondents sign the Agreement Containing Consent Order in this matter, the Commission may appoint an Interim Trustee to ensure that respondents and the Acquirer expeditiously perform their respective responsibilities as required by this order and the Divestiture Agreement approved by the Commission. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Trustee appointed pursuant to this paragraph III.:

A. The Commission shall select the Interim Trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

B. The Interim Trustee shall have the power and authority to monitor respondents' compliance with the terms of this order and with the terms of the Divestiture Agreement.

C. Within ten (10) days after appointment of the Interim Trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Interim Trustee all the rights and powers necessary to permit the Interim Trustee to monitor respondents' compliance with the terms of this order and with the Divestiture Agreement and to monitor the compliance of the Acquirer under the Divestiture Agreement. The Interim Trustee shall sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Interim Trustee.

D. The Interim Trustee shall serve for two (2) years from the date the respondents and GenCorp have signed the Divestiture Agreement, or in the event that there is a New Acquirer pursuant to the provisions of paragraph IV. of this order, the Interim Trustee shall serve for two (2) years from date the respondents and the New Acquirer have signed the Divestiture Agreement; provided however, that the term shall end earlier if the Interim Trustee has reported that the Acquirer has obtained the Commercial Capability to Manufacture and Sell the Morton Floor Care Products, and the Commission has accepted that report.

E. The Interim Trustee shall have full and complete access to respondents' personnel, books, records, documents, facilities and technical information relating to the research, design, development, manufacture, importation, marketing, distribution and sale of the Morton Floor Care Products, or to any other relevant information, as the Interim Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the manufacture of the Morton Floor Care Products. Respondents shall cooperate with any reasonable request of the Interim Trustee. Respondents shall take no action to interfere with or impede the Interim Trustee's ability to monitor respondents' compliance with paragraphs II., III. and IV. of this order and with the Divestiture Agreement.

F. The Interim Trustee shall serve, without bond or other security, at the expense of respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Trustee shall have authority to employ, at the expense of respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Trustee's duties and responsibilities. The Interim Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

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

H. If the Commission determines that the Interim Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in paragraph III.A. of this order.

I. The Commission may on its own initiative or at the request of the Interim Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this order and with the Divestiture Agreement.

J. The Interim Trustee shall evaluate reports submitted to it by the Acquirer with respect to the efforts of the Acquirer to obtain the Commercial Capability to Manufacture and Sell the Morton Floor Care Products. The Interim Trustee shall report to the Commission in writing, concerning compliance by respondents and the Acquirer with the provisions of paragraphs II. and III. of this order at least once every sixty (60) days until the Acquirer obtains, or abandons efforts to obtain, the Commercial Capability to Manufacture and Sell Morton Floor Care Products. Such reports shall include at least the following:

1. Whether respondents have supplied Morton Floor Care Products in conformity with the requirements of paragraph II.C. of this order;
2. Whether respondents have given the Interim Trustee access to records in conformity with paragraph III.E. of this order;
3. Whether the Acquirer has given the Interim Trustee reports and access pursuant to paragraph III.J. of this order;
4. Whether the Acquirer is making good faith efforts to sell the Morton Floor Care Products and to obtain the Commercial Capability to Manufacture and Sell such products; and
5. Whether respondents have maintained the Assets To Be Divested and Additional Assets To Be Divested as required in paragraph II.J. of this order.

IV.

It is further ordered, That:

A. If respondents fail to complete the divestitures required by paragraphs II.A. and II.B. of this order within the time periods specified therein, then the Commission may terminate any executed Divestiture Agreement and may appoint a Divestiture Trustee to divest the Assets To Be Divested and the Additional Assets To Be Divested to a buyer other than GenCorp and to execute a new Divestiture Agreement that satisfies the requirements of paragraph II. of this order. The Divestiture Trustee may be the same person as the Interim Trustee and will have the authority and responsibility to divest the Assets To Be Divested and the Additional Assets To Be Divested absolutely and in good faith, and with the Commission's prior approval. Neither the decision of the Commission to appoint a Divestiture Trustee, nor the decision of the Commission not to

appoint a Divestiture Trustee, to divest any of the assets under this paragraph IV.A. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(I) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this order.

B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to paragraph IV.A. of this order to divest the Assets To Be Divested and the Additional Assets To Be Divested to a New Acquirer, respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the Divestiture Trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed Divestiture Trustee, respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the Assets To Be Divested and the Additional Assets To Be Divested to a New Acquirer pursuant to the terms of this order and to enter into a Divestiture Agreement with the New Acquirer pursuant to the terms of this order, which Divestiture Agreement shall be subject to the prior approval of the Commission.

3. Within ten (10) days after appointment of the Divestiture Trustee, respondents shall execute a (or amend the existing) trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to divest the Assets To Be Divested and the Additional Assets To Be Divested to a New Acquirer and to enter into a Divestiture Agreement with the New Acquirer.

4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph IV.B.3. of this order to divest the Assets To Be Divested

and the Additional Assets To Be Divested and to enter into a Divestiture Agreement with the New Acquirer that satisfies the requirements of paragraph II. of this order. If, however, at the end of the applicable twelve-month period, the Divestiture Trustee has submitted to the Commission a plan of divestiture or believes that divestiture can be achieved within a reasonable time, such divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend such divestiture period only two (2) times.

5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities of respondents related to the manufacture, distribution, or sale of the Assets To Be Divested and the Additional Assets To Be Divested, or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of his or her responsibilities.

6. The Divestiture Trustee shall use reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price and the Divestiture Trustee's obligation to expeditiously accomplish the remedial purpose of this order; to assure that respondents enter into a Divestiture Agreement that complies with the provisions of paragraph II.B. of this order; to assure that respondents comply with the remaining provisions of paragraphs II., III. and IV. of this order; and to assure that the New Acquirer obtains the Commercial Capability to Manufacture and Sell all of the Morton Floor Care Products. The divestiture shall be made to, and the Divestiture Agreement executed with, the New Acquirer in the manner set forth in paragraph II. of this order; provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one (1) such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by respondents from among those approved by the Commission.

7. The Divestiture Trustee shall serve, without bond or other security, at the expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may

set. The Divestiture Trustee shall have the authority to employ, at the expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondents. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's locating a New Acquirer and assuring compliance with this order.

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

9. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in paragraph IV. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to comply with the terms of this order.

11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested or the Additional Assets To Be Divested.

12. The Divestiture Trustee shall report in writing to respondents and to the Commission every two (2) months concerning his or her efforts to divest the relevant assets and respondents' compliance with the terms of this order.

V.

It is further ordered, That within sixty (60) days of the date this order becomes final and every ninety (90) days thereafter until respondents have fully complied with the provisions of paragraphs II. through IV. of this order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with these paragraphs of this order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with these paragraphs of this order, including a description of all substantive contacts or negotiations for accomplishing the divestitures and entering into the Divestiture Agreements required by this order, including the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the Divestiture Agreements required by paragraph II. of this order, subject to any legally recognized privilege.

VI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondents, respondents shall permit any duly authorized representatives of the Commission:

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

B. Upon five (5) days' notice to respondents, and without restraint or interference from respondents, to interview officers or employees of respondents, who may have counsel present, regarding such matters.

VII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in respondents, such as dissolution, assignment, sale resulting in the

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Decision and Order

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

VIII.

It is further ordered, That this order shall terminate on July 13, 2009.

SCHEDULE A

Greg Watterson
Mike Denice
Kathy McVicker
Mike Virostek

Nelson Donahoo
John Lindsay
Ernie Hamp

IN THE MATTER OF

LS ENTERPRISES, LLC, ET AL.

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

Docket C-3884. Complaint, July 13, 1999--Decision, July 13, 1999

This consent order, among other things, prohibits the two Connecticut-based companies and a member from misrepresenting their ability to provide unsolicited commercial e-mail products or services, or work-at-home opportunities, and prohibits respondents from making any representation as to the amount of earnings, income, or sales that a prospective purchaser can expect to attain. In addition, the consent order requires the respondents to obtain a performance bond, and to make a disclosure statement regarding the bond, prior to distributing any unsolicited commercial e-mail product or service.

Participants

For the Commission: *John Dugan* and *Andrew Caverly*.

For the respondents: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that LS Enterprises, LLC, a limited liability company, also doing business as Freepromo.com, Enterprise Publications, and LRS Publications; Internet Promotions, LLC, a limited liability company, also doing business as Cyberpromoters.com; and Louis Salatto, individually and as the principal member of the limited liability companies ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent LS Enterprises, LLC is a Connecticut limited liability company with its principal office or place of business at 1204 Main Street, Suite 380, Branford, Connecticut.

2. Respondent Internet Promotions, LLC is a Connecticut limited liability company with its principal office or place of business at 1204 Main Street, Suite 380, Branford, Connecticut.

3. Respondent Louis Salatto is the principal member of LS Enterprises, LLC and Internet Promotions, LLC. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the companies, including the acts or practices

alleged in this complaint. His place of residence is 13 Branhaven Drive, East Haven, Connecticut.

4. Respondents have advertised, offered for sale, sold, and distributed products and services to the public, including: a service whereby respondents will assist in disseminating unsolicited commercial electronic mail ("E-Mail") on behalf of other companies or individuals who are trying to sell their own products or services; software and mailing lists that would enable other companies or individuals to send their own unsolicited commercial E-Mail; and various business opportunities and work-at-home opportunities offered for sale by respondents via unsolicited commercial E-Mail or postings on Internet newsgroups. Newsgroups are a collection of topic groups and discussion fora on the Usenet portion of the Internet where users can post messages to be read by the general public, and where others can post responses to particular messages.

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

UNSOLICITED COMMERCIAL E-MAIL PRODUCTS AND SERVICES

6. Respondents have disseminated or have caused to be disseminated advertisements for unsolicited commercial E-Mail products and services, including but not necessarily limited to the attached Exhibits A through D that were disseminated via unsolicited commercial E-Mail, postings on Internet newsgroups, or the World Wide Web. These advertisements contain the following statements:

A. "Bulk E-Mail I[nternet] S[ervice] P[rovider]

<http://www.freepromo.com/isp.htm>

High Speed E-Mail Relay Network . . . NOW AVAILABLE!

....

LS Enterprises is now presenting THREE new technologies that will only work properly if used all together. The first technology can CHANGE THE MESSAGE-ID **BEFORE** your emails leave your computer! The second technology allows you to send OVER 150,000 EMAILS AN HOUR - with a single computer and modem - and the third technology will relay your email messages through LS Enterprises [sic] *OWN* PROPRIETARY HIGH-SPEED RELAY NETWORK, WITHOUT IDENTIFYING THE DOMAIN NAME OR IP ADDRESS OF THE ORIGIN!

....

You can make the same fortunes that many other online marketers are making the hard way! . . .

Well, if this package sold for \$8,000 . . . you would probably be smart enough to spend that money on 'Cyber-Bomber,' knowing that you will make it right back in the next couple of *days* The bottom line is that LS Enterprises is offering the full 'Cyber-Bomber' package for only \$1,495. This will be the best investment you will make this year - guaranteed. It's hard to put a value on what you will receive, but it would be fair to say that this technology can help make you thousands or even millions - this year! This is what you will receive when you order 'Cyber-Bomber':

.....
* Unlimited exclusive-direct-access to LS Enterprises [sic] own dedicated high-speed relay network that will relay your email to its final destination, and cloak the originating domain name and IP address of your local dialup provider, leaving absolutely no trace to your origin." (Exhibit A).

**B. "27,000,000 Email Addresses Plus 12 Bonuses . . . All For Only \$295!
EARN INSANE PROFITS WITH THE RIGHT FORMULA**

.....
You can literally make a fortune by just sending out email and the best part is that you will pay nothing to do so. All you need is an internet connection that you can find for as little as \$19 per month. . . .

LS Enterprises has been in the online marketing business for over 7 years. We have helped many individuals succeed in marketing their product effectively. It's very simple to do. In fact, soon you will have the problem of what to do with all the cash you will make from sending out bulk email.

Here is just one of many true success stories we have seen . . .

We did a mailing of 1 ½ million emails for one of our customers. He was selling a home workers manual for \$29.95. His results are very typical and scary. He took in over 700 orders! $700 \times \$29.95 = \$20,000$. This gentleman was so amazed, that after being skeptical, it had really happened to him, he made it, he found a niche. That niche was email! He went on to buy our full list and will be set for life in less than a years time. All this from selling a manual via email.

That was just one of the many success stories we hear everyday. It may all sound to [sic] good to be true. Well, we can tell you this. It really does work. Why else are there so many individuals doing it? They are not just wasting their time. They are all making mega bucks." (Exhibit B).

C. "Bulk Email Services

.....
The Demographic Breakdown for our [mailing] list of 300,000 [bulk e-mail] recipients, include only business people and opportunity seekers. All recipients are located in the United States and are interested in receiving emails from other businesses. Recent research reveals that approximately 90% of our recipients are small business owners or opportunity seekers. The remaining 10% of our list is comprised of medium to large corporations. . . . These types of individuals have proven to be most receptive to internet marketing." (Exhibit C).

D. "The Truths about Bulk Email**Our Recipient List**

Our recipient list is over 27,000,000 and continuously growing. It is made up of mainly small business owners and individuals that would be categorized as opportunity seekers. Experience has shown that these types of recipients are the most responsive to this form of marketing." (Exhibit D).

7. Through the means described in paragraph 6, respondents have represented, expressly or by implication, that:

A. Respondents act as an E-Mail Internet Service Provider, maintaining their own proprietary high speed E-Mail relay network through which unsolicited commercial E-mail can be transmitted.

B. Respondents sent out 1.5 million unsolicited commercial E-Mails on behalf of one customer who was selling a home worker's manual for \$29.95 each, and this customer took in over 700 orders as a result of this one mailing, earning \$20,000.

8. In truth and in fact:

A. Respondents do not act as an E-Mail Internet Service Provider, and do not maintain their own proprietary high speed E-Mail relay network through which unsolicited commercial E-mail can be transmitted. Rather, respondents can arrange for purchasers to have their unsolicited commercial E-mail transmitted through actual Internet Service Providers.

B. Respondents did not send out 1.5 million unsolicited commercial E-Mails on behalf of one customer who was selling a home worker's manual for \$29.95 each, and who then took in over 700 orders as a result of this one mailing, earning \$20,000. The representation set forth in paragraph 7(B) does not reflect the actual experience of any customer of respondents.

Therefore, the representations set forth in paragraph 7 were, and are, false or misleading.

9. Through the means described in paragraph 6, respondents have represented, expressly or by implication, that:

A. Purchasers of respondents' unsolicited commercial E-Mail products and services can reasonably expect to achieve a specific level of earnings, income, or sales, such as: sales of 700 products and

profits of \$20,000 for each one-time sending of bulk unsolicited commercial E-Mail; earnings of millions of dollars per year; or recouping an investment of up to \$8,000 within a matter of days.

B. Most or all of the recipients on respondents' E-Mail recipient lists have been identified as small business owners and individuals categorized as opportunity seekers who are interested in receiving unsolicited commercial E-Mail.

10. In truth and in fact:

A. Few if any purchasers attain the specific level of earnings, income, or sales represented by respondents.

B. Few if any of the recipients on respondents' E-Mail recipient lists have been identified as small business owners and individuals categorized as opportunity seekers who are interested in receiving unsolicited commercial E-Mail.

Therefore, the representations set forth in paragraph 9 were, and are, false or misleading.

11. Through the means described in paragraph 6, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph 9, at the time the representations were made.

12. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph 9, at the time the representations were made. Therefore, the representation set forth in paragraph 11 was, and is, false or misleading.

WORK-AT-HOME OPPORTUNITIES AND BUSINESS OPPORTUNITIES

Mystery Shopper Promotion

13. Respondents have disseminated or have caused to be disseminated advertisements for a work-at-home opportunity as a "mystery shopper," *i.e.*, someone who is hired by companies to shop in their stores or places of business and then report back on the shopping experience, including but not necessarily limited to the attached Exhibit E that was disseminated via unsolicited commercial E-Mail and postings on Internet newsgroups. This advertisement contains the following statements:

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"Subject: \$ JOBS \$

....

GET PAID TO SHOP AND RECEIVE FREE MERCHANDISE!

....

[Y]ou can easily make \$300 - \$600 part-time in your area.

....

You are guaranteed to find a position in your local area and we will make sure this dream comes true for you. In fact, we are the #1 company in connecting people just like you with the right contacts. You can earn up to \$24 per hour and bring home Free Merchandise every time you go shopping. Items such as Food, Clothing, Appliances, Electronics and much more. In addition, you will even receive coupons worth hundreds of dollars in free stuff.

Help solve your money problems! If you already have a job, you can still work part-time and earn a hefty pay check each week, or if you want a full-time job and want to earn \$600 to \$1000 or more per week, then this could be for you. You can take as many shopping assignments as you desire. You can also turn down assignments if you wish, without losing your job. Basically you work when you want and for whoever you want. We will make sure you have as many assignments as you need.

....

[M]ajor corporations ask contractors such as ourselves, to hire people like you to do this simple work.

Where [sic] not the only contractor. There are hundreds of contractors and each one has thousands of assignments they need to give to somebody, why not let that somebody be you. In addition to our service, you will be given a 25 page manual that will include over one hundred contractors['] [n]ames, [p]hone [n]umbers, and addresses so you can get in touch with them for more assignments. You can work for as many contractors as you like and for as long as you like. You can even make a career out of Mystery Shopping!

....

In addition, you will be entered into our Nationwide Database, so when there is [sic] extra "shops" in your area, you will be contacted in advance to see if you can fit them in your schedule.

....

You never have to pay any money for the merchandise [that you purchase during a shopping assignment]. You will be given Vouchers or Free Coupons to make sure you don't spend one single penny of your own cash. In other words, you pick out the merchandise, totaling a certain amount, usually \$25 to \$75 worth of merchandise. The company pays for it . . . and you get to keep it! This of course, is in addition to making upwards of \$24 per hour.

There is a one time refundable fee of \$29.00 to get started. This is a small fee indeed! This one-time refundable fee is to ensure us that you are serious about Mystery Shopping. We are looking for serious people and this is a good way to weed out the people who just are not serious.

60 Day No Risk Trial! We have helped thousands of people get started Mystery Shopping. Let us help you. Try Mystery Shopping for 60 days and if it's not for you, we will promptly refund your \$29[.] Guaranteed !

