

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

In the Matter of )

LENTEK INTERNATIONAL, INC. )  
a corporation, and )

JOSEPH DUREK and LOU LENTINE, )  
individually and as officers )  
of the corporation. )

) DOCKET NO. 9303  
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**OBJECTIONS OF RESPONDENT JOE DUREK TO COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES**

Pursuant to § 3.35 of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings ("Rules of Practice"), 16 C.F.R. § 3.35, Respondent Joe Durek ("Respondent"), an individual, by his attorneys, Foley & Lardner hereby submits his objections to Complaint Counsel's First Set of Interrogatories to Respondents ("Interrogatories") issued on November 4, 2002. Each interrogatory is restated below, along with any applicable objections. Notwithstanding these objections, Respondent will commence their responses to the following Interrogatories to the extent possible. Such responses shall not constitute a waiver of any applicable objection or privilege.

**GENERAL OBJECTIONS**

1. Respondent objects to the interrogatories to the extent that they seek information that may be protected by the attorney-client privilege, the work-product doctrine, the joint defense privilege and any other privilege.

2. Respondent objects to the Interrogatories to the extent that they seek to impose obligations broader than those required by or authorized by the Federal Trade Commission Rules of Practice for Adjudicative Proceedings or any applicable order or rule of this Court.

3. Respondent objects to the Interrogatories to the extent that they may not reasonably be expected to yield information relevant to the allegations of the complaint, to the proposed relief or to the defenses of any respondent.

4. Respondent objects to the Interrogatories to the extent that they are unduly burdensome or require unreasonable efforts or expense on behalf of Respondent.

5. Respondent objects to Interrogatories to the extent they require Respondent to answer the Interrogatories on behalf of third parties or other respondents in this case. In particular, Complaint Counsel's definition of "Lentek" is overly broad because it requires Respondent to respond on behalf of other entities and respondents.

6. Respondent objects on the basis that the number of Interrogatories exceeds twenty-five (25) when including all discrete subparts in violation of § 3.35(a) of the Rules of Practice.

7. Respondent's answers to Interrogatories are given without prejudice to Respondent's right to produce evidence of any subsequently discovered facts. Respondent reserves the right to amend his responses if it appears from additional research that omissions or errors have been made or if further or more accurate information becomes available. The failure of Respondent to object to any specific interrogatory on a particular ground may not be construed as a waiver of their right to object on any additional ground(s).

These General Objections shall apply to each interrogatory herein and shall be incorporated by reference as though set forth fully in each of the responses to follow.

## INTERROGATORIES

1) Describe the relationship between Lentek and Joseph Durek from the incorporation of Lentek to date of service of these Interrogatories, including a description of any ownership interest, management duties and titles, and the role Joseph Durek has played in manufacturing, purchasing, advertising (including claims development, substantiation, and dissemination), labeling, offering for sale, selling, distributing, evaluation, or testing of the Challenged Lentek Products.

**Response:** Respondent objects to this interrogatory because it is over-broad to the extent that it is not sufficiently limited in duration. Subject to and without waiving this objection, Respondent will provide an answer to this interrogatory.

2) Describe the relationship between Lentek and Lou Lentine from the incorporation of Lentek to the date of service of these Interrogatories, including a description of any ownership interest, management duties and titles, and the role Lou Lentine has played in manufacturing, purchasing, advertising (including claims development, substantiation, and dissemination), labeling, offering for sale, selling, distributing, evaluation, or testing of the Challenged Lentek Products.

**Response:** Respondent objects to this interrogatory because it is over-broad to the extent that it is not sufficiently limited in duration. Subject to and without waiving this objection, Respondent will provide an answer to this interrogatory, to the extent it is within his personal knowledge.

3) Identify all current and former manufacturers and suppliers to you of the Challenged Lentek Products, stating for each manufacturer or supplier the products supplied to you and the time period during which the products were supplied to you by each manufacturer or supplier.

**Response:** Respondent objects to this interrogatory because it is over-broad to the extent that it is not sufficiently limited in duration. Respondent further objects to this interrogatory to the extent that it is overly broad because it seeks information about products that are not at issue in this proceeding. Subject to and without waiving these objection, Respondent will provide an answer to these interrogatory.

4) Describe in detail (step by step) the technology, including any series of physical, chemical, or other processes, by which Sila Air Cleaning Products produce ozone and ionization.

