

IN THE MATTER OF

P. LEINER NUTRITIONAL PRODUCTS CORP., ET AL.

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

Docket 9173. Complaint, Jan. 27, 1984—Decision, May 3, 1985

This consent order requires two California firms engaged in the advertising, labelling, packaging, sale and distribution of nutritional supplements, among other things, to cease representing falsely or without proper substantiation, that Octacol 4 or any similar product can improve human vigor, endurance or other aspects of physical performance or fitness; or that the Octacosano, Triacontanol, Hexacosanol or tetracosanol contained in their products are related to athletic endurance or physical fitness. The firms are also barred from making claims regarding physical benefits to be derived from using such products unless they are properly substantiated; and from misrepresenting the purpose, reliability, results or conclusions of any test, research, article or scientific opinion. Additionally, the companies are required to maintain for a period of three years all materials that substantiate or contradict representations covered by the order.

Appearances

For the Commission: *Cheryl B. Anderson, Teresa A. Hennessy and Brinley