In order to get started, just [p]rint out the form below and fill in the necessary information. [S]end it to us along with your check or money order and then wait 3 to 7 days to hear from us. Also, upon receiving your form, [W]e will [r]ush the Professional Mystery Shopping Guide to you the same day. This is the guide that contains the Mystery Shopping contractors in your area and will be waiting to hear from you.

This is a one time offer and will never be repeated. You must act right now and let us hear from you today. When we receive your profile form below[,] [y]ou can begin Mystery Shopping. You will then be able to take on as many assignments as you desire and work for as long as you wish, with no obligation to us." (Exhibit E).

14. Through the means described in paragraph 13, respondents have represented, expressly or by implication, that:

A. Respondents act as contractors for major corporations to hire consumers to work as "mystery shoppers," and have hired thousands of consumers to work as "mystery shoppers."

B. Respondents have actual job openings for "mystery shoppers" all over the country, and consumers who respond to respondents' "mystery shopper" promotion will be given as many "mystery shopper" assignments from respondents as they want or need.

15. In truth and in fact:

A. Respondents do not act as contractors for major corporations to hire consumers to work as "mystery shoppers," and have not hired thousands of consumers to work as "mystery shoppers." Rather, respondents do nothing more than sell a manual known as the "Guide to Professional Mystery Shopping."

B. Respondents do not have actual job openings for "mystery shoppers" all over the country, and consumers who respond to respondents' "mystery shopper" promotion will not be given as many "mystery shopper" assignments from respondents as they want or need. Rather, respondents do nothing more than sell a manual known as the "Guide to Professional Mystery Shopping."

Therefore, the representations set forth in Paragraph 14 were, and are, false or misleading.

16. Through the means described in paragraph 13, respondents have represented, expressly or by implication, that:

A. Consumers who respond to respondents' "mystery shopper" promotion can reasonably expect to achieve a specific level of

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earnings, such as \$300 to \$600 per week part time, \$600 to \$1000 or more per week full time, or up to \$24 per hour.

B. Consumers who respond to respondents' "mystery shopper" promotion will always receive for free all merchandise purchased during "mystery shopper" assignments.

17. In truth and in fact:

A. Few if any consumers who respond to respondents' "mystery shopper" promotion attain the specific level of earnings represented by respondents.

B. Consumers who respond to respondents' "mystery shopper" promotion may not always receive for free all merchandise purchased during "mystery shopper" assignments. Whether consumers receive any free merchandise, and the types of merchandise they may receive, depend on the policies of companies who actually hire and use "mystery shoppers."

Therefore, the representations set forth in paragraph 16 were, and are, false or misleading.

18. Through the means described in paragraph 13, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph 16, at the time the representations were made.

19. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph 16, at the time the representations were made. Therefore, the representation set forth in paragraph 18 was, and is, false or misleading.

General Work-At-Home Opportunities

20. Respondents have disseminated or have caused to be disseminated advertisements for general work-at-home opportunities, including but not necessarily limited to the attached Exhibit F that was disseminated via unsolicited commercial E-Mail and postings on Internet newsgroups. This advertisement contains the following statements:

"Subject: MAKE EXTRA CASH AT HOME!

....

******WORK IN THE COMFORT OF YOUR OWN HOME******

*****WIDE SELECTION OF JOBS . . . TOP PAY*****

****REAL JOBS WITH REAL COMPANIES****

Plus receive your very own 'Computer Cash Disk' . . FREE!

Every day thousands of people just like you are getting started working at home in fields of computer work, sewing, assembling products, crafts, processing coupons, typing, telephone work and much more!

WHO ARE HOME WORKERS?

They are regular ordinary people who earn an excellent living working at their own pace and make their own hours. They are fortunate people who have found an easier way to make a living. They had absolutely no prior experience in this field. They earn several hundred dollars weekly in the comfort of their own home and you can be next!

Companies all over the United States want to hire you as an independent home worker.

....

\$\$\$\$ EASY EXTRA INCOME AT HOME \$\$\$\$

All business can be done by Mail or phone. You can START THE SAME DAY you receive the 'Guide to Genuine Home Employment.'

Start Receiving Money in about two [w]eeks and every week from then on for as long as you desire.

****ONLY REAL COMPANIES OFFERING REAL JOBS!**

The companies in our guide are legitimate and really need home workers. There is [sic] over one hundred of the top companies included in our guide offering an opportunity for you to make extra income at home. Unlike other insulting booklets or lists you may see, our guide only includes up to date information of companies who pay top dollar for your services and will hire you. . [.] GUARANTEED!

....

You are guaranteed to find home based work in our guide. . [.] No Problem!

....

\$

This is an opportunity for you to become an independent HOME WORKER. remember, this is not a get-rich-quick-scheme. It is an easy way for you to [e]arn [m]oney while filling the needs of a company who needs you.

....

We helped thousands of people like yourself get started working at home. You can be next!

THINK WHAT AN EXTRA \$300, \$700 OR MORE A WEEK COULD DO FOR YOU AND LET US HEAR FROM YOU TODAY!

THIS COULD EASILY CHANGE YOUR LIFE FOREVER!

DON'T LET THIS EXTRAORDINARY OPPORTUNITY PASS!! THESE OPPORTUNITIES ARE PROFITABLE AND EASY . . . ACT NOW!!!!!!

....

Send Check or Money-Order for \$29.95 [t]o:
LRS PUBLICATIONS." (Exhibit F).

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21. Through the means described in paragraph 20, respondents have represented, expressly or by implication, that respondents have helped thousands of consumers to find home-based work.

22. In truth and in fact, respondents have not helped thousands of consumers to find home-based work. Respondents sell a home workers' manual that contains tips for finding home-based work and a list of companies that may be hiring home workers. Respondents have sold fewer than 200 of these manuals. Therefore, the representation set forth in paragraph 21 was, and is, false or misleading.

23. Through the means described in paragraph 20, respondents have represented, expressly or by implication, that:

A. Consumers who purchase respondents' "Guide to Genuine Home Employment" can reasonably expect to achieve a specific level of earnings, such as \$300 to \$700 or more per week.

B. Consumers who purchase respondents' "Guide to Genuine Home Employment" can start working at home the same day they receive the guide, will start receiving earnings within two weeks of receiving the guide, and will continue to receive earnings every week thereafter for as long as they want to continue working at home.

24. In truth and in fact:

A. Few if any purchasers attain the specific level of earnings represented by respondents.

B. Few if any purchasers can start working at home the same day they receive the guide, will start receiving earnings within two weeks of receiving the guide, or will continue to receive earnings every week thereafter for as long as they want to continue working at home.

Therefore, the representations set forth in paragraph 23 were, and are, false or misleading.

25. Through the means described in paragraph 20, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph 23, at the time the representations were made.

26. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph 23, at the time the representations were made. Therefore, the representation set forth in paragraph 25 was, and is, false or misleading.

Sale of Distribution Rights to Consumer Manuals

27. Respondents have disseminated or have caused to be disseminated advertisements for a business opportunity or work-at-home opportunity involving making money through the reproduction and distribution of various consumer manuals, including but not necessarily limited to the attached Exhibit G that was disseminated via unsolicited commercial E-Mail and postings on Internet newsgroups. This advertisement contains the following statements:

"Subject: Open NOW!!!

. . . .

FOR SALE!

My Multi-Million Dollar Publishing Company - \$199.

If you ever wanted 'the easy way out' to make a lot of money with a business of your own. . . Here is the easiest way to start!

. . . .

For the past five years or so. . . I've been running small, inexpensive ads in the back of many large National magazines and the Internet. These ads were always small and very cheap. . . On [sic] these ads I've been selling little manuals. These manuals sold from \$14.95 - \$49.95 each. I always ran a different ad for each manual I was selling.

I have collected the reprint rights to 15 different HOT SELLING manuals on topics that consumers really need. . . [I]t is very cheap to produce HOW-TO manuals. It usually costs me about 40 cents to produce each manual that I get to sell for as much as \$49.95. That s [sic] one hell of a mark-up.

Anyway, I've been selling these 15 manuals with little, cheap ads in the back of National Magazines and on the Internet for the past five years or so. . . Each manual brings me about \$2000 - \$4000 per week - PER AD . . . This is big money stuff . . . A very lucrative business to be in.

Well this is where the unbelievable offer comes in . . . I hope your [sic] sitting down for this one . . . because it is a once in a lifetime offer to you. I do not know of any easier way for you to become financially independent . . . In fact THEIR [sic] IS NO EASIER WAY!!! . . . Since I m [sic] so busy selling my best-selling HOW-TO business books nowadays . . . I do not have the time to service these ads . . . It s [sic] just that I really can t [sic] find the time to have all the orders taken care of in a timely fashion.

. . . .

[L]ike I was saying \$2000 to \$4000 per week per advertisement. There are 15 different manuals. . . and there are several hundreds of magazines to run these little ads in.

. . . .

I m [sic] willing to sell you the entire set of reprint rights to all 15 of these manuals on a 3 1/2 [sic] floppy disk . . . I m [sic] also willing to give you the rough drafts of the actual ads that sold these manuals!!! (all you have to do is have them copied.

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You can do it yourself - or you can take them all to a local copy shop. . . this is why I say Push One Button And Start Your Own Million Dollar Publishing Company).

. . . .

Remember these are PROVEN winners.

. . . .

One of the manuals in this kit sold \$4,000,000 worth by a Florida man named M. Zboch. Now, I got the reprint rights . . . and I ll [sic] sell them to you . . . If your [sic] wondering how much this will cost you . . . Think about it for a minute. There are 15 different manuals that can make you \$3000 per week - each manual . . . That equals \$45,000 per week if you placed an ad in one magazine . . . Now there are thousands of magazines and newspapers out there . . . You can place these ads in more magazines as you make more money . . . You can also sell them through direct mail . . .

. . . .

[Y]ou get to make a ton of money off these manuals, for as long as you wish. . . .

All I ask for is this. . . \$199.00 and I'll include RUSH shipping for free! . . . But there is only one drawback. . . I will only allow 200 sets of my Publishing Company In A Box to be sold. It won t [sic] make much sense if I sold the kit to 1000 or 2000 people. . . the market would be saturated with the same manuals. . . and I don't want that. To make sure the same people who invest in this offer get the same results I got in the past 5 years. . . Only 200 people can have it for \$199.00.

. . . .

And anyone who gets their check in to me late. . . I ll [sic] simply send it back uncashed. . . . For only \$199.00 I m [sic] going to let you in on the easiest money you ll [sic] ever make. YOU DO NOT HAVE TO DO ANYTHING!! The ads are done. The manuals are all written. The printer will print the manuals for about 40 cents. . . All you have to do is place the ads and your [sic] set. . . Push one button today! Rush me your payment of \$199.00 right now. . . and get your very own MILLION-DOLLAR publishing company going!

. . . .

Sincerely,

Louis Salatto

Owner Enterprise Publications." (Exhibit G).

28. Through the means described in paragraph 27, respondents have represented, expressly or by implication, that respondents have been selling the consumer manuals referred to in paragraph 27 for five years preceding the dissemination of the advertisement(s) referred to in paragraph 27, and that the experiences related in paragraph 27 are those of respondents over that five year period.

29. In truth and in fact, respondents have not been selling the consumer manuals referred to in paragraph 27 for five years preceding the dissemination of the advertisement(s) referred to in paragraph 27, and the experiences related in paragraph 27 are not the

actual experiences of respondents over that five year period. Rather, respondents began selling the consumer manuals referred to in paragraph 27 no earlier than March 1996, and began disseminating the advertisement(s) referred to in paragraph 27 shortly thereafter. Therefore, the representations set forth in paragraph 28 were, and are, false or misleading.

30. Through the means described in paragraph 27, respondents have represented, expressly or by implication, that consumers who purchase from respondents the right to reproduce and distribute various consumer manuals can reasonably expect to achieve a specific level of earnings, such as \$2,000 to \$4,000 per week for each individual advertisement promoting a single manual, \$45,000 per week for 15 individual advertisements promoting each of 15 different manuals, \$4,000,000 overall for one particular manual, or millions of dollars each year.

31. In truth and in fact, few if any purchasers attain the specific level of earnings represented by respondents. Therefore, the representations set forth in paragraph 30 were, and are, false or misleading.

32. Through the means described in paragraph 27, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph 30, at the time the representations were made.

33. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph 30, at the time the representations were made. Therefore, the representation set forth in paragraph 32 was, and is, false or misleading.

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

EXHIBIT A

High Speed Bulk E-Mail Relay Network...
NOW AVAILABLE!

- > Send All The Bulk Email You Wish...
- > At Lightning Fast Speed..
- > From Your Own Local Dialup Account...
- > Without The Risk Of Account Termination...
- > Without Stealing Other People's Resources...

The Ultimate Bulk Email Solution Has Finally Arrived!

- > SEND OVER 150,000 EMAILS AN HOUR WITH A 28.8 MODEM!
- > YOUR LOCAL DIALUP ACCOUNT WON'T BE SHUT OFF!
- > YOUR EMAIL CAMPAIGN WILL BE COMPLETELY LEGAL!

*** LS Enterprises Has Done It Again ***

*** This Is The Big One! ***

As soon as you finish reading this document, you will WANT to SPEND thousands of dollars! You are about to enter a technical lesson that will - believe it or not - leave a lasting impression that will never be forgotten! It's time to turn on your thinking caps. This information is vital! Every single Internet email message has an origin, relay, and destination.

* Your dial-up account is the --origin--.

* Email messages must be --relayed-- to get to its final destination. Email programs have a setting for "relay host" or "smtp". That setting represents a computer that acts as a relay. Almost every computer connected to the Internet can act as a relay. You will soon see why that could lead to BIG trouble! * And, of course, the recipient of your message is the --destination--.

Every email message contains a "body" and a "header". * The --body-- is the actual message that you type. * The --header-- contains all of the technical information about the route that takes place when the email message travels from the origin to the relay to the destination. (Don't worry... We're going somewhere with all of this!)

Every computer connected to the Internet is represented by an "IP address" and a "domain name".

* An --IP address-- is a numeric code (ie. 205.199.212.30) that uniquely identifies a computer on the Internet. Any technically savvy Internet user can easily trace an IP address to the real owner of that particular machine.

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EXHIBIT A

to the real owner of that particular machine.

* A --domain name-- is a name that corresponds with an IP address (ie. freepromo.com). Generally, domain names were invented because they were easier to remember than IP addresses. But once again, any technically savvy Internet user can easily trace a domain name to the real owner of that particular machine. In every email header, one can see the IP address and domain of the computer from where the message originated, the IP address and domain of the computer that relayed the message, and the IP address and domain of the final destination.

PUNCH LINE... You see, the information in this wonderful email header is used by anti-commercial-email people to make your life miserable!! Without the header, the interference with your business would magically disappear!! Everyone knows that bulk emailers don't actually *try* to offend people. It would be stupid to do so purposely. How can bulk emailers make money if all of their potential clients are offended? The truth is that most people don't mind getting solicited through email, and many people end up BUYING! But -- The biggest problem that bulk emailers face is that if even 1 out of 1000 recipients complain, the bulk emailers' dialup-service-providers receive enough complaints to cancel their accounts!

SO HOW DID BULK EMAILERS OVERCOME THIS TERMINATION PROBLEM? They didn't! To lower the complaint rate, many bulk emailers began to "forge" their "return" addresses. In the beginning, people who were new to the Internet were fooled by this. But the problem was that the email *headers* still showed the true route of the messages. As Internet users became more educated in deciphering email headers, the forging tactics actually generated even more angry complaints to the originating dialup providers. So, then some bulk emailers discovered a new "trick". They realized that many computers on the Internet could be used to relay their mail. Even better, many of those relays did not identify the IP address of the origin's computer. But this tactic went sour, too. The origin's IP addresses may not have appeared, but the origin's domain name still *did* appear, thus still making it easy to identify the origin.

In addition, the owners of many of these unwilling relays quickly caught onto this tactic and reconfigured their computers to reject relay connections. This practice will lead to much more headache than it is worth!! **SO WHY IS ALL OF THIS SO IMPORTANT?** Because you will now appreciate the significance of LS Enterprises latest achievement... LS Enterprises is now presenting **THREE** new technologies that will only work properly if used all together. The first technology can **CHANGE THE MESSAGE-ID **BEFORE**** your emails leave your computer! The second technology allows you to send **OVER 150,000 EMAILS AN HOUR** - with a single computer and modem - and the third technology will relay your email messages through LS Enterprises ***OWN* PROPRIETARY HIGH-SPEED RELAY NETWORK, WITHOUT IDENTIFYING THE DOMAIN NAME OR IP ADDRESS OF THE ORIGIN!**

The end result is that you will be able to send all the bulk email you wish - **AT LIGHTNING FAST SPEED** - from your own local dialup account - without the risk of account termination! --- **NOW WASNT THAT WORTH READING?!!?** --- If you thought *that* was good, then wait till you read this conclusion!!

INTRODUCING . . . LS Enterprises pride and joy... The ultimate solution... The package that will forever change the bulk email industry... The one and only... **BRAND NEW...**

----- "Cyber-Bomber" -----

"Cyber-Bomber" is a tremendously powerful package that will allow you to send email out on a Windows based machine connected with a 28.8 modem at speeds rivaling a T1 server.

EXHIBIT A

on a Windows based machine connected with a 28.8 modem at speeds rivaling a T1 server. Standard email software only allows you to send mail at a rate of approximately 7,000 - 10,000 recipients an hour. "Cyber-Bomber" sends as much as 150,000 or more per hour! Not only does "Cyber-Bomber" consistently outperform the others, but it also includes many more powerful features! Here are some of the amazing cutting-edge features included with LS Enterprises new "Cyber-Bomber" package...

* Multitasking - opens several separate connections at the same time to LS Enterprises dedicated relay network so that your computer will essentially "clone" itself into 15 or more sending machines!!

* Can send personalized email which will greatly increase positive responses and dramatically lower flames... "Dear (recipient's address),"

* Can break large lists into subsets so you can test different ad copies against equal portions of your mailing list

* Automatically skips invalid email addresses (missing .com or .net, etc.)

* Can skip certain "foreign" email addresses that would greatly slow down the sending process

* When sending to AOL members, it can remove the complete header section from obvious view, by using special built-in email coding.

* Can automatically check *incoming* email every 30 seconds

* Automatically adds "remove" and "unsubscribe" requests to your do-no-send list

* Automatically processes undeliverable addresses and builds a "return" list

* Includes special "flame" handling capabilities

* Generates statistical analysis of responses. You can track percentages of REMOVES, RETURNS, FLAMES, and POSITIVE REPLIES! This feature is invaluable for testing different ad copies and email lists!