**Response:** Respondent objects to this interrogatory to the extent that it imposes a duty on Respondent to provide what amounts to expert testimony at this stage in the proceedings. To the extent it is within his personal knowledge, Respondent will provide a general description of the technology in response to this interrogatory.

5) Describe in detail the specifications for the ozone and ion output of all Sila Air Cleaning Products.

**Response:** Respondent objects to this interrogatory to the extent that it imposes a duty on Respondent to provide what amounts to expert testimony at this stage in the proceedings. To the extent it is within his personal knowledge, Respondent will provide a general description of the technology in response to this interrogatory.

6) Describe in detail (step by step) the technology, including any series of physical, chemical, or other processes, by which PestContro Products repel or eliminate pests, including rats, mice, ants, cockroaches, flies, crickets, squirrels, bees, spiders, fleas, ants, bats, waterbugs, moles, deer, racoons, skunks, rabbits, dogs, and cats.

**Response:** Respondent objects to this interrogatory to the extent that it imposes a duty on Respondent to provide what amounts to expert testimony at this stage in the proceedings. To the extent it is within his personal knowledge, Respondent will provide a general description of the technology in response to this interrogatory.

7) Describe in detail the technical specifications for the electromagnetic technology used by PestContro Products to alter the electromagnetic field inside a home's walls and wiring.

**Response:** Respondent objects to this interrogatory to the extent that it imposes a duty on Respondent to provide what amounts to expert testimony at this stage in the proceedings. To

the extent it is within his personal knowledge, Respondent will provide a general description of the technology in response to this interrogatory.

8) Describe in detail the technical specifications for the ultrasonic technology used by PestContro Products.

**Response:** Respondent objects to this interrogatory to the extent that it imposes a duty on Respondent to provide what amounts to expert testimony at this stage in the proceedings. To the extent it is within his personal knowledge, Respondent will provide a general description of the technology in response to this interrogatory.

9) Describe in detail (step by step) the technology, including any series of physical, chemical, or other processes, by which MosquitoContro Products repel mosquitoes from a user's body.

**Response:** Respondent objects to this interrogatory to the extent that it imposes a duty on Respondent to provide what amounts to expert testimony at this stage in the proceedings. To the extent it is within his personal knowledge, Respondent will provide a general description of the technology in response to this interrogatory.

10) For the period beginning August 27, 1999, and continuing through the date of service of these Interrogatories, state the complete dissemination schedule for the advertisement for any of the Challenged Lentek Products included in Exhibits A through T of the Complaint.

**Response:** Respondent objects to this interrogatory to the extent that it is overly burdensome. To respond to this interrogatory, Respondent must undertake an exhaustive review of Lentek's internal documents. Pursuant to § 3.35(c) of Rules of Practice, Respondent will provide any responsive and non-privileged documents in his possession, custody or control.

11) For the period beginning August 27, 1999, and continuing through the date of service of these Interrogatories, state the complete dissemination schedule for the following exhibits attached to these Interrogatories: Exhibit I (entitled Lentek 2001 Fall Catalog); Exhibit 2

(entitled Lentek 2001 Catalog); and Exhibit 3 (entitled Lentek Creating Solutions for a Healthier Environment).

**Response:** Respondent objects to this interrogatory to the extent that it is overly burdensome. To respond to this interrogatory, Respondent must undertake an exhaustive review of Lentek's internal documents. Pursuant to § 3.35(c) of Rules of Practice, Respondent will provide any responsive and non-privileged documents in his possession, custody or control.

12) For the period beginning August 27, 1999, and continuing through the date of service of these Interrogatories, identify all persons or entities, including all advertising agencies and public relations firms, who were involved in the advertising or marketing of the Challenged Lentek Products, including copytesting or other evaluation of advertising or marketing materials, stating for each person or entity the nature and subject of the work performed and the date or dates during which the work referring or relating to the Challenged Lentek Products was performed.

**Response:** Respondent objects to this interrogatory to the extent that it is overly burdensome. To respond to this interrogatory, Respondent must undertake an exhaustive review of Lentek's internal documents. Pursuant to § 3.35(c) of Rules of Practice, Respondent will provide any responsive and non-privileged documents in his possession, custody or control.

13) For the period beginning August 27, 1999, and continuing through the date of service of these Interrogatories, identify and describe each policy, procedure, rule, regulation and practice guideline (whether or not in written form) for review of advertising claims before dissemination and for substantiation of claims made, stating for each the time period during which it was in effect.