So, as you can see, the "Cyber-Bomber" package will give you the tools to successfully promote your product, service, or opportunity to hundreds, thousands, or millions of Internet users every day, without the regular headaches and obstacles that most bulk emailers have come to expect every day! You can make the same fortunes that many other online marketers are making the hard way! Remember earlier, we told you that you would actually *want* to *spend* thousands of dollars?

Well, if this package sold for \$8,000 (the price of one high-speed email server and one month of T-1 service) you would probably be smart enough to spend that money on "Cyber-Bomber", knowing that you will make it right back in the next couple of *days*. But, LS Enterprises has never set high prices for cutting-edge services. That's why you can get two years of autoresponder service for 139 bucks (when others charge the same - for setup alone), or three years of unlimited bullet-proof web hosting for under \$700 (when others charge \$500 a MONTH for similar services).

The bottom line is that LS Enterprises is offering the full "Cyber-Bomber" package for only \$1,495. This will be the best investment you will make this year - guaranteed. It's hard to put a value on what you will receive, but it would be fair to say that this technology can help you make thousands or even millions - this year! This is what you will receive when you order "Cyber-Bomber":

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* An easy-to-use fully-documented software package that will turn your PC & modem into a powerful email server - which will not only send over 150,000 qualified emails per hour, but will also cloak the "message-id" in the headers.

* Unlimited exclusive-direct-access to LS Enterprises own dedicated high-speed relay network that will relay your email to its final destination, and cloak the originating domain name and IP address of your local dialup provider, leaving absolutely no trace to your origin.

* A special "reply" / "return" email address on LS Enterprises network that can handle all of the responses and returns. This email account will integrate seamlessly with "Cyber-Bomber"s powerful incoming email processing features!

* Unlimited technical support by the people who programmed this great software package. And as always, your purchase is protected by a full "no questions asked" 10 day money back guarantee by LS Enterprises.

MINIMUM HARDWARE REQUIREMENTS TO QUALIFY FOR "CYBER-BOMBER":
486DX or better 33MHZ or better 8MB RAM or better Windows 3.x, 95, or NT 14.4kbs modem or faster PPP or SLIP account with an ISP.

ACT NOW! This is the total bulk email solution! Don't delay on this one! This is what you've been waiting for! If you have any questions, please feel free to call LS Enterprises at: 1-203-483-8634

ORDER NOW...CLICK HERE!

[[Email Us](#)] [[Home Page](#)] [[C.D.S.](#)] [[Bulk Email Services](#)] [[Webcollector](#)]
[[Bulk Email ISP](#)] [[Bullet Proof Autoresponder](#)] [[Become A Dealer](#)]
[[Internet Marketers Resource Center](#)] [[Direct Response Marketing](#)]
[[Bulk Email Addresses](#)] [[Merchant Account](#)] [[Sonic Mass Mailer](#)]

EXHIBIT B

**27,000,000 Email Addresses
Plus 12 Bonuses...****All For Only \$295!****EARN INSANE PROFITS WITH THE RIGHT FORMULA**

If you have a product, service, or message that you would like to get out to Thousands, Hundreds of Thousands, or even Millions of people, you have several options. Traditional methods include print advertising, direct mail, radio, and television advertising. They are all effective, but they all have two catches: They're EXPENSIVE and TIME CONSUMING. Not only that, you only get ONE SHOT at making your message heard, by the right people.

The INTERNET, the "Global Communications Frontier" has changed this dramatically, including making countless individuals wealthy. "Electronic Marketing," as it's commonly referred to, has effectively leveled the playing fields of all types businesses.

You can literally make a fortune by just sending out email and the best part is that you will pay nothing to do so. All you will need is an internet connection that you can find for as little as \$19 per month. To find one, simply [Click Here!](#)

LS Enterprises has been in the online marketing business for over 7 years. We can help make your goals come true. We have helped many individuals succeed in marketing their product effectively. It's very simple to do. In fact soon you will have the problem of what to do with all the cash you will make from sending out bulk email.

Here is just one of many true success stories we have seen...

We did a mailing of 1 1/2 million emails for one of our customers. He was selling a home workers manual for \$29.95. His results are very typical and scary. He took in over 700 orders! $700 \times \$29.95 = \$20,000$. This gentleman was so amazed, that after being skeptical, it had really happened to him, he made it, he found a niche. That niche was email! He went on to buy our full list and will be set for life in less than a years time. All this from selling a manual via email.

That was just one of the many success stories we hear everyday. It may all sound to good to be true. Well, we can tell you this. It really does work. Why else are so many individuals doing it? They are not just wasting their time. They are all making mega bucks.

Don't even hesitate on this one or you will miss out on the biggest and most effective way to market anywhere..PERIOD!

HERE'S THE BOTTOM LINE**AND****WHAT WE CAN DO FOR YOU**

EXHIBIT B

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EXHIBIT B

WHAT WE CAN DO FOR YOU**Here is what you get when you order today!**

>> 27 Million Email Addresses... 1 per line in simple text format on a CD. Multiple files of 250,000 or greater (no codes needed to open files). You will receive email addresses of the following domains... AOL, PRODIGY, COMPUSERVE, DELPHI, GENIE, JUNO, PIPELINE, INTERAMP, MSN, MCI, and 5 MILLION OTHER MIXED EMAIL ADDRESSES (.com, .net). All names listed above are separated in files by domain name for your convenience.

PLUS THESE BONUS SPECIALS...

>> 2 Free Bulk Email Programs...Pegasus and Eudora. You will be able to load our names into these 2 Distribution List Software's (which will create Distribution Lists Saving you hours of work) for immediate, around the clock launching! You can whip out as many distribution lists as you like, and depending on the speed of your modem and the length of your message, you will be able to send out around 10,000 to 30,000 messages per hour for free.

>> "Floodgate" Bulk Email Loader Demo. This is the most popular bulk emailer in the world. You can test drive it for free.

>> Super Note Pad... This software will help manage your large text files for you

>> Winzip Self Extractor... This program will be needed when de-compressing a compressed file. It will come in handy when dealing with files of zip format.

>> Over 5,000 Places To Advertise For Free!

Plus Yet Another Bonus...

>> "Profits 2500 Series"... 7 manuals that will teach you how to market on the internet and what offers work and which ones to stay clear of. Also we will show you where to find web designers for free and much, much more!

YOU GET EVERYTHING FOR ONLY \$295...

We have previously sold the seven manuals alone for over \$200. Now you can have the complete package for the low price of only \$295!

This unbelievably low price will not last for ever. Reserve your email package today!

ORDER TODAY..CLICK HERE!

All lists are completely free of any Duplicates. We also, on a continual basis, add New names and Remove Undeliverables and Remove Requests.

The result is the Cleanest Email Addresses Available Anywhere to use over and over again, for a

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EXHIBIT B

FRACTION of the cost that other companies charge. Typical rates for acquiring email lists are from 1 cent to as high as 3 cents per email address - that's "INFORMATION HIGHWAY" ROBBERY!.

Start earning mega money and get started now!

EASY ORDERING INSTRUCTIONS CLICK HERE!

If you have any further questions contact us by email: [Click here](#), or call our Marketing Department at: 203-483-9634

[[Email Us](#)] [[Home Page](#)] [[C.D.S.](#)] [[Bulk Email Services](#)] [[Sonic Mass Mailer](#)]
[[Bulk EMail ISP](#)] [[Bullet Proof Autoresponder](#)] [[Become A Dealer](#)]
[[Internet Marketers Resource Center](#)] [[Direct Response Marketing](#)]
[[Bulk Email Addresses](#)] [[Merchant Account](#)] [[Webcollector](#)]

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EXHIBIT C

Bulk Email Services

Bulk Email Services

 To learn more about Bulk Email and how to effectively use it [Click Here](#)

Bulk Email Rates

Exclusive - Bulk E-Mailing

	Up to 5 line AD	6 to 10 line AD	Recipients
PLAN 1	\$125	\$175	100,000
PLAN 2	\$195	\$250	200,000
PLAN 3	\$275	\$325	300,000

If Ad exceeds 10 lines, add \$10 per additional line.

***** Best Value - Exclusive Bulk E-Mailing *****

Full Page up to 40 Lines	\$399	300,000
--------------------------	-------	---------

The cost to send your message by postal mail would be over \$75,000 with us it's ONLY \$399. Your message will go out exclusively (no other messages) to our full Circulation.

Full Page up to 40 Lines	\$299	200,000
--------------------------	-------	---------

Full Page up to 40 Lines	\$199	100,000
--------------------------	-------	---------

1 Line = 78 characters, including spaces, commas and periods.

The Demographic Breakdown for our list of 300,000 recipients, includes only business people and opportunity seekers. All recipients are located within the United States and are interested in receiving e-mails from other businesses. Recent research reveals that approximately 90% of our recipients are small business owners or opportunity seekers. The remaining 10% of our list is comprised of medium to large corporations. We do not currently break-down our lists in any other way, which is reflected in our low rates. These types of individuals have proven to be the most receptive to internet marketing.

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EXHIBIT C

Bulk Email Services

<http://www.freepromo.com/bulk.htm>**General Recipients**

If you have a product or service that would be of interest to a broader field of individuals, we also have a list of over 1,000,000 general recipients. There are no demographics available for this list, other than, all recipients are located within the United States. The rates for mailing to this list are the same as the above listed lists. For mailings over 300,000, please contact us for a current quote.

EASY ORDERING INSTRUCTIONS

If you have any questions send us email [Click Here](#) or call our Marketing Dept. at 203-483-8634

[[Email Us](#)] [[Home Page](#)] [[C.D.S. Check System](#)] [[Bulk Email Services](#)] [[Webcollector](#)]
[[Bulk Email ISP](#)] [[Bullet Proof Autoresponder](#)] [[Become A Dealer](#)]
[[Internet Marketers Resource Center](#)] [[Direct Response Marketing](#)]
[[Bulk Email Addresses](#)] [[Merchant Account](#)] [[Sonic Mass Mailer](#)]

EXHIBIT D

The Truths about Bulk Email

<http://www.trecpromo.com/truths.htm>

The Truths about Bulk Email

What is Bulk Email ?

Bulk Email is a powerful and fast promotional method in which your message is sent to 10's of thousands of people instantly via the internet.

Bulk Email vs. other Advertising

The cost associated with bulk email is lower than any other form of advertising.

The response rate can be much higher. This is because when you send someone email it sits in their email box until it's opened (100 % readership) With other forms of advertising your message may never be seen.

Email is faster, you can typically expect replies back within hours to a few days. Try that with the U.S. mail system (1 week or more). Also, with email there is no lost mail, thats something that never happens with the U.S. mail system? Postal mail costs over 300 times what it costs to use our bulk email service.

Our Recipient List

Our recipient list is over 27,000,000 and continuously growing. It is made up of mainly small business owners and individuals that would be categorized as opportunity seekers. Experience has shown that these types of recipients are the most responsive to this form of marketing.

What type of response rate should I expect?

Response rates will vary depending on your initial offer and sales letter. We recommend a two step approach:

1) Initially send a teaser letter, and do not make it too "pitchy" (don't try and sell them on the first letter). Give them the benefits of your product / service. People buy because of benefits, not features. ("What's in it for them?")

2) Offer a free information package (this should be 5-10 pages long, and where all the selling should be done) We will be happy to work with you on your teaser letter. All you have to do is ask.

Tip 1: Always include your phone # in your follow up letter, because no one should EVER buy anything on line unless they can call and speak to someone.

Tip 2: Set up a web site, it doesn't have to be big and flashy, your internet provider probably has 5megs reserved for you right now / use it (this is common with most ISP's). If not, send us an email and we will send you some information on the Hosting Service we use. You can do this very cheaply. Being able to go some where and see something before buying can make a difference. (This is not mandatory, LS Enterprises has built its business on sending email out to millions of customers for the first year).

How do I get started ?

Complaint

EXHIBIT D

The Truths about Bulk Email

<http://www.treepromo.com/truths.htm>

For our rates and complete ordering instructions [Click Here](#)
If you have any questions send us email [Click Here](#) or call
our marketing department at 203-483-8634

[[Email Us](#)] [[Home Page](#)] [[C.D.S.](#)] [[Bulk Email Services](#)] [[Sonic Mass Mailer](#)]
[[Bulk Email ISP](#)] [[Bullet Proof Autoresponder](#)] [[Become A Dealer](#)]
[[Internet Marketers Resource Center](#)] [[Direct Response Marketing](#)]
[[Bulk Email Addresses](#)] [[Merchant Account](#)] [[Webcollector](#)]

EXHIBIT E

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and for as long as you like. You can even make a career out of Mystery Shopping!

You can live in Anchorage, Alaska and work for a contractor in Miami, Florida because that same contractor is holding assignments to large chains of stores all over the country. In addition, you will be entered into our Nationwide Database, so when there is extra "shops" in your area, you will be contacted in advance to see if you can fit them in your schedule.

A Typical Assignment! You are contacted or you contact the contractor yourself, then you are given an assignment. You go to the place of business and complete the assignment, then report your findings to the contractor. Then you receive a check in the mail once a week. You will be checking business operations for cleanliness, courteousness, how employees answer questions, and many other small tasks that anyone can do.

You will be shopping, but at the same time you will be checking store operations. You always need to remain anonymous to all employees. You never have to pay any money for the merchandise. You will be given Vouchers or Free Coupons to make sure you don't spend one single penny of your own cash. In other words, You pick out the merchandise, totaling a certain amount, usually \$25 to \$75 worth of merchandise. The company pays for it...and you get to keep it! This of course, is in addition to making upwards of \$24 per hour.

There is a small one time refundable fee of \$29.00 to get started. This is a small fee indeed! This one-time refundable fee is to ensure us that you are serious about Mystery Shopping. We are looking for serious people and this is a good way to weed out the people who just are not serious.

60 Day No Risk Trial! We have helped thousands of people get started Mystery Shopping. Let us help you. Try Mystery Shopping for 60 days and if it's not for you, we will promptly refund your \$29 Guaranteed!

In order to get started, just Print out the form below and fill in the necessary information. send it to us along with your check or money order and then wait 3 to 7 days to hear from us. Also, upon receiving your form, We will Rush the Professional Mystery Shopping Guide to you the same day. This is the guide that contains the Mystery Shopping contractors in your area and will be waiting to hear from you.

This is a one time offer and will never be repeated. You must act right now and let us hear from you today. When we receive your profile form below, You can begin Mystery Shopping. You will be able to take on as many assignments as you desire and work for as long as you wish, with no obligation to us.

-----cut-----
here-----
Mail Cash, Check, or Money-order For \$29.00 To:
LS Enterprise - P.O. Box 9535 - New Haven, CT. 06534

Yes, Rush me your Mystery Shopping Guide Containing Over 100 Contractors. In addition, put me in your Nationwide Data Base of Mystery Shoppers (confidential) so I can be notified of additional assignments.

Name _____ Phone# (____) _____
Address _____
City _____ State _____ Zip _____ (Please Print All Information

Days I am available to "shop" (circle all that apply below)
Mon Tues Weds Thur Fri Sat Sun

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<http://xp5.dejanews.com/getdoc.xp?...&CONTEXT=858953232.25029&htmum=10>



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EXHIBIT F



Article 5 of 10

Subject: **MAKE EXTRA CASH AT HOME!**
 From: undelive@homebasedwork.net
 Date: 1997/04/10
 Message-Id: <sci.engr.lighting.37474743565665.JDL9087@bethere.net>
 Newsgroups: sci.engr.lighting
[\[More Headers\]](#)

****WORK IN THE COMFORT OF YOUR OWN HOME****
 WIDE SELECTION OF JOBS...TOP PAY
 REAL JOBS WITH REAL COMPANIES

Plus receive your very own "Computer Cash Disk"..FREE!

Every day thousands of people just like you are getting started working at home in fields of computer work, sewing, assembling products, crafts, processing coupons, typing, telephone work and much more!

WHO ARE HOME WORKERS?

They are regular ordinary people who earn an excellent living working at their own pace and make their own hours. They are fortunate people who have found an easier way to make a living. They had absolutely no prior experience in this field. They earn several hundred dollars weekly in the comfort of their own home and you can be the next!

Companies all over the United States want to hire you as an independent home-worker. You are a valuable person to these companies because you will actually be saving them a great amount of money.

These companies want to expand their business, but do not want to hire more office people. If they hired more office employees, they would have to supervise them, rent more office space, pay more taxes and insurance, all involving more paperwork. It is much easier for them to set it up so you can earn an excellent income working in the comfort of your own home.

—LIVE ANYWHERE—

You can live anywhere and work for these companies. The companies themselves can be located anywhere. For Computer work, the companies provide you with assignments, usually data entry or similar tasks. You then complete the project and get paid for each task you complete. You receive step by step instructions along with toll free telephone help numbers to make it easier for you and to insure you successfully complete the job.

After your finished you ship the completed assignments

4/22/97

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EXHIBIT F

****FREE BONUS!.. "COMPUTER CASH DISK" (IBM compatible)**
 167 business reports. Tips, Tricks, and Secrets on starting and operating a successful home based business and how to avoid dishonest marketing offers. Comes with full reproduction rights! **READ THEM, SELL THEM AND BANK THE MONEY.** Never pay us any royalties. Sells for \$69 but it's worth a whole lot more than that. Get yours today..FREE! It will run on a MAC with softwindows installed.

>>>FULL 30 DAY RISK FREE MONEY-BACK GUARANTEE!

Test our material out for a free trial period and if it isn't everything we said it is, just send it back and we will gladly refund your money. We helped thousands of people like yourself get started working at home. You can be the next!

THINK WHAT AN EXTRA \$300, \$700 OR MORE A WEEK COULD DO FOR YOU AND LET US HEAR FROM YOU TODAY!

THIS COULD EASILY CHANGE YOUR LIFE FOREVER!

DON'T LET THIS EXTRAORDINARY OPPORTUNITY PASS !! THESE OPPORTUNITIES ARE PROFITABLE AND EASY...ACT NOW!!!!!!

EZ ORDER FORM

Yes! I am interested in making money at home. I am ordering within 15 days. Here is my \$29.95. Please Rush me my package today including "The Guide To Genuine Home Employment" and your "Free Computer Cash Disk"!

NAME _____

ADDRESS _____

CITY, STATE, ZIP _____

EMAIL _____ @ _____

PHONE (_____) _____

Please PRINT ALL Information Clearly

Send Check or Money-Order for \$29.95 To:

LRS PUBLICATIONS
 PO BOX 9535
 NEW HAVEN, CT 06534

****WANT TO GET STARTED EVEN FASTER?**

USE OUR 24 HOUR CHECK BY FAX SERVICES...

Paste or Tape your check in the space below and fax it to our office along with the completed form.
 Fax # 1-203-483-8637

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PLACE CHECK "HERE" AND FAX IT TO:
(203) 483-8637

**Note: If you fax a check, There is no need to mail it in.
Keep it for your records. We will draft one up from your
exact information on your original check.



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http://apoc.juniper.com/guestcomp.html#...

Hard drive full?
Electronic file storage over the internet

Free trial offer

Article 100 of 108

Subject: [Open...NOW!!!](#)
 From: [lousala@aol.com \(LouSALA\)](mailto:lousala@aol.com)
 Date: 1996/07/19
 Message-Id: <4snfj4\$160@newsbf02.news.aol.com>
 Newsgroups: comp.multimedia
[\[More Headers\]](#)

FOR SALE!
 My Multi-Million Dollar
 Publishing Company - \$199.

If you ever wanted "the easy way out" to make a lot of money with a business of your own... Here is the easiest way to start!

I m writing this letter to let you in on something that will blow you away. What I m about to present to you is something that I ve never done before...and something that I ll never do again... So pay attention!

For the past five years or so... I ve been running small, inexpensive ads in the back of many large National magazines and the Internet. These ads were always small and very cheap... 1/6 of a page or 3 to 5 line classified ads. On these ads I ve been selling little manuals. These manuals sold from \$14.95 - \$49.95 each. I always ran a different ad for each manual I was selling.

I have collected the reprint rights to 15 different HOT SELLING manuals on topics that consumers really need. I like to sell information because NOBODY can set a price on it... Especially if the information I m selling is my own... The sky is the limit. Plus it is very cheap to produce HOW-TO manuals. It usually costs me about 40 cents to produce each manual that I get to sell for as much as \$49.95. That s one hell of a mark-up.

Anyway, I ve been selling these 15 manuals with little, cheap ads in the back of National magazines and on the Internet for the past five years or so... Each manual brings me about \$2000 - \$4000 per week - PER AD. These manuals tell people how to get a new car with little or no money down and no credit... another one tells how to get a government job... and stuff like that... I mean... you and I may not be interested in getting a job with the government... But believe me... there are MILLIONS OF PEOPLE THAT DO... and their willing to pay me to teach them! This kind of stuff sells the greatest! Remember, I have 15 different manuals that I sell with 15 different ads. This is big money stuff... A very lucrative business to be in.

Well this is where the unbelievable offer comes in... I hope your sitting down for this one... because it is a once in a lifetime offer for you. I do not know of any easier way for you to become financially independent... In fact THEIR IS NO EASIER WAY!!! The next few paragraphs will reveal everything to you. Since I m so busy selling my best-selling HOW-TO business books nowadays... I do not have the time to service these ads... It s just that I really can t find the time to have all the orders taken care of in a timely fashion.

4/8/97

FEDERAL TRADE COMMISSION DECISIONS

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<http://xp3.dejanews.com/getdoc.xp?...CONTTEXT=000000224>

I prefer to keep helping people just like you, by selling my business books and offering my assistance... and I'm doing a lot of work with Large corporations right now. Now I don't have the time to run 15 little ads anymore... I could just put them to sleep... I could stop running them and stop the entire thing... But, like I was saying \$2000 to \$4000 per week per advertisement. There are 15 different manuals... and there are several hundreds of magazines to run these little ads in... This is so good just to throw away... It'd kill me to do that... This is why I'm going to make you the deal of your entire life...

I'm willing to sell you the entire set of re-print rights to all 15 of these manuals on a 3 1/2 floppy disk (IBM compatible)... I'm also willing to give you the rough drafts of the actual ads that sold these manuals!!! (all you have to do is have them copied. You can do it yourself - or you can take them to a local copy shop... this is why I can say Push One Button And Start Your Own Million Dollar Publishing Company)... and if I get your order in the next 30 days... I'll also include an extra set of 82 other money making reports and manuals... \$850 value. ABSOLUTELY FREE. They will show you exactly how to do just about anything: "HOW TO own and operate 1 of over 25 other businesses" - "How to write killer advertisement so people buy your materials NOW!" - "How to write, publish, and market reports, manuals, and books". And much much more. You will also receive our professionally designed and most successful advertising circulars.

All you have to do is insert the disk in your floppy drive and start printing. If you don't have a computer don't worry, because any local print shop will print them out in a jiffy. Have some of the ads copied along with the manuals you want to sell and then just wait for the orders to pour in.

Remember, these are PROVEN winners. If your stumped on selecting a product to sell... or if you are having a problem crafting a sales letter or space ad... This is your lucky day... IT IS ALL DONE FOR YOU!!! Now, when I say manual... please do not think that they are small, insulting items to sell... They are pretty bulky... They range from 20 to 60 pages long... Your customers will get more than their money's worth... and they'll be extremely happy with the purchase... And you'll have pride selling this information.

The entire re-printing package, which I like to call, The Publishing Business In A Box... will come with over 400 pages of camera ready artwork (these are the actual pages you'll make copies from). You will also receive a signed letter allowing you to reprint them and sell them as much as you want for as long as you want. Heck, you can even package them all together and sell the kit to someone else to resell on their own. You'll also receive copies of the winning ad drafts that sold these manuals.

One of the manuals in this kit sold \$4,000,000 worth by a Florida man named M. Zboch. Now, I got the reprint rights... and I'll sell them to you... If your wondering how much this will cost you... Think about it for a minute. There are 15 different manuals that can make you \$3000 per week - each manual... That equals \$45,000 per week if you placed every ad in one magazine... Now there are thousands of magazines and newspapers out there... You can place these ads in more magazines as you make more money... You can also sell them through direct mail...

I'm not going to ask you for any cut of the money either... What you make is what you keep. I'm not going to hit you up for anymore fees either... Once you pay me for the re-print rights... you're all paid up for good! In fact... you get to make a ton of money off these manuals, for as long as you wish... and you never have to pay one cent in royalty!

All I ask for all this is... \$199.00 and I'll include RUSH shipping for free! Yes, I said only \$199.00. And that is for all 15 manuals, and if you respond in the next 30 days... I'll even give you the rough drafts of the actual advertisements that sold them!!! Also, I'll include 82 more reports and manuals absolutely FREE. That's 97 in all. But

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there is only one drawback... I will only allow 200 sets of my Publishing Company in A Box to be sold. It won't make much sense if I sold the kit to 1000 or 2000 people... the market would be saturated with the same manuals... and I don't want that. To make sure the same people who invest in this offer get the same results I got for the past 5 years... ONLY 200 people can have it for \$199.00.

Chances are, I'll get 200 within a week's time. So, if this is something you'd be interested in... Rush me a check or money order for \$199.00 TODAY to insure you get your very own publishing company in a box.

But, even if you decide to pass up on this offer... Don't sweat it. It's not like I'm going to be mad or anything like that. I know I will fill my 200 order limit real fast. And anyone who gets their check in to me late... I'll simply send it back un-cashed. For only \$199.00 I'm going to let you in on the easiest money you'll ever make. YOU DO NOT HAVE TO DO ANYTHING!! The ads are done. The manuals are all written. The printer will print the manuals for about 40 cents... All you have to do is place the ads and your set... Push one button today! Rush me your payment of \$199.00 right now... and get your very own MILLION-DOLLAR publishing company going!

You can start out by selling one or two manuals... then grow to sell all 15. You can do this from your kitchen table if you wish. And you do not have to pay any royalties and you print the manuals as you sell them. If you order in the next 30 days... You'll get the winning ads and 82 How to reports and manuals included!

For only \$199.00 you will have everything you need to make a killing with your very own business. You do not need to read any manuals or study any courses... If you want to make money the easy way - real fast... this offer may be right for you.

Last year, a friend of mine wrote a book and tried to sell it through a publishing company, after about nine months and a lot of searching he finally found one that would accept the book. He spent over \$6,000 and one and a half years to write and compile information in putting the book together. The publishing company gave him \$2000 up front and only about 1,000 copies sold for \$19.95. He also had to pay a 5% royalty to the publisher. His book was about building a coral reef fish tank. He lost his shirt and valuable time was wasted. He now says he wishes I was running this offer last year.

The point is this... the market is not in demand for knowing how to build fish tanks or any other non-money-making offer. People will always buy information on how they can make money, save money or improve their lives... and you can have all this information today... with no hassles. It's easy to get started, just simply complete the form below and mail it to me along with your check. I'll personally send your Publishing Company in A Box out the same day I receive your order. But remember, you must HURRY or you could be too late.

Sincerely,

Louis Salatto
Owner Enterprise Publications

-----cut here-----

For Immediate Delivery RUSH Check or Money Order for \$199.00 To:
Enterprise Publications - 15 Crestwood Road - Branford, CT 06405

I'm ordering within 30 days and want all the bonuses mentioned above. I understand that you are only offering this to 200 people. If I'm late, please return my check un-cashed.

Name _____

Address _____

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Deja News 1995-1997

City _____ State _____ Zip _____
(Please Print All Information Clearly)

Hard drive full?  **Click Here**

Free trial offer | Electronic file storage over the internet









[Home](#) [Power Search](#) [Post to Usenet](#) [Ask DN Wizard](#) [Help](#)
[Why use DN?](#) | [Advertising Info](#) | [Press Releases](#) | [Jobs](#) | [Policy Stuff](#)
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DECISION AND ORDER

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

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

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

1.a. Respondent LS Enterprises, LLC is a Connecticut limited liability company with its principal office or place of business at 1204 Main Street, Suite 380, Branford, Connecticut.

1.b. Respondent Internet Promotions, LLC is a Connecticut limited liability company with its principal office or place of business at 1204 Main Street, Suite 380, Branford, Connecticut.

1.c. Respondent Louis Salatto is the principal member of LS Enterprises, LLC and Internet Promotions, LLC. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the companies. His place of residence is 13 Branhaven Drive, East Haven, Connecticut.

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

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 purposes of this order, the following definitions shall apply:

1. "*Unsolicited commercial E-Mail product or service*" shall mean any software program capable of sending E-Mail messages in an automated manner to E-Mail addresses contained on a list, the service of sending E-Mail messages through use of such a software program, or any other product or service whose purpose is to assist in the dissemination of unsolicited commercial messages by electronic mail via the Internet or proprietary online services.

2. "*Unsolicited commercial E-Mail*" shall mean any E-Mail message that consists of or contains a communication advertising, promoting, soliciting, offering, or offering to sell any product, any service, or any form of donation or charitable contribution, not requested by the addressee or recipient or sent pursuant to a pre-existing business or personal relationship between the sender and the addressee or recipient of the E-Mail.

3. "*Business opportunity*" and "*work-at-home opportunity*" shall mean an activity engaged in for the purpose of making a profit.

4. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

5. Unless otherwise specified, "*respondents*" shall mean LS Enterprises, LLC, a limited liability company, its successors and assigns and its officers; Internet Promotions, LLC, a limited liability company, its successors and assigns and its officers; Louis Salatto, individually and as the principal member of the limited liability companies; and each of the above's agents, representatives, and employees.

6. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any unsolicited commercial E-Mail product or service, or any product or service concerning business opportunities or work-at-home opportunities, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

- A. Respondents' ability to provide any such product or service;
- B. Respondents' experience in providing any such product or service;
- C. That respondents act as contractors for other companies to hire consumers for any type of work; or
- D. The availability of actual job openings or any other type of employment opportunities, or the level of assistance provided by respondents in securing any job or other type of employment opportunity.

II.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any unsolicited commercial E-Mail product or service, or any product or service concerning business opportunities or work-at-home opportunities, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about:

- A. The amount of earnings, income, or sales that a prospective purchaser could reasonably expect to attain;
- B. The amount of time within which a prospective purchaser could reasonably expect to: (i) begin earning money; (ii) continue earning money; (iii) attain any amount of earnings, income, or sales; or (iv) recoup his or her investment;
- C. The availability of free merchandise; or
- D. The receptivity of potential recipients listed on any type of mailing list towards receiving commercial solicitations,

unless the representation is true and, at the time it is made, respondents possess and rely upon competent and reliable evidence that substantiates the representation.

III.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, shall not send or distribute any unsolicited commercial E-Mail containing any misrepresentations including, but not limited to, misrepresentations in:

- A. The subject line of the unsolicited commercial E-Mail; or
- B. The text of the unsolicited commercial E-Mail.

IV.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy, or success rate of such product or service, unless such representation is true and, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

V.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, are permanently enjoined from advertising, promoting, offering for sale, selling, or distributing any unsolicited commercial E-Mail product or service via any media, or any other product or service via unsolicited commercial E-Mail, unless they first obtain a performance bond in the principal amount of \$100,000.

- A. Each bond shall be conditioned upon compliance with Section 5 of the FTC Act, 15 U.S.C. 45, and with the provisions of this order. Each bond shall be deemed continuous and remain in full force and effect as long as respondents continue to advertise, offer for sale, sell,

or distribute any unsolicited commercial E-Mail product or service via any media, or any other product or service via unsolicited commercial E-Mail, and for at least three (3) years after respondents have ceased to engage in any such activity. Each bond shall cite this order as the subject matter of the bond, and shall provide surety thereunder against financial loss due, in whole or in part, to any violation of Section 5 of the FTC Act, to any violation of the provisions of this order, or to any other cause attributable to respondents' advertising, offering for sale, selling, or distributing any unsolicited commercial E-Mail product or service via any media, or any other product or service via unsolicited commercial E-Mail;

B. Each bond shall be an insurance agreement providing for financial loss issued by a surety company that is admitted to conduct business in each of the states in which respondent does business and that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. Respondents shall be deemed to be doing business in each state in which they, or any entity through which they advertise, offer for sale, sell, or distribute any unsolicited commercial E-Mail product or service via any media, or any other product or service via unsolicited commercial E-Mail, maintain an office or contact any consumer. Such bond shall be in favor of both (a) the FTC for the benefit of consumers injured due, in whole or in part, to any violation of Section 5 of the FTC Act, to any violation of the provisions of this order, or to any other cause attributable to respondents' advertising, offering for sale, selling, or distributing any unsolicited commercial E-Mail product or service via any media, or any other product or service via unsolicited commercial E-Mail, and (b) any consumer so injured. Each bond shall be executed in favor of the FTC or in favor of any injured consumer if the FTC or the consumer demonstrates to any court of competent jurisdiction, by a preponderance of evidence, that respondents violated any condition of the bond;

C. Respondents shall not disclose the existence of any bond to any consumer or other purchaser or prospective purchaser of any product or service without simultaneously making the following disclosure:

THIS BOND IS REQUIRED BY ORDER OF
THE FEDERAL TRADE COMMISSION
IN SETTLEMENT OF CHARGES THAT RESPONDENTS ENGAGED
IN FALSE AND MISLEADING REPRESENTATIONS IN THE
PROMOTION AND SALE OF VARIOUS PRODUCTS AND SERVICES.

The required disclosure shall be set forth in a clear and conspicuous manner, enclosed in a box containing only the required disclosure, separated from all other text on the page, in 100% black ink against a light background, in print at least as large as that of any other text on the page;

D. Respondents shall provide a copy of each bond required by this Part to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, at least ten (10) days prior to the commencement of any activity or business for which the bond is required; and

E. The bond required by this Part shall be in addition to, and not in lieu of, any other bond required by law.

VI.

It is further ordered, That respondent LS Enterprises, LLC, and its successors and assigns, respondent Internet Promotions, LLC, and its successors and assigns, and respondent Louis Salatto shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VII.

It is further ordered, That respondent LS Enterprises, LLC, and its successors and assigns, respondent Internet Promotions, LLC, and its successors and assigns, and respondent Louis Salatto shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order and

shall, for five (5) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission such signed and dated statements. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

It is further ordered, That respondent LS Enterprises, LLC, and its successors and assigns, and respondent Internet Promotions, LLC, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the company that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company or corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the company name or address. Provided, however, that, with respect to any proposed change in the company about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

IX.

It is further ordered, That respondent Louis Salatto, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

X.

It is further ordered, That respondent LS Enterprises, LLC, and its successors and assigns, respondent Internet Promotions, LLC, and its successors and assigns, and respondent Louis Salatto shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XI.

This order will terminate on July 13, 2019, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

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

IN THE MATTER OF

NORTH LAKE TAHOE MEDICAL GROUP, INC.

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

Docket C-3885. Complaint, July 21, 1999--Decision, July 21, 1999

This consent order, among other things, prohibits North Lake Tahoe Medical Group, Inc., a California corporation, from entering into, maintaining, or enforcing any conspiracy or agreement to negotiate, to deal, or refuse to deal with any payer or provider for physician services. It also requires the respondent to terminate the membership of physician members who refused to deal with Blue Shield, unless the physicians make a good faith effort to reestablish participation in Blue Shield.

Participants

For the Commission: *Paul Nolan, Kerry O'Brien, Matthew Gold, Richard Feinstein, William Baer, Jeremy Bulow, Roy Levy and Alan Fisher.*

For the respondent: *Joel Goldman, Hanson, Bridgett, Marcus, Valhos & Rudy, San Francisco, CA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the North Lake Tahoe Medical Group, Inc., a corporation ("Tahoe IPA") has violated Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Tahoe IPA is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at P.O. Box 2466, Truckee, California. North Lake Tahoe Medical Group, Inc., also has traded and done business as North Lake Tahoe IPA, North Lake IPA, and Tahoe IPA.

PAR. 2. Tahoe IPA physician members compete in the Lake Tahoe Basin, a basin comprised of the North Lake Tahoe area and the

South Lake Tahoe area. For physician services, the North and South Lake Tahoe areas each represent a separate geographic market. The North Lake Tahoe area has about 30,000 year-round residents as well as about 150,000 tourists, part-time residents and day users. The North Lake Tahoe area includes the communities of Truckee, Tahoe City, Kings Beach, Carnelian Bay, Homewood, Tahoma and Meeks Bay, California, and Incline Village, Nevada. The South Lake Tahoe area has about 35,000 year-round residents. The South Lake Tahoe area includes the towns of South Lake Tahoe, California, and Stateline, Nevada. The largest cities near the Lake Tahoe Basin are Sacramento, California (about 100 miles and two hours and twenty minutes southwest) and Reno, Nevada (about 31 miles and 45 minutes northeast).