**Response:** Respondent objects to the form of the interrogatory to the extent that it assumes that an unwritten policy, procedure, rule, regulation, or practice guideline exists. To the extent possible, Respondent will undertake a review to determine if any such policies, procedures, rules, regulations or practice guidelines exist. Pursuant to § 3.35(c) of Rules of Practice, Respondent will produce any responsive, non-privileged documents in his possession, custody or control.

14) State each fact and identify each document that you assert provided a reasonable basis for each of the alleged representations regarding the Challenged Lentek Products set forth in the Complaint prior to the initial dissemination of any ad containing such representations, and state the date that each fact or document came into your possession. Respond fully to the Interrogatory even if you contest whether such a claim was made.

**Response:** Respondent objects to this interrogatory to the extent that it imposes a duty on Respondent to provide what amounts to expert testimony at this stage in the proceedings. Respondent objects to the extent this interrogatory calls for legal conclusion and to the extent that a response may be subject to attorney-client privilege.

15) State each fact and identify each document that you assert provided a reasonable basis for each of the alleged representations regarding the Challenged Lentek Products set forth in the Complaint after the initial dissemination of any ad containing such representations, and state the date that each fact or document came into your possession. Respond fully to the Interrogatory even if you contest whether such a claim was made.

**Response:** Respondent objects to this interrogatory to the extent that it imposes a duty on Respondent to provide what amounts to expert testimony at this stage in the proceedings. Respondent objects to the extent this interrogatory calls for legal conclusion and to the extent that a response may be subject to attorney-client privilege.

16) Identify all persons who evaluated, analyzed, or tested the Challenged Lentek Products or provided other information that either confirmed, contradicted, qualified, or called into question the efficacy of the Challenged Lentek Products, stating for each such person the evaluation, analysis, test, or other information provided and the date provided.

**Response:** Respondent objects to this interrogatory to the extent that it is overly burdensome. To respond to this interrogatory, Respondent must undertake an exhaustive review of Lentek's internal documents. Pursuant to § 3.35(c) of Rules of Practice, Respondent will provide all responsive and non-privileged documents.

17) Identify all persons who participated in obtaining, reviewing, or determining the adequacy of substantiation for the advertising claims made about the Challenged Lentek Products, stating for each such person the role played in this regard.

**Response:** Respondent objects to this interrogatory to the extent that the answer may be covered under the attorney-client privilege, work-product doctrine or other applicable privilege.

18) Identify all wholesalers and retailers of the Challenged Lentek Products since August 27, 1999.

**Response:** Respondent objects to this interrogatory on the basis that it is not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief or to the defenses of any respondent.

19) For each of the Challenged Lentek Products, provide complete sales information for each full or partial fiscal or calendar year in which you have sold the products since August 27, 1999, including the total number of units sold to wholesale purchasers, total number of units sold to direct consumer purchasers total number of units returned by wholesale purchasers, total number of units returned by direct consumer purchasers, suggested retail price of each unit, direct consumer purchase price of each unit, total dollar amount of sales of the product, and total profit from sales of the product.

**Response:** Respondent objects to this interrogatory on the basis that it is not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief or to the defenses of any respondent. Respondent further objects to this request on the basis that it is unduly burdensome.

20) Identify all legal actions, whether federal, state, local, or administrative, in which Lentek International has been named as a party and describe the nature of each action.

**Response:** Respondent objects to this interrogatory on the basis that it is not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief or to the defenses of any respondent. Respondent further objects to this request on the basis that it is unduly burdensome.



21) State the specific nature and substance of the knowledge that you believe the persons identified in Part I of Respondents' Initial Disclosures may have.

**Response:** Respondent objects to this interrogatory because it is overbroad, unduly burdensome, and impermissibly vague. In particular, Respondent objects to the request that it state the substance of each individual's knowledge because Complaint Counsel may seek to depose the individuals and ask them specific questions about the substance of their knowledge.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that this 30<sup>th</sup> day of September 2002, the original, one paper copy, and one electronic copy of the foregoing Objections of Respondents Joe Durek, to Complaint Counsel's First Set of Interrogatories were filed with the Secretary of the Commission, and that one copy was served by hand delivery to the Honorable D. Michael Chappell, Administrative Law Judge at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, and that four copies were served by hand delivery to Complaint Counsel, listed below:

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