PAR. 3. Respondent Tahoe IPA's physician membership consists of the majority of the physicians in both the North and South Lake Tahoe markets. Tahoe IPA's members include at least 78% of the physicians (medical doctors and doctors of osteopathic medicine) in the North Lake Tahoe area and at least 70% of the physicians in the South Lake Tahoe area. In the North Lake Tahoe area, the IPA's members include at least 67% of the primary care physicians in private practice and at least 89% of the specialty physicians in private practice. In the South Lake Tahoe area, Tahoe IPA's members include at least 70% of the primary care physicians in private practice and at least 72% of the specialty physicians in private practice. All of respondent Tahoe IPA's physician members are engaged in the business of providing health care services for a fee. Except to the extent that competition has been restrained as alleged herein, some or all of the physician members of respondent Tahoe IPA have been, and are now, in competition with each other for the provision of physician services.

PAR. 4. The general business practices of respondent Tahoe IPA and its members, including the acts and practices herein alleged, are in or affect "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR.5. Respondent Tahoe IPA is a for-profit corporation that also engages in substantial activities for the pecuniary benefit of its physician members. At all times relevant to this complaint, Tahoe IPA is and has been organized in substantial part for the profit of its members, and is therefore a corporation within the meaning of

Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 6. Respondent Tahoe IPA was formed in 1994 to promote the collective economic interests of the Lake Tahoe Basin physicians. Respondent, acting as a combination of its members, and in a continuing conspiracy with at least some of its members, and other parties, has acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements among its members, express or implied, to (i) act concertedly to delay the market entry of managed care, including health maintenance organizations ("HMOs") and preferred provider organizations ("PPOs"); (ii) engage in collective negotiations over terms and conditions of dealing with third-party payers; and (iii) refuse to deal with Blue Shield of California ("Blue Shield") when Blue Shield did not comply with the IPA's contractual demands.

PAR. 7. In furtherance of its unlawful agreements, beginning in 1994 and until the present, Tahoe IPA has acted to restrain and delay the market entry of managed care plans. Physicians practicing in the North Lake Tahoe area concluded that such plans would attempt to contract with physicians in the Lake Tahoe Basin, and that competitive pressure could force physicians to lower their fees or to contract on other than standard fee-for-service terms. Accordingly, they formed the Tahoe IPA to combine physicians into a united bargaining front that would prevent managed care from gaining access -- on competitive terms -- to North and South Lake Tahoe physicians. Since the IPA's formation in 1994, a number of third-party payers, including Blue Shield, Hometown Health Plan, St. Mary's Health Network, and Foundation Health, have attempted to develop and market managed care products in the North Lake Tahoe area. However, there are still no HMOs and only a few PPOs operating in the Lake Tahoe Basin.

PAR. 8. Typically, managed care plans reimburse for, purchase, or pay for all or part of the health care services provided to their enrollees or subscribers. Managed care plans may contract with integrated physician associations or groups to establish the terms and conditions of the relationship between a participating physician and a managed care plan, including the fees to be paid to the physician for treating managed care subscribers or enrollees. Through such contracts, managed care plans may obtain capitated payments or

significant discounts from physicians' usual fees, and physicians may obtain access to additional patients. As a result, managed care plans often are able to offer health care coverage to their enrollees or subscribers at an attractive price.

PAR. 9. From the time it was formed in 1994, Tahoe IPA's Board developed and implemented an anticompetitive strategy: It required its members to contract only through the Tahoe IPA to resist fee discounting and financial risk-sharing. Tahoe IPA accomplished these goals by including a clause in its Provider Participation Agreement that required members to contract with payors only through the Tahoe IPA and not to contract individually with any PPO, EPO or HMO. In its newsletter and other informal communications with members, the IPA further encouraged physicians to use the IPA as their sole contracting agent. Through these means, the Tahoe IPA resisted competitive pressures from managed care plans to accept financial risk or reimbursement on other than a standard fee-for-service basis.

PAR. 10. In October 1996, Blue Shield sought to enter into agreements with Tahoe IPA members to participate in an HMO product. Initially, Tahoe IPA urged Blue Shield not to introduce an HMO product in the Tahoe Basin. Tahoe IPA's Board then demanded that Blue Shield raise its reimbursement levels to area physicians, and told Blue Shield that the IPA would not contract with its HMO. Subsequently, the IPA's Board decided that the IPA should contract only on a fee-for-service basis with all payers, including managed care plans. Also at various times in 1996 and through the present, the IPA has informed payers, including Foundation Health Plan, Hometown Health Plan, St. Mary's PPO Network, and others, that Tahoe IPA was not willing to accept capitation or any other form of financial risk. The IPA's representatives have stated that the IPA would negotiate only fee-for-service contracts on behalf of its members, and they have communicated to these payers the minimum rates that the IPA would accept.

PAR. 11. In furtherance of its anticompetitive agreements, from 1996 to the present, Tahoe IPA has engaged in collective negotiations to fix price terms and other competitively significant terms with all payers seeking to enter the North and South Lake Tahoe areas. Tahoe IPA utilized the members' collective bargaining power as a united negotiating front to seek more favorable prices than each member could obtain by contracting as an individual in a competitive market.

By early 1996, the IPA developed its own minimum reimbursement rates, and sought to negotiate on behalf of its members the highest possible fees without the members sharing a substantial risk of loss from their participation in the IPA. From 1996 to the present, the IPA's leaders have clearly communicated to payers that the IPA is the exclusive representative of physicians in the North and South Lake Tahoe areas. Tahoe IPA has sought to coerce payers into accepting the IPA fee schedules and minimum reimbursement rates. Tahoe IPA leaders have stated that payers, including Blue Cross, St. Mary's Health Network, Hometown Health Plan, CCN, and Interplan, must accept the IPA's price terms if they want to contract with IPA members.

PAR. 12. After negotiating with Tahoe IPA for extended periods of time, several payers offered contracts to individual Lake Tahoe Basin physicians, but most individual physicians told these payers that they would contract only through Tahoe IPA. Consequently, payers were forced either to accept the IPA's reimbursement rates or to decide not to contract with physicians in the Lake Tahoe Basin. Payers were concerned that Tahoe IPA's minimum rates were much higher than rates that these plans paid physicians in other parts of California or Nevada. Payers also were concerned that they would not be able to do business in the Lake Tahoe Basin because the rates Tahoe IPA demanded would prevent the payers from developing a PPO product that would offer consumers a significant discount from full physician charges.

PAR. 13. Since at least February 1998, Tahoe IPA has represented to Blue Cross, CCN, Interplan and other payers that its physician members will not enter into any contract unless the payer reimburses the IPA's members their usual fees with no more than a ten percent discount. The IPA's negotiators ignored objections that their charge-based reimbursement proposal was inefficient, and informed these payers that this was the minimum reimbursement that the IPA's Board would accept in any contract. The IPA's negotiators also told payers that they would not be disadvantaged relative to other payers competing in the market, because all payers would get the same deal. Tahoe IPA entered contracts with Health Net, CCN PPO Network, and Admar PPO Network, in which the reimbursement was calculated at ten percent off of each physician's charges.

PAR. 14. In furtherance of its unlawful agreements, since 1996 and continuing to the present, Tahoe IPA attempted to coerce Blue Shield of California to raise its level of fee-for-service reimbursement to IPA physicians. Beginning as early as 1996, Tahoe IPA obtained information from its members as to their prevailing fee levels, which it used to develop a fee schedule that represented the minimum levels that it would accept from payers. The IPA demanded that Blue Shield allow the IPA to collectively enter into a contract with higher reimbursement and without any financial risk-sharing among the member physicians. The IPA not only demanded higher reimbursement, but solicited Blue Shield to raise its premiums and redirect the increased revenue to physicians. To pressure Blue Shield into accepting the IPA's demands, Tahoe IPA officials informed Blue Shield that the IPA's members would cease their participation in Blue Shield's PPO if Blue Shield did not agree to negotiate with the IPA.

PAR. 15. Since November 1997, when it became clear that Blue Shield would not negotiate on the Tahoe IPA's terms, the IPA encouraged its physician members to departicipate from Blue Shield's PPO. In private and public statements, the IPA reminded its members that it was acting as their agent with Blue Shield, and that the IPA would ultimately be successful in its negotiations with Blue Shield if the members continued to contract on a united front. The IPA also threatened area employers that few of its members would continue to participate with Blue Shield, and that these employers should contract with payers that have agreed to contract with the IPA.

PAR. 16. Beginning as early as January 1998, many of the physician members of Tahoe IPA submitted letters of termination to Blue Shield. Some members no longer contract with Blue Shield, and other members have terminated their contracts as of January 1, 1999.

PAR. 17. The physician members of Tahoe IPA have not integrated the IPA in any economically significant way, nor have they created efficiencies sufficient to justify their acts or practices described in paragraphs six through sixteen.

PAR. 18. By engaging in the acts or practices described above, Tahoe IPA has combined or conspired with its respective physician members to fix and/or increase the fees received from third-party payers for the provision of physician services, to boycott third-party payers, or otherwise to restrain competition among physicians in the Lake Tahoe Basin.

PAR. 19. The actions of the respondent described in this complaint have had, and continue to have, the purpose, tendency, and capacity to result in the following effects, among others, in the Lake Tahoe Basin, including the North Lake Tahoe area and the South Lake Tahoe area:

- A. Restraining competition among physicians;
- B. Fixing or increasing the prices that are paid for physician services; and
- C. Depriving third-party payers, their subscribers, and patients of the benefits of competition among physicians.

PAR. 20. The combinations or conspiracies and the acts and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The acts and practices, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of North Lake Tahoe Medical Group, Inc. ("Tahoe IPA"), hereinafter sometimes referred to as "respondent," and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that 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 North Lake Tahoe Medical Group, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at P.O. Box 2466, Truckee, California. North Lake Tahoe Medical Group, Inc., also has traded and done business as North Lake Tahoe IPA, North Lake IPA, and Tahoe IPA.

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

ORDER

I.

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

A. "*Tahoe IPA*" means North Lake Tahoe Medical Group, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its subsidiaries, divisions, groups, affiliates controlled by Tahoe IPA, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*Payer*" means any person that purchases, reimburses for, or otherwise pays for all or part of any health care services for itself or for any other person. Payer includes, but is not limited to, any health insurance company; preferred provider organization; prepaid hospital, medical, or other health service plan; health maintenance organization; government health benefits program; employer or other person providing or administering self-insured health benefits programs; and patients who purchase health care for themselves.

C. "*Person*" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

D. "*Physician*" means a doctor of allopathic medicine ("M.D.") or a doctor of osteopathic medicine ("D.O.").

E. "*Participating physician*" means any physician: (1) who is a stockholder, owner, or member of Tahoe IPA; (2) who has agreed to provide services through Tahoe IPA; or (3) whose services have been offered to any payer through Tahoe IPA.

F. "*Provider*" means any person that supplies health care services to any other person, including, but not limited to, physicians, hospitals, and clinics.

G. "*Qualified risk-sharing joint arrangement*" means an arrangement to provide physician services in which: (1) all physicians participating in the arrangement share substantial financial risk from their participation in the arrangement through: (a) the provision of physician services to payers at a capitated rate, (b) the provision of physician services for a predetermined percentage of premium or revenue from payers, (c) the use of significant financial incentives (e.g., substantial withholds) for its participating physicians, as a group, to achieve specified cost-containment goals, or (d) the provision of a complex or extended course of treatment that requires the substantial coordination of care by physicians in different specialties offering a complementary mix of services, for a fixed, predetermined payment, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient's condition, the choice, complexity, or length of treatment, or other factors; (2) any agreement on prices or terms of reimbursement entered into by the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement; and (3) the arrangement does not restrict the ability, or facilitate the refusal, of physicians participating in the arrangement to deal with payers individually or through any other arrangement.

H. "*Qualified clinically integrated joint arrangement*" means an arrangement to provide physician services in which: (1) all physicians participating in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the physicians participating in the arrangement, in order to control costs and ensure quality of the services provided through the arrangement; (2) any agreement on prices or terms of reimbursement entered into by the arrangement is reasonably

necessary to obtain significant efficiencies through the joint arrangement; and (3) the arrangement does not restrict the ability, or facilitate the refusal, of physicians participating in the arrangement to deal with payers individually or through any other arrangement.

I. "*Reimbursement*" means any payment, whether cash or non-cash, or other benefit received for the provision of physician services.

II.

It is further ordered, That Tahoe IPA, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, cease and desist from:

A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding to:

1. Negotiate on behalf of any physicians with any payer or provider for physician services;
2. Deal, or refuse to deal, with any payer or provider;
3. Determine or influence any terms, conditions, or requirements upon which any physician deals, or is willing to deal, with any payer or provider, including, but not limited to, terms of reimbursement; or
4. Restrict the ability of any physician to deal with any payer or provider individually or through any arrangement outside Tahoe IPA.

B. Exchanging, or facilitating the exchange of, information among physicians concerning the terms or conditions, including reimbursement, on which any physician is willing to deal with payers.

C. Encouraging, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited if the person were subject to this order.

Provided that nothing in this order shall be construed to prohibit any agreement or conduct by Tahoe IPA that is reasonably necessary to form, facilitate, manage, operate, or participate in:

- a. A qualified risk-sharing joint arrangement; or
- b. A qualified clinically integrated joint arrangement, if Tahoe IPA has provided the prior notification(s) as required by this paragraph (b). Such prior notification must be filed with the Secretary

of the Commission at least thirty (30) days prior to forming, facilitating, managing, operating, participating in, or taking any action, other than planning, in furtherance of any joint arrangement requiring such notice ("first waiting period"), and shall include for such arrangement the identity of each participant; the location or area of operation; a copy of the agreement and any supporting organizational documents; a description of its purpose or function; a description of the nature and extent of the integration expected to be achieved, and the anticipated resulting efficiencies; an explanation of the relationship of any agreement on prices, or terms of reimbursement, to furthering the integration and achieving the expected efficiencies; and a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from such agreement(s). If, within the first waiting period, a representative of the Commission makes a written request for additional information, Tahoe IPA shall not form, facilitate, manage, operate, participate in, or take any action, other than planning, in furtherance of such joint arrangement until thirty (30) days after substantially complying with such request for additional information ("second waiting period") or such shorter waiting period as may be granted by letter from the Bureau of Competition.

Provided further, that nothing in this order shall prevent the Tahoe IPA from refusing to transmit any information to less than all of its participating physicians. Notwithstanding this proviso, the IPA shall not require, as a condition of transmitting information to participating physicians or for any other reason, that any offer by a payer or provider be made to all participating physicians or to any particular physician.

III.

It is further ordered, That Tahoe IPA shall:

A. Within five (5) days after the date this agreement is signed by Tahoe IPA, provide to Blue Shield of California the names and addresses of all participating physicians, and request from Blue Shield of California the names of all participating physicians who either have terminated participation, or have given notice of intent to terminate future participation, in any Blue Shield of California health

plan at any time between January 1, 1998, and the date this agreement is signed by Tahoe IPA.

B. Within ten (10) days after Tahoe IPA has received from Blue Shield of California the names and addresses requested in accordance with paragraph III.A. of this agreement, give notice of the requirements of paragraph III.C. of this agreement to any participating physician who either has terminated participation, or has given notice of future intent to terminate participation, in any Blue Shield of California health plan at any time between January 1, 1998, and the date this agreement is signed by Tahoe IPA.

C. Within twenty (20) days after Tahoe IPA has received from Blue Shield of California the names and addresses requested in accordance with paragraph III.A. of this agreement, terminate the participation in Tahoe IPA of any physician who either has terminated participation, or has given notice of intent to terminate future participation, in any Blue Shield of California health plan at any time between January 1, 1998, and the date this agreement is signed by Tahoe IPA, unless any such physician:

1. Who has terminated participation in any Blue Shield of California health plan, attempts in good faith to reestablish such participation for a period of at least six (6) months thereafter, or

2. Who has given notice of intent to terminate future participation in any Blue Shield of California health plan, rescinds in writing such notice and continues such participation for a period of at least six (6) months thereafter.

IV.

It is further ordered, That Tahoe IPA shall:

A. Within thirty (30) days after the date on which this order becomes final:

1. Distribute by first-class mail a copy of this order and the complaint to each participating physician, officer, director, manager, and employee, and to each payer enumerated in Attachment A to this order; and

2. Revise the Provider Services Agreement so that it is in conformance with the provisions of this order.

B. Terminate any agreement or contract with any payer for the provision of physician services that does not comply with paragraph II. of this order at the earlier of: (1) the termination or renewal date (including any automatic renewal date) of such agreement or contract; or (2) receipt of a written request from a payer to terminate such agreement or contract.

C. For a period of five (5) years after the date this order becomes final:

1. Distribute by first-class mail a copy of this order and the complaint to each new participating physician, officer, director, manager, and employee within thirty (30) days of his or her admission, election, appointment, or employment; and

2. Annually publish in an official annual report or newsletter sent to all participating physicians, a copy of this order and the complaint with such prominence as is given to regularly featured articles.

V.

It is further ordered, That Tahoe IPA shall file verified written reports within sixty (60) days after the date this order becomes final, annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may by written notice require, setting forth in detail the manner and form in which it has complied and is complying with the order. In addition to any other information that may be necessary to demonstrate compliance, Tahoe IPA shall include in such reports: (1) information identifying each payer that has contacted Tahoe IPA for the purpose of contracting for physician services, the terms of any contract the payer was seeking with Tahoe IPA, and Tahoe IPA's response to the payer; (2) information sufficient to describe the manner in which participating physicians share financial risk in each qualified non-exclusive risk-sharing arrangement in which they participate; and (3) copies of the minutes of Tahoe IPA's annual meetings.

VI.

It is further ordered, That Tahoe IPA shall notify the Commission at least thirty (30) days prior to any proposed change in Tahoe IPA, such as dissolution, assignment, sale resulting in the emergence of a

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

VII.

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

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

B. Upon five (5) days' notice to Tahoe IPA, and without restraint or interference from it, to interview officers, directors, or employees of Tahoe IPA.

VIII.

It is further ordered, That this order shall terminate on July 21, 2019.

ATTACHMENT A

Admar Corporation	Multiplan
Barton Memorial Hospital	MMC/Cigna
Blue Shield of California	Mutual of Omaha
Blue Cross of California	PacifiCare
CCN	School Insurance Group
First Health (Affordable Healthcare)	St. Mary's Health Network
Health Net	Tahoe Forest Hospital
Hometown Health Plan	USA MCO
Interplan Corporation	

STATEMENT OF COMMISSIONER ORSON SWINDLE
CONCURRING IN PART AND DISSENTING IN PART

The Commission's order in this matter includes a novel provision that I do not support. North Lake Tahoe Medical Group, Inc. ("Tahoe IPA"), the respondent, engaged in negotiations on behalf of its member physicians to obtain from third-party payers prices that were discounted no more than 10 percent below their usual fees. Blue Shield, a third-party payer, refused to accede to Tahoe IPA's demands, leading Tahoe IPA to successfully encourage many of its members no longer to participate as physicians for Blue Shield. Other third-party payers that were considering offering HMO products in the Lake Tahoe area responded to Tahoe IPA's demands by deciding not to enter.

I agree that there is reason to believe that Tahoe IPA's conduct violated Section 5 of the FTC Act. To remedy these violations, paragraph II of the order contains typical provisions that prohibit Tahoe IPA from entering into any agreement to (1) negotiate on behalf of physicians with any payer or provider for physician services, or (2) refuse to deal with any payer or provider. I support the relief in paragraph II because it is necessary to prevent Tahoe IPA from engaging in unlawful conduct that is identical or similar to that alleged in the proposed complaint. Both the Commission's complaint and the relief prescribed by paragraph II make it clear to Tahoe IPA's members that they must make unilateral decisions as to whether to deal with Blue Shield.

The order, however, also contains a novel provision that I do not support. Paragraph III requires that Tahoe IPA terminate the membership of all physicians who refused to deal (or who gave notice of their intent to refuse to deal) with Blue Shield as a result of Tahoe IPA's encouragement. Tahoe IPA, however, does not have to terminate: (1) physicians who refused to deal but attempt in good faith to reparticipate in Blue Shield for six months, and (2) physicians who rescind their notices of refusal to deal and continue to participate in Blue Shield for at least six months.

I do not believe that paragraph III is needed. Prior to the refusal to deal with Blue Shield alleged in the complaint, the Tahoe IPA physicians who participated in Blue Shield had their own sufficient market incentives to participate. With the cessation of the refusal to deal and the prohibition in paragraph II on future refusals to deal,

these market incentives were revived. With the return of these incentives, the Tahoe IPA physicians who refused to deal presumably would have chosen once again to participate in Blue Shield even without the burdens imposed by paragraph III.¹

The majority believes that government action beyond these market incentives is needed to make this market work better in the future. I disagree. Because Tahoe IPA physicians on their own have sufficient incentives to return to Blue Shield, there is no reason to add a layer of government intervention intended to achieve the same result.

I dissent as to paragraph III of the order.

¹ Many physicians have agreed to reparticipate in Blue Shield, while some have not. All this demonstrates is that physicians have reparticipated in Blue Shield while paragraph III is in effect. It does not establish that paragraph III was a cause of this reparticipation, or that market incentives would not have caused the physicians to reparticipate in the absence of paragraph III.

IN THE MATTER OF
FITNESS QUEST, INC., ET AL.

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

Docket C-3886. Complaint, July 26, 1999--Decision, July 26, 1999

This consent order, among other things, prohibits the Ohio-based corporation and its officer from disseminating advertisements concerning the benefits, performance, or efficacy of exercise equipment and weight-loss products unless they possess and rely upon competent and reliable evidence to substantiate the claims. The consent order also requires the respondents to disclose, in close proximity to any endorsement or testimonial involving a user's experience that is not typical or ordinary, either what the generally expected results would be or the limited applicability of the endorser's experience to what consumers may generally expect to achieve.

Participants

For the Commission: *Robert Frisby, Robin Spector, Mary Engle, Elaine Kolish, and Carolyn Cox.*

For the respondents: *Eric Rubin and Walter Diercks, Rubin, Winston, Diercks, Harris & Cooke, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Fitness Quest, Inc., a corporation, and Robert R. Schnabel, Jr., individually and as an officer of the corporation, ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Fitness Quest, Inc. is a Delaware corporation with its principal office or place of business at 1400 Raff Road, SW, Canton, Ohio.

2. Respondent Robert R. Schnabel, Jr. is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Fitness Quest, Inc.

3. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed exercise equipment and weight-loss products to the public, including the "Airofit," "SkyTrek" and

"Gazelle Glider," exercise gliders, and the "Ab Isolator" and "Abs Only Machine" abdominal exercise devices.

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

AIROFIT

5. Respondents have disseminated, or caused to be disseminated, advertisements for the Airofit, including but not necessarily limited to the attached Exhibits A1- A5. These advertisements contain the following statements:

Nearly zero impact! -- While you burn up to 1000 calories an hour. (Exhibit A1)
 "I've had tremendous results and I feel wonderful...I just can't say enough about the AiroFit."

Roberta, lost 27 lbs.

"I really love this machine. It's easy and it's fun...I've had better results than anything I've done in years."

Nerissa, lost 7 inches.

"With the AiroFit, the biggest change I noticed at first, was inches coming off everywhere."

Pam, lost 6 inches.

The AiroFit burns up to 1000 calories an hour. That's 3 times more than walking, 2 times more than cross-country skiing.

(Exhibit A2)

1,000 calories per hour

Yes! Your Airofit workout actually lets you burn up to *1,000 calories per hour*. The secret is in the upper and lower body connection. Try and find *these* kinds of numbers in any other machine!

(Exhibit A3)

The Airofit burns up to 1000 calories an hour. That's 3 times more than walking, nearly 2 times more than cross-country skiing.*

[Superscript in footnote: "*Walking 3 mph on level ground. Cross-Country skiing 5 mph on level ground. **Consult your physician before beginning this or any exercise program.**"]

(Exhibit A4)

... Airofit burns up to 1000 calories per hour. Now, that's hard to beat but let's compare. Step Aerobics cannot compare. Riding bikes is fun but burns less than half the calories. Airofit burns more than 3 times more calories than walking, it burns a ton more calories than running and swimming and Airofit even burns more calories than cross country skiing. . . .

And the Airofit burns nearly twice the number of calories as this treadmill . . .

... It is nearly zero impact gliding that burns 3 times more calories than walking and nearly twice the calories of cross country skiing. . . .

(Exhibit A5)

91

Complaint

6. Through the means described in paragraph 5, respondents have represented, expressly or by implication, that:

A) Under conditions of ordinary use, the Airofit:

- (1) Burns calories at a rate of up to 1,000 per hour;
- (2) Burns three times more calories than burned while walking;
- (3) Burns nearly twice the calories burned while cross-country skiing or exercising on a treadmill;
- (4) Burns significantly more calories than are burned while swimming, bicycling or doing step aerobics;
- (5) Causes significant weight loss; and

B) Testimonials from consumers appearing in advertisements for the Airofit reflect the typical or ordinary experience of members of the public who use the product.

7. Through the means described in paragraph 5, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph 6, at the time the representations were made.

8. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph 6, at the time the representations were made. Therefore, the representation set forth in paragraph 7 was, and is, false or misleading.

SKYTREK

9. Respondents have disseminated, or caused to be disseminated, advertisements for the SkyTrek, including but not necessarily limited to the attached Exhibit B. This advertisement contains the following statements:

Get the best of aerobic exercise and strength training while burning up to 1000 calories an hour (based on individual body type and workout intensity), with nearly zero impact. . . .

The SkyTrek™ burns up to 1000 calories an hour (based on individual body type and workout intensity). That's 3 times more than walking at 3 m.p.h., and nearly 2 times more than cross-country skiing at 5 m.p.h. . . .

(Exhibit B)

10. Through the means described in paragraph 9, respondents have represented, expressly or by implication, that, under conditions of ordinary use, the SkyTrek:

- A) Burns calories at a rate of up to 1,000 per hour;
- B) Burns three times more calories than burned while walking at 3 m.p.h.; and
- C) Burns nearly two times the calories burned while cross country skiing at 5 m.p.h.

11. Through the means described in paragraph 9, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph 10, at the time the representations were made.

12. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph 10, at the time the representations were made. Therefore, the representation set forth in paragraph 11 was, and is, false or misleading.

GAZELLE GLIDER

13. Respondents have disseminated, or caused to be disseminated, advertisements for the Gazelle Glider, including but not necessarily limited to the attached Exhibit C. This advertisement contains the following statements:

"First, my Gazelle Glider® burns up to 1000 calories an hour."(based on individual body type and workout intensity) That's 3 times more than walking at 3 m.p.h., nearly twice as much as cross-country skiing at 5 m.p.h., and more than running at 5.5 m.p.h. . . . (Exhibit C)

14. Through the means described in paragraph 13, respondents have represented, expressly or by implication, that, under conditions of ordinary use, the Gazelle Glider:

- A) Burns calories at a rate of up to 1,000 per hour;
- B) Burns three times more calories than burned while walking at 3 m.p.h.;
- C) Burns nearly twice the calories burned while cross country skiing at 5 m.p.h.; and
- D) Burns more calories than burned while running at 5.5 m.p.h.

15. Through the means described in paragraph 13, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph 14, at the time the representations were made.

16. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph 14, at the time the representations were made. Therefore, the representation set forth in paragraph 15 was, and is, false or misleading.

AB ISOLATOR

17. Respondents have disseminated or caused to be disseminated advertisements for the Ab Isolator, including but not necessarily limited to the attached Exhibits D1-D2. These advertisements contain the following statements:

FACT: Ab Isolator is twice as effective as regular sit-ups. And it strengthens your back.

FACT: You'll lose 4 - 6" off your waist in 30 days or your money back . . .

. . . With Ab Isolator, three minutes a day melts the inches away.

[Superscript: "Consult your physician before beginning this or any exercise program" and "Results vary"]

(Exhibit D1)

Take a look at Carl! He lost over 12 inches in his waist using the Ab Isolator and my techniques! Take a look at Jody. She went from a size 11 dress to a size 1!

[Superscript: "RESULTS VARY" and "DIET AND EXERCISE ARE PART OF A TOTAL STOMACH REDUCTION PROGRAM"]

. . . The Ab Isolator is scientifically proven to be the most effective ab exerciser ever - or your money back. (Exhibit D2)

18. Through the means described in paragraph 17, respondents have represented, expressly or by implication, that:

- A) The Ab Isolator is twice as effective as regular sit-ups;
- B) The Ab Isolator is more effective than other abdominal exercise devices;
- C) Use of the Ab Isolator three minutes a day results in a significantly reduced waistline in thirty days;
- D) Use of the Ab Isolator results in a significant reduction in clothing size and waistline; and

E) Testimonials from consumers appearing in advertisements for the Ab Isolator reflect the typical or ordinary experience of members of the public who use the product.

19. Through the means described in paragraph 17, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph 18, at the time the representations were made.

20. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph 18, at the time the representations were made. Therefore, the representation set forth in paragraph 19 was, and is, false or misleading.

ABS ONLY MACHINE

21. Respondents have disseminated, or caused to be disseminated, advertisements for the Abs Only Machine, including but not necessarily limited to the attached Exhibit D. This advertisement contains the following statements:

... Get the Facts on Tony Little's Abs Only Machine™:

FACT: Twice as effective as regular sit-ups and it won't strain your neck and back!

... (Exhibit E)

22. Through the means described in paragraph 21, respondents have represented, expressly or by implication, that the Abs Only Machine is twice as effective as regular sit-ups.

23. Through the means described in paragraph 21, respondents have represented, expressly or by implication that they possessed and relied upon a reasonable basis that substantiated the representation set forth in paragraph 22, at the time the representation was made.

24. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representation set forth in paragraph 22, at the time the representation was made. Therefore, the representation set forth in paragraph 23 was, and is, false or misleading.

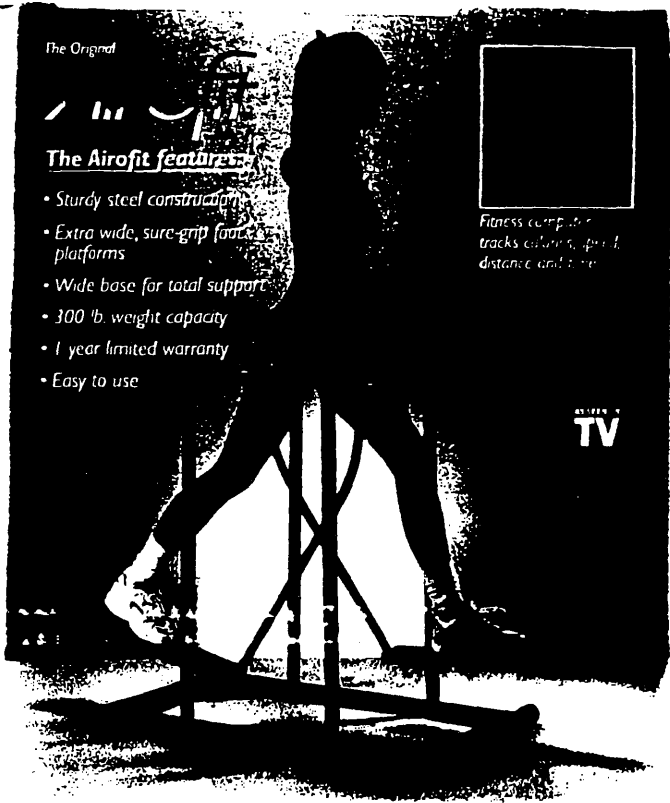
25. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

Exhibit A1

FQ00166

The Original



The Airofit features:

- Sturdy steel construction
- Extra wide, sure-grip foot platforms
- Wide base for total support
- 300 lb. weight capacity
- 1 year limited warranty
- Easy to use

Fitness computer tracks calories, speed, distance and time

ON TV


The Future of Fitness is Here

- Airofit's Dual Split Suspension provides a feel unmatched by any machine.
- Unsurpassed range of motion lets you go from a slow walk to a full run—with no sudden stops.
- Nearly zero impact—While you burn up to 1,000 calories an hour.
- Your workout is completely smooth and silent.
- Perfect for any fitness level.




Total Body Aerobic and Resistance Training in One Revolutionary New Fitness System


Walking



Running



Cross-Country Skiing



Upper Body Resistance





EXHIBIT A

AiroFit™ combines the best of aerobics with the best of resistance training – for the future of fitness!



Now get the best total body workout ever - with the one machine that combines Aerobics and Resistance Training - the AiroFit.

The AiroFit combines 5 fat-burning exercises in one machine. With its high-tech engineering, the AiroFit brings together the best of Walking, Running, Cross-Country Skiing, Aerobics and Resistance Training, with none of the stress or impact.

"With AiroFit, there is virtually zero impact. And it's possible to get even fitter than you thought possible..."

Jonathan Matthews,
3 time National Race Walking Champion

"I've had tremendous results and I feel wonderful...I just can't say enough about the AiroFit."

Roberta, lost 27 lbs.

"I really love this machine. It's easy and it's fun...I've had better results than anything I've done in years."

Nerissa, lost 7 inches

"With the AiroFit, the biggest change I noticed at first, was inches coming off everywhere."

Pam, lost 6 inches

The AiroFit burns up to 1000 calories an hour. That's 3 times more than walking, 2 times more than cross-country skiing.

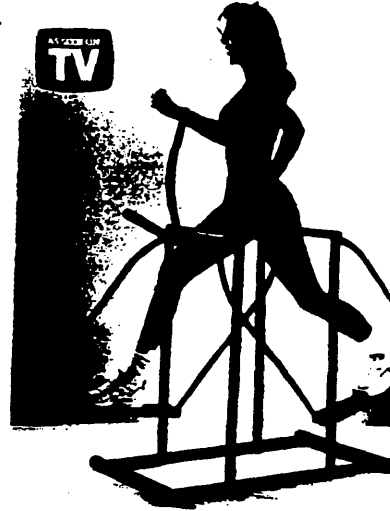
The AiroFit helps you build lean muscle...which raises your metabolism naturally because lean muscle burns fat and calories 24 hours a day.

The AiroFit combines both aerobic conditioning and resistance training to give you the ultimate fat-burning, body-shaping workout...without the impact and stress on your ankles, knees and hips.

The AiroFit will firm and shape every part of your body. Weight loss has never been so easy...or so fun! Here's why:

- **Complete freedom of movement - it's free style exercise.** No repetition. You can vary your length of stride from a walk to a full run and you select your own heart rate zone from slow to very fast.
- **A challenging, interesting workout - every time!** Change exercises easily to work your upper or lower body. You can get a total body workout and pinpoint specific areas for added toning simply by shifting position or varying your stride.
- **Nearly zero impact!** Because your body is suspended on the AiroFit, there's no stress or strain on your ankles, knees, back or spine. Walking on air! Plus the AiroFit naturally self-centers your body - so it's always safe, stable and secure.

Order the AiroFit today and start watching inches melt away tomorrow!



AiroFit Electronic (optional)

AiroFit's Fitness Computer tracks calories, distance, workout, engine, and speed. See order form for pricing.

Try it in your home for 30 days! If you don't absolutely love it, return it within 30 days for a complete refund of the purchase price (less shipping & handling).

The simple fact is, you can't use yesterday's technology, to get the results you want today. Today, you need AiroFit! Order yours now!

CREDIT CARD CUSTOMERS CALL TOLL-FREE

1-800-321-9236

Monday - Friday 9:00am to 4:30pm, Eastern Time

Exercise freestyle for ultimate results!



Walking



Running



Cross-Country Skiing



Upper Body Resistance



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Complaint

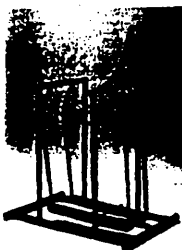
EXHIBIT A

Exhibit A3



FQ00170

Where the home fitness market is headed



Looking to anniversary some fairly stiff numbers from last year? Then look no further: Airofit is here. Never before has there been anything like

it. It has more versatility, more depth and better lines than anything else in the market. And it has created the new emerging category.

Very user friendly

Why has Airofit swept so many people? Folks say so because Airofit is so simple to use. It's just a stress-released, low-impact benefit. It offers upper and lower body motion and is so silent you can hear a pin drop. It has an incredible feel and it also delivers a phenomenal toning workout, all at an unbeatable price.

1,000 calories per hour

Yes, your Airofit workout actually lets you burn up to 1,000 calories per hour. The secret is in the upper and lower body connection. Try and find these kinds of numbers in any other machine!

Plus lots of "exclusives"!

Only Airofit features unique dual suspension points for each foot. That means you get a true, up-and-down feel over the archaic single pivot point units. The difference is dramatic, much like the preferred feel of 11-generals looking their Smooth Mats. It's made that's why folks say they feel weightless on the Airofit.

And only Airofit offers front and rear safety rails for a good, secure feel when working out. Other units leave your back side wide open, unprotected. Airofit keeps your legs safe and female, regardless of your level of fitness. From the beginner

who wants to "walk" to the expert who wants to "sprint," Airofit delivers!

Super easy, super fun

Airofit is fun because there is virtually no learning curve. First timers simply hop on & go! That's important on today's crowded retail floor. Airofit makes a great first impression and an even greater lasting impression. And assembly is a breeze. In fact, it requires only a Phillips screwdriver. It sets up faster than a beach chair and you can be in and out of the gym in 10 minutes. No set-up or maintenance fees.

All at popular price points

Fitness Quest, Inc. is proud to offer two versions of Airofit One with the Fitness Computer and one without. What could be simpler!

Airofit has it all...durability, ease of use, phenomenal results, and a totally unique feel. So take our advice: For results that's out of this world, come to Fitness Quest for the Airofit. There's no machine better. And Fitness Quest is the only place on earth to get it.



EXHIBIT A

EXHIBIT A

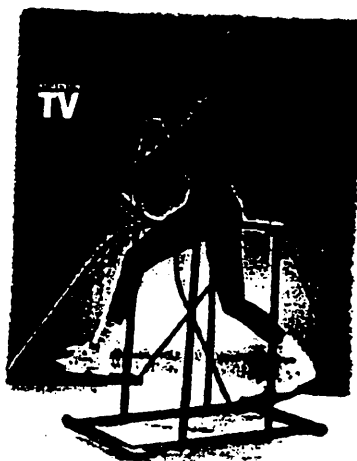
Take a weightless walk to weight loss—with Airofit!

Burn up to 1000 calories an hour exercising in mid air



The Airofit machine is a fat-burning machine that burns up to 1000 calories an hour.

The Airofit machine is a fat-burning machine that burns up to 1000 calories an hour.



The Airofit machine is a fat-burning machine that burns up to 1000 calories an hour.

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The Airofit machine is a fat-burning machine that burns up to 1000 calories an hour.

"With Airofit, there is virtually zero impact. And it's possible to get even fitter than you thought possible..."

—Jonathan Matthews
1 mile Marine Race Walking Champion

"I've had tremendous results and I feel wonderful...I just can't say enough about the Airofit."

—Roberta, lost 27 lbs.

"I walked on the moon 27 years ago and the Airofit is the best walk I've had since returning to earth."

—Dr. Buzz Aldrin, Astronaut

The Airofit is a fat-burning machine that burns up to 1000 calories an hour.



The Airofit machine is a fat-burning machine that burns up to 1000 calories an hour.

CREDIT CARD CUSTOMERS
CALL TOLL-FREE
1-800-249-1900
134 100 000000 000007

Only 4 payments of \$49.95

Order the Airofit and start watching inches melt away!
Try it in your home for 30 days!



Airofit

134 100 000000 000007

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Complaint

EXHIBIT A

FITNESS QUEST
AIROFIT
IAF-100 4 PAY VERSION
PAGE 1

The following program is a paid advertisement for Airofit, presented by Fitness Quest.

What is the best exercise? Aerobics burn fat and calories and resistance training sculpts sensual muscles. Which exercise is best for your body? Healthy bodies need both. Imagine, both aerobic and resistance training in one exercise system and using the future of fitness is here today. Airofit - tighten and reduce your hips, thighs and buttocks. Firm and shape you chest, arms and shoulders. Airofit is an aerobic glide that burns up to 1000 calories an hour. It is a weightless walk with nearly zero impact. Airofit makes it easy to be hard, easy on your body and hard on fat. The future of fitness is here today. Airofit.

I, I am Vivian Eckelfield. Here is the future of fitness - Airofit. You have never seen anything like it. Airofit re-invents the very concept of exercise. Airofit combines five great fat burning exercises in one complete fitness system - walking, running, cross country skiing, plus total body aerobics and resistance training which shapes and sculpts sensual muscles. Airofit is five great exercises in one system with nearly zero impact. So, how does the Airofit burn fat and calories and tighten muscles all at the same time. Well, you gotta ask the hottest, most innovative trail blazer in all of America, Douglas Brooks.

Exhibit A-5

Complaint

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EXHIBIT A

FITNESS QUEST
AIROFIT
IAF-100 4 PAY VERSION
PAGE 2

Hi Vivian, I am doing fine.

Now listen, you have seen all the latest exercise equipment out there. So, why is the Airofit creating such a sensation in the fitness world?

Well, Airofit creates freedom of movement. It is a free style exercise, no repetition. You are free to shape your body at your own pace. Change exercises easily to work your upper or lower body. You have 180° of motion and you can vary your length of stride from a slow walk to a full run and you select your own speed from very slow to very fast. Airofit feels like a weightless walk to better health and a better body.

And Douglas, who would know more about weightless walking than famed astronaut Buzz Aldren. First, he set a NASA record for walking in space. Later he piloted Apollo 11 to the lunar surface and became one of the first men to walk on the moon. This historic event was viewed by more people world wide than any previous telecast in history. Buzz Aldren is also an accomplished author. His latest release is a science fiction novel called "Encounter with Tiger". I met with Buzz Aldren at the renowned museum of Science and Industry in Chicago.

Buzz, there are 6 billion people walking around on this planet. Now, you were one of the first people to walk on yet another

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Complaint

EXHIBIT A

FITNESS QUEST
AIROFIT
IAF-100 4 PAY VERSION
PAGE 3

planet. You walked on the moon. Can you even begin to describe what it's like to walk in space, much less on the moon.

Well, right now it feels like walking on air. It is a floating weightless sensation. There is no gravity in space. Very little on the moon. You walk with total freedom of movement.

Well, Buzz you know space age took on _____ when you see it. You have a doctorate from MIT, you have designed space stations, so what is your scientific opinion of the Airofit.

The Airofit reminds me of the space age equipment I trained on to prepare to Apollo 11. Airofit is a great workout and it is easy on my body. Very high tech engineering. It is a lot like space walking because size and weight don't matter in space and Airofit seems to defy gravity. Completely stable, supportive. I walking on the moon 27 years ago and the Airofit is the best walk I have had since returning to earth.

Douglas, is it really as easy as it looks to get started on the Airofit?

Yea, Airofit can be as easy as walking. In fact, it is even safer because you are fully supported by a sturdy exercise system made of steel.

Complaint

128 F.T.C.

EXHIBIT A

FITNESS QUEST
AIROFIT
IAF-100 4 PAV VERSION
PAGE 4

What's Tony doing here now?

Tony is warming up with baby steps. Now, always start your exercise slowly to warm up. You set the pace on Airopfit so you can start slow and finish fast. Now, Tony, I don't think you need my help on this, you are really looking good there.

It is so easy Doug, you just step on it and start to glide.

Looks great.

It is really easy to get started on Airopfit. Now, you are going to love this next exercise.

Yea, what have we got?

Here's Nicki doing a speed walk. In just a second she is going to open up her stride to show some full run motion.

Wow, look at that.

That's right. She is getting all the fat burning and conditioning benefits of running without the stress and impact to her ankles, knees, hips and back.

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That's great. So, Airofit strengthens your cardiovascular system,
lowers cholesterol and blood pressure.

Reduces your risk of heart attack and the biggest benefit for
weight loss - raises your metabolism.

Since it raises your metabolism you burn fat and calories
naturally. So you lose those pounds and inches without ever
dieting, 24 hours a day every day. Right.

That's exactly right. Now, here is Sara showing us how easy it is
to go from a total body workout to upper body resistance training
that sculpts and shapes sensual muscle in the arms, shoulders and
chest.

Look at that, she is almost completely horizontal.

..It looks great doesn't it.

I love it.

That's what I call free style push up and Sara is getting
tremendous upper body resistance training and all that has done is
lean forward.

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Or lean back to add upper body sculpting to her aerobic training.

So Sarah, what do you think.

I have never been able to get aerobics and resistance training at the time same time.

Airofit really does it all.

People everywhere are walking on air with Airofit.

Like walking on air but connected to bars and it is easier than walking really. I have had other exercise machines - the Cardioglide, Twist and Skin and a rowing machine and the other machines tend to isolate certain areas and you don't get that good of a workout. Now, on the Airofit you can work out as hard as you want, or as easy as you want, it is up to you. You can switch and do different movements for different parts of your body. No impact, no stress on the knees, hips, it doesn't bother any part of my body really. Airofit is just comfortable to work out on and I do want to exercise and if it is boring, tedious or uncomfortable I won't do it. You wouldn't think you are getting the workout that you are. I really like it. And, I have recommended it and I have told a lot of people about it. The Airofit seems like you can work out at your own pace but you still get tremendous results without

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really jarring your body and feel like you are killing your body so much as to get it back in shape, it is more of a natural way to shape and form your body. The Airofit is very smooth. You can do an upper body workout then get a lower body workout without really much change. You can keep an aerobic workout plus doing the upper and lower body also. I had tremendous inches lost, more than I would say with the poundage. That is the biggest change I noticed at first was inches coming off everywhere.

Douglas, does the Airofit really burn more calories than most other exercises.

Airofit burns up to 1000 calories per hour. Now, that's hard to beat but let's compare. Step Aerobics cannot compare. Riding bikes is fun but burns less than half the calories. Airofit burns more than 3 times more calories than walking, it burns a ton more calories than running and swimming and Airofit even burns more calories than cross country skiing.

Wow. The Airofit burns more calories than cross country skiing? That is very impressive.

Pretty amazing isn't it.

Yea.

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Now, here is a popular treadmill. This costs about \$500.00.

And the Airofit burns nearly twice the number of calories as this treadmill.

It is obvious. We need to do a sound check on this machine.

It is so loud.

Listen to that noise.

You better believe it.

You don't want to get this thing anywhere near a sleeping baby.

No way. Hey, what's this, it looks like a big plastic banana.

It looks like one. You know what is obvious? Another sound check here. Listen to that. That is actually louder than the treadmill.

I think you're right.

Vivian, can you even hear me.

I can hear you but I don't like that at all.

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Now, step up to the Airofit.

It is easy to get up on to.

Listen -

Wow, I don't hear anything.

Let's check this mike and make sure it is still working. It is working fine. Now, a sound check on the Airofit. Airofit is whisper quiet.

You know how it is. I do feel like I am walking on air. It is just so smooth and easy and quiet. I gotta tell you though, most people who glide on the Airofit are just a lot more outspoken.

You are limited in what you can do with fast tack as opposed to the Airofit. The Airofit is a much quieter machine. You can do so many more different exercises with it. Like I say, you can work your whole body as opposed to the fast track where you can just walk and that sort of thing. Also, you are limited with the fast track with the length of your strike. You don't have that with the Airofit.

Well, I would say that the Airofit is a combination of different

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equipment that they have seen. It works all parts of the body, does a good job at it without tiring you out. And, what I like about the Airofit, if one part of your body starts to get a little tired you can kind of move around and switch it to a different part and then you can pick it back up, so you can work at your own pace and yet a full body. The time goes so fast with the Airofit. When you are on it you don't want to get off. You keep wanting to go back to a different routine. It has been very good, I have enjoyed it a whole lot. The Airofit is great.

I would say that the Airofit is mostly just low impact, your feet going back and forth and, there again, you can do an easier regimen for people who, when they are first starting, or are not used to exercising where they do shorter, smaller strides, and then as you get on to it you can really get in there and get a bigger stride going and work out harder. So, you can do your exercising on the Airofit at your own pace.

Airofit can be as easy as walking and burns 3 times more calories with nearly zero impact. The future of fitness is here today. Airofit.

Take a weightless walk to better health and a better body on the new Airofit. Tighten and tone your hips, thighs and buttocks on a fat burning aerobic aerobic workout, then lean forward or back for

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shaping and sculpting arms, shoulders and chest. Airofit is total body aerobic and resistance training in one revolutionary new fitness system. Exercise free style. Change from a slow walk to a fast run. It is this easy. It is nearly zero impact gliding that burns 3 times more calories than walking and nearly twice the calories of cross country skiing. Airofit builds a healthier heart and cardiovascular system and raises your natural metabolism so you burn fat and calories 24 hours a day, every day. Create leaner and tighter abs and sculpt sensual muscles. Step up on extra wide, sure grip foot platforms and glide with whisper quiet, silky smooth motion. This sturdy steel base and frame is proven to withstand 300 pounds of pressure. Airofit is strong, silent and easy to use. The Airofit self-batters your body weight so you're stable, safe and secure. Airofit is even available with a fitness computer that tracks your walking speed and mileage and times your workout so that you meet and beat your personal best records. You also receive this terrific video packed with fat-burning workouts to keep you walking strong. Take a weightless walk to better health and a better body on the revolutionary new Airofit. The future of fitness is here today. Call 1-800-436-5170 now to order your Airofit for just four easy payments of \$49.95, plus shipping and handling. The Airofit comes complete with a free 27 minute exercise video to get you started. There is no obligation. We are so sure that you will love your Airofit that we are offering a 30 day money back guarantee. Call now and begin your walk to better

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health and a better body with Airofit. To order your Airofit and free video call 1-800-436-5170 - now.

Douglas, we saw Airofit burn nearly twice the number of calories of step some step aerobics and treadmills. It also out burns the number of calories as swimming, bicycling, even cross country skiing.

It is really great, isn't it. Aerobic and resistance training at once. You actually save time.

And there is a commodity, because we all want to save time. But, here is a man who has a very good reason to save time. Three time national race walking champion, - Jonathan Matthews.

With race walking, on the average I can only sustain an average of about 10 miles a day or I risk injury. Now that I have incorporated Airofit in my training I find that I can do 10 miles of race walking and then come back and do the equivalent 10 more miles on the Airofit and not suffer any injury consequences from that. One of the unique things about the Airofit stride that actually benefited my race walking is the range of motion is so much greater on the Airofit. I find that I can really lengthen out my stride and get very intense upper body workout on it. And, it is not apparent maybe looking at there, just standing there,

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because you don't see any weights, rubberbands, or other contraptions that you would think would give you that kind of resistant workout, but all you have to do is lean a little bit forward or lean a little bit backwards on that and you have an incredible upper body response. I have Airofit to be virtually impact. I mean, I feel like my feet are gliding, I don't feel any impact forces when I am on the Airofit. I am going to be 40 virtually in a couple of weeks, so I think it is possible, even at this advanced age, to keep getting fitter and I think that Airofit is one of the things that is going to help me get that extra fitness.

I had the chance to meet with Royce Huston, the inventor of the Airofit. Royce has over 40 patents and has designed a number of sports and fitness products. So, Royce, what actually inspired you to create the Airofit.

My concept was simple, really. I took all the positives of three great exercises - walking, running and skiing. Then I virtually eliminated the negatives, stress and impact, and I created the Airofit. It is the best of both worlds.

Well, then you went even further by combining a lower body workout and upper body workout in one system.

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That was the tough part. How to combine aerobics and resistance training and make it easy to change from one to the other.

I bet.

First, I made the Airofit self-center, so you just lean forward or back to transfer your weight to the upper body. As you lean your upper body weight is balanced by your lower body weight. And your center of gravity stays center, so you remain safe and stable at all times.

That's great.

I made it of steel tubing for strength and rigidity. Airofit is high tech, yet easy and simple to use. It is natural exercise, no pulleys, fly wheels, no adjustments. I made the base very wide with total support. It is stable, it is strong, and it is safe. My finishing touch, extra wide, sure grip ski-style foot platforms that glide smoothly and silently. The Airofit mirrors your natural walking and running motion with nearly zero impact.

Well Royce, you absolutely broke the mold when it comes to exercise equipment; we are sure glad you did.

Thanks.

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Thanks for joining us.

Douglas, don't you ever just get bored of exercising.

You know, boredom comes from repetition. The Airofit gives you freedom of movement. Each workout is a new workout.

Douglas, what do we have here.

Here is the idea of doing the ultimate buns burner. The hesitation movement, you just move one leg forward, one leg back and you hold.

Wcw.

Deanna, where do you feel it working?

Deanna, it is really amazing. I can really feel it targeting my glutes.

I'll bet. You can tell just by looking at it. It is working the entire lower body. The Airofit not only changes bodies, it changes lives.

I had gone through a great deal of testing at the Cleveland Clinic several years ago and they had no trouble telling me what was wrong

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but they didn't tell me how to correct it and Airofit is indicated what I should be doing. The Airofit is the first machine that I have ever used that got me started in the right direction towards weight loss, blood pressure reduction and that sort of thing. I like the results, I like losing weight, the blood pressure reduction is fantastic. Certainly worth thousands of dollars in future medical bills. I am amazed that going through just a moderate exercise program has had such an effect on my weight, my blood pressure and my feeling of well being. I am just fantastically grateful for the experience.

Airofit combines aerobics and resistance training in one low impact fitness system. It creates stronger, healthier, leaner bodies and it is fun. The future of fitness is here today. Airofit.

Take a weightless walk to better health and a better body on the new Airofit. Tighten and tone your hips, thighs and buttocks on a fat burning aerobic workout. Then, lean forward or back for shaping and sculpting arms, shoulders and chest. Airofit is total body aerobic and resistance training in one revolutionary new fitness system. Exercise free style, change from a slow walk to a fast run. It is this easy. It is nearly zero impact gliding that burns 3 times more calories than walking and nearly twice the calories of cross country skiing. Airofit builds a healthier heart and cardiovascular system and raises your natural metabolism so you

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burn fat and calories 24 hours a day every day. Create leaner and tighter abs and sculpt sensual muscles. Step on extra wide sure grip foot platforms and glide with whisper quiet, silky smooth motion. The sturdy steel base and frame is proven to withstand 300 pounds of pressure. Airofit is strong, silent and easy to use. The Airofit self-centers your body weight so you are stable, safe and secure. Airofit is even available with a fitness computer that tracks your walking speed and mileage and times your workout so that you meet and beat your personal best records. You also receive this terrific video packed with fat burning workouts to keep you walking strong. Take a weightless walk to better health and a better body on the revolutionary new Airofit, the future of fitness is here today. Call 1-800-436-5170 now to order your Airofit for just four easy payments of \$49.95, plus shipping and handling. The Airofit comes complete with a free 27 minute exercise video to get you started. There is no obligation. We are so sure that you will love your Airofit that we are offering a 30 day money back guarantee. Call now and begin your walk to better health and a better body with Airofit. To order your Airofit and free video call 1-800-436-5170 now.

This is Roberta Harman. She had a mission. She was determined to qualify for the Senior Olympics.

I have always looked forward to getting in the Senior Olympics and

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a little thought went through my mind. I wonder if I can possibly get in this so I decided to enter and try it. I got in two bike races and I also got in a 100 meter dash and had it not been for the Airofit I would have never attempted that. It was the best thing I ever did. I would have to say the Airofit gives me the all around conditioning. You can get aerobic on it, you can tone your muscles up on it, you can strengthen your muscles. I was quite heavy when I started using it and it didn't stress me to the point that my joints hurt or any of that type of thing. But, from the first time on, being heavy, I felt a real good feeling that I have done something. The Airofit is my favorite. It is something that you miss, it becomes a part of you. It is a good machine.

Well, I am back with moon walking astronaut Buzz Aldren. Buzz, you were saying earlier that an Airofit walk is very similar to a space walk.

It is very similar. A walk in space is total freedom of movement. Airofit gives me that same freedom. There is a sense of weightless walking. My body is suspended. Your feet don't touch the ground and then you get a fantastic workout. Your size and weight don't matter because of the anti-gravity effect. Airofit feels like you are walking on air.

Buzz Aldren, thank you so much for being here. You're a big fan of

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the Airofit aren't you.

Airofit is the best walk I have ever had on this planet.

The Airofit is right there. It is not hard to learn how to use it and you get a complete workout in a short period of time which is what most people are looking for.

You are not working just parts of your body, you get a complete workout from it so I really enjoy that. It is not strenuous, I don't feel the stress and strain, especially on my knees or you know, like if I were using my Fast Track. You can do a lot of different things with and get over all body results. I love it, I really love this machine. It is just very easy and it is fun to use and you hear that all the time with different machines, and so forth, but you just have to try it and see because it really does make a difference. I have had better results than anything I have done in years. I finally have found the thing I enjoy doing and I am having results with it. It is the best thing that has happened to me. I just, I cannot elaborate enough on the changes it has made in my body, not just inches and pounds and that sort of thing, but just how I feel. Airofit has just made a difference.

Airofit is 5 great exercises in one fitness system. Aerobic and resistance training, plus walking, running and skiing.

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Airofit gives you the positive benefits of these great exercises

Without the stress of high impact negatives.

You don't have to take the good with the bad and exercise ever again.

Now you can have the good with the good. It burns over 3 times the calories of walking, with nearly zero impact. Airofit does something most equipment can only dream of doing.

Airofit creates lean muscle. Once you build lean muscle you burn calories naturally every second, minute and every hour of every day.

Airofit is free style exercise with total freedom of movement. It is like walking on air. Start slow and finish fast. From baby steps to a full run, you set the pace. Douglas, are we leaving anything out?

Yes, there is one more thing. Airofit creates a healthier cardiovascular system. A shaped and lean body begins with a healthy heart and a healthy body. Airofit is the natural solution.

Douglas, thanks so much for joining us and helping us prove that

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Airofit is truly the future of fitness.

It was my pleasure, thanks Vivian.

Alright, take care. Take a walk to better health and a better body. Call and start walking on air now with Airofit.

Take a weightless walk to better health and a better body on the new Airofit. Tighten and tone your hips, thighs and buttocks on a fat burning aerobic workout. Then, lean forward or back for shaping and sculpting arms, shoulders and chest. Airofit is total body aerobic and resistance training in one revolutionary new fitness system. Exercise free style change from a slow walk to a fast run. It is this easy. It is nearly zero impact gliding that burns 3 times more calories than walking, and nearly twice the calories of cross country skiing. Airofit builds a healthier heart and cardiovascular system and raises your natural metabolism so you burn fat and calories 24 hours a day, every day. Create leaner and tighter abs and sculpt sensual muscles. Step up on extra wide sure grip foot platforms and glide with whisper quiet, silky smooth motion. The sturdy steel base and frame is proven to withstand 300 pounds of pressure. Airofit is strong, silent and easy to use. The Airofit self-centers your body weight so you are stable, safe and secure. Airofit is even available with a fitness computer that tracks your walking speed and mileage and times your workout

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so that you meet and beat your personal best records. You also receive this terrific video, packed with fat burning workouts to keep you walking strong. Take a weightless walk to better health and a better body on the revolutionary new Airofit. The future of fitness is here today. Call 1-800-436-5170 now to order your Airofit for just 4 easy payments of \$49.95, plus shipping and handling. The Airofit comes complete with a free 27 minute exercise video to get you started. There is no obligation. We are so sure that you will love your Airofit that we are offering a 30 day money back guarantee. Call now and begin your walk to better health and a better body with Airofit. To order your Airofit and free video call 1-800-436-5170 now.

The preceding program was a paid advertisement for Airofit, presented by Fitness Quest.

FQ00200

EXHIBIT B

SkyTrek

<http://www.fitnessquest.com/html/skytrek>



- Welcome to FQI
- Product Lines
- Client Testimonials
- Inventory Wanted
- Customer Service
- Timely Response
- Order Now

SkyTrek™

Get 5 great calorie burning exercises in one machine

Combines walking, running, cross-country skiing, aerobics and strength training.

Get the best of aerobic exercise and strength training while burning up to 1000 calories an hour (based on individual body type and workout intensity), with nearly zero impact. Exercise in midair with SkyTrek™, a machine so revolutionary, it will change the way you exercise forever.



The SkyTrek™ combines 5 calorie-burning exercises in one machine. With its high-tech engineering, SkyTrek™ brings together the best of... Walking, Running, Cross-country Skiing, Aerobics and Strength Training. With SkyTrek's™ whole new range of movements, your workout is always fun and interesting.

Exhibit B

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EXHIBIT B

skyTrek

http://www.fitnessquest.com/html/skytre.htm

The SkyTrek™ burns up to 1000 calories an hour (based on individual body type and workout intensity). That's 3 times more than walking at 3 m.p.h., and nearly 2 times more than cross-country skiing at 5 m.p.h. And you burn those calories while gliding through space, smoothly and silently.

The SkyTrek™ gives you a complete workout. You get both aerobic and strength training together... for a great cardiovascular workout as well as toning and tightening major muscle groups.

Get a great workout with virtually no impact. In lab trials involving speed, duration and intensity of user workouts, SkyTrek™ consistently delivered impact forces similar to casual walking. So you can exercise with as much vigor and speed as you like while increasing your impact just slightly. SkyTrek™ is great if you are overweight or deconditioned because the virtually non-impact factor opens up a whole new range of exercises.

SkyTrek™ lets you vary your workout so you never get bored. You get complete freedom of movement. Change from a slow walk to a fast run, quickly and smoothly, or extend your range of motion... up to 180 degrees. Bend your knees or pause between strides to target problem areas. To get the ultimate in full body strength training, simply lean forward or back for a smooth gravity resistance.

SkyTrek™ mirrors your natural walking and running motion. The swing radius of the SkyTrek™ matches the human stride... making it smooth and easy for everyone to use.

SkyTrek™ is safe, stable and secure. Designed for ease of use and safety, the SkyTrek™ naturally self-centers your body. Front and rear restraining rails, an extra wide base and the sturdy steel frame guarantee that you will stay stable and secure at all times. Wide wooden foot platforms with traction surface keeps your feet securely in place.

Included with your purchase:

- Electronic computer to track progress (Speed, time, distance, and calories burned)
- Detachable hydraulic piston that provides greater resistance
- 1 year warranty

All this for \$249.75 plus \$39.95 shipping and handling or 5



EXHIBIT C

ony little's gazelle glider

http://www.fitnessquest.com/ami_gazelle..



- Welcome to FQI
- Product Lines
- Client Testimonials
- Inventory Wanted
- Customer Service
- Family Response
- Order Now

TONY LITTLE'S
GAZELLE
GLIDER

"My Gazelle Glider® is 5 times better than any other fitness machine! Because it combines 5 fun, fat-burning workouts in one machine!"



"First, my Gazelle Glider® burns up to 1000

calories an hour." (based on individual body type and workout intensity) That's 3 times more than walking at 3 m.p.h., nearly twice as much as cross-country skiing at 5 m.p.h., and more than running at 5.5 m.p.h. Plus, there's no heavy bands or weights to change - the Gazelle Glider® moves effortlessly from a walking machine to a total body shaper... in seconds.

"Second, my Glider delivers nearly zero impact ..." There's less stress, less strain on your ankles, knees, hips or back - because you're suspended in air! Plus, the Gazelle Glider® naturally self-centers your body - so it's always safe, stable and secure.

"Third, my Glider brings you 5 fat-burning workouts in one." It's a treadmill, a running machine, a cross-country skier, a stretching workout, plus a muscle toner... all in one amazing machine. The Gazelle Glider® combines both aerobic conditioning and muscle toning to bring you the ultimate fat-burning workout... with little stress and strain.

"Fourth, my Gazelle Glider® raises your natural metabolism so you burn fat and calories 24-hours a day." The Gazelle Glider® builds lean muscle... which raises your metabolism naturally because lean muscle burns fat and calories all day, all night.

"And fifth, the reason why my Gazelle Glider® is 5 times better - it's from me, Tony Little, America's Personal Trainer!" And with Tony Little's Gazelle Glider® Training System you receive...

- Tony Little's Gazelle Glider® Personal Trainer Workout Video - featuring 30 minutes of custom music, visual motivation and interactive

Exhibit-C

Complaint

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EXHIBIT D

TONY LITTLE
AB ISOLATOR
"GIMMICKS" (:120) Tag Master
(11/8/95 Production Partners)

TRANSCRIPT FROM TAPE
9/24/97

\$59 bucks for this! You've got to be kidding me. I've spent my life fighting "gimmicks."

There's only one Tony Little and only one Ab Isolator.

FACT: Ab Isolator has over two million satisfied customers. Why? Because it works.

FACT: Ab Isolator is twice as effective as regular sit-ups. And it strengthens your back.

FACT: You'll lose 4 - 6" off your waist in 30 days or your money back.

Only my Ab Isolator can make these promises. The key to great abs is technique. Look, sit-ups don't work. They don't isolate your abdominal muscles and they can put stress on your lower back. I've got medical proof.

See how quickly my Ab Isolator locks your legs, your hips and lower back into place. Only my Ab Isolator gives you perfect exercise technique - automatically.

That's because my Ab Isolator locks you on target so you can't use the wrong muscles. With proper technique, you can get real results, fast.

C'mon - you can do it! Hundreds of thousands have washboard abs and thought they never could. With Ab Isolator, three minutes a day melts the inches away.

"Gimmicks" don't work. As far as I'm concerned, the Ab Isolator is the only abdominal product you'll ever need.

My Ab Isolator also comes with my One-on-One Personal Trainer video. Beginner, intermediate or advanced - it doesn't matter. I'll motivate you through the best ab workout of your life.

And I'm the only person that offers a toll-free, certified personal trainer hotline.

Get all this for \$29.95

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EXHIBIT D

Page 2
Ab Isolator
"Gimmicks" (:120) Tag Master
(11/8/95 Production Partners)
Transcript from Tape
9/24/97

Take control of your life. Make the choices that matter most. Millions of satisfied customers can't be wrong.

You decide. Pay twice as much for "gimmicks" or get the number one fitness product in the world.

Pick up the phone and demand your right to awesome abs. I guarantee you'll love 4 - 6" in 30 days or your money back. Believe it - it work!

Call now!

Complaint

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EXHIBIT D

TONY LITTLE
AB ISOLATOR - REVISION
:120 (SAI-11)
TRANSCRIPT FROM TAPE
9/24/97

Take a look at Carl! He lost over 12 inches in his waist using the Ab Isolator and my techniques! Take a look at Jody. She went from a size 11 dress to a size 1!

I'm Tony Little. With over two million Ab Isolators sold, and now available in over 60 countries, the Ab Isolator is now the number 1 fitness product in the world. Why? Results!

Jody and Carl know how effective the Ab Isolator is... let me show you how!

She's doing sit-ups. Sit-ups don't work! They don't isolate the abdominal muscles and look at her legs - everywhere. The wrong way.

Simply put the Ab Isolator on. It locks her legs down, isolates her abdominals. It targets the stomach muscles automatically. Perfect exercise technique everytime.

The Ab Isolator locks you on target so you can't use the wrong muscles. With proper technique you get results fast.

I love the Ab Isolator! It locks you in on target and gives you a fantastic abdominal workout!

As a model and mother of 5, time is precious to me. The Ab Isolator is perfect because it's quick, easy and effective!

I've worked out with trainers my entire athletic career. But with Tony's Ab Isolator, it's like having your own personal trainer right in your own home.

My Ab Isolator comes with my One-on-One Personal Trainer Video. I'm gonna' motivate you through the best Ab workout of your life!

Plus, you'll also get my famous toll-free personal trainer hotline! The Ab Isolator is scientifically proven to be the most effective ab exercise ever - or your money back.

So call now and receive my Ab Isolator, personal trainer video and toll-free trainer hotline for just 3 easy payments of \$9.95.

You've heard the personal stories...you've seen the results...now get the results for yourself! The Ab Isolator is the only abdominal product you'll every need!

EXHIBIT D-2

EXHIBIT E

only

http://www.fitnessquest.com/abs-abs-only



- Welcome to FQI
- Product Lines
- Client Testimonials
- Inventors Wanted
- Customer Service
- Family Response
- Order Now

Tony Little's
Abs Only Machine™

Get Tighter, Sexier Abs!

Get the Facts on Tony Little's Abs Only Machine™:
FACT: Twice as effective as regular sit-ups and it won't strain your neck and back!
FACT: Abs Only is the best product for the best price.



Now from the worlds #1 Certified Fitness Trainer-Tony Little-comes the greatest breakthrough in abdominal machines-Abs Only Machine!



Tony Little's Complete Abs Only Machine™ is a one-of-a-kind muscle building system that, for the first time, actually, mirrors the natural pivot point of your hips-making it easier, safer and more comfortable to tone and tighten your abdominals.

Abs Only Machine™ follows the natural curve of your hips,

Exhibit - E

Complaint

128 F.T.C.

EXHIBIT E

<http://www.fitnessquest.com/html/ab-only.htm>

not only making your abdominal workout easier and more comfortable, but also supporting your hip flexors, delivering a safer, more effective workout-every time!

With Tony Little's Abs Only Machine™, you're in perfect position every time.

Guaranteed results in just 3 minutes, every other day! That's right-not 20 minutes, not 10 minutes, not even 5 minutes a day. But in just 3 minutes every other day, beginners can begin to achieve the look, the shape of firmer, tighter abs. For intermediate workouts, use Abs Only for just 6 minutes every other day. And for advanced, just 9 minutes every other day.

The revolutionary Abs Only Machine™ featuring... Natural pivot point construction. Full adjustability. Easy fold & store design. 30 day money-back guarantee (less shipping and handling). Includes 1 Year Warranty.

Tony Little's® Personal Trainer Video-Featuring 30 minutes of Tony's guaranteed results, abdominal workout.

The Abs Only Machine™ Booklet-Gets you started safely and keeps you motivated with your very own Goal Chart.

PLUS your One-On-One Personal Trainer VIP Membership Card with a toll-free personal trainer help line, to answer your questions and provide that extra incentive when you need it.

The Abs Only Machine™ can be yours for only \$39.95 plus \$7.95 shipping and handling.

To order now, click one of our payment methods below:

[Welcome!](#) [Products!](#) [Testimonials!](#) [Customer Service!](#) [Inventors!](#) [Response!](#) [Order Now](#)
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 Send @ the site to the [Webmaster](#).

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that 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 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 Fitness Quest, Inc. is a Delaware corporation with its principal office or place of business at 1400 Raff Road, SW, Canton, Ohio.

2. Respondent Robert R. Schnabel, Jr. is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation. His principal office or place of business is the same as that of Fitness Quest, Inc.

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:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. "*Weight-loss product*" shall mean any product or program designed to produce weight loss, reduction or elimination of fat, caloric deficit or to suppress the appetite in a user of the product or program.

3. "*Clearly and prominently*" shall mean as follows:

A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), if the disclosure is given orally, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. For a disclosure given in the video portion of an advertisement, the disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

4. Unless otherwise specified, "*respondents*" shall mean Fitness Quest, Inc., a corporation, its successors and assigns, and its officers; Robert R. Schnabel, Jr., individually and as an officer of the corporation; and each of the above's agents, representatives and employees.

5. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any exercise equipment or any weight-loss product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

A. About the rate at which users burn calories, or the number of calories users burn, through use of such product;

B. About the weight loss or fat loss users achieve through use of such product;

C. That such product causes a specific reduction in the size or shape of specific, desired areas of the body;

D. That such product causes a specific reduction in users' body size or shape, or body measurements;

E. About the comparative efficacy of such product; or

F. About the benefits, performance, or efficacy of such product;

unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation; provided, however, that nothing in this order shall prohibit the respondents from making a truthful statement that merely describes the existence, design, instructions for use, or content of any such product.

II.

It is further ordered, That respondents, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution

of any exercise equipment or any weight-loss product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

A. At the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

1. What the generally expected results would be for users of the product, or

2. The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results; or one of the following statements:

- (a) "You should not expect to experience these results."
- (b) "This result is not typical. You may not do as well."
- (c) "This result is not typical. You may be less successful."
- (d) "_____ 's success is not typical. You may not do as well."
- (e) "_____ 's experience is not typical. You may achieve less."
- (f) "Results not typical."

For purposes of this Part, "endorsement" shall mean as defined in 16 CFR 255.0(b).

III.

It is further ordered, That respondent Fitness Quest, Inc. and its successors and assigns, and respondent Robert R. Schnabel, Jr. shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call

into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IV.

It is further ordered, That respondent Fitness Quest, Inc. and its successors and assigns, and respondent Robert R. Schnabel, Jr. shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, provided, however, that the duty to deliver a copy of this order to future personnel as required by this Part shall terminate three (3) years after the date upon which this order becomes final. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

It is further ordered, That respondent Fitness Quest, Inc. and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VI.

It is further ordered, That respondent Robert R. Schnabel, Jr., for a period of ten (10) years after the date of issuance of this order, shall

by the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VII.

It is further ordered, That respondent Fitness Quest, Inc. and its successors and assigns, and respondent Robert R. Schnabel, Jr. shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate on July 26, 2019, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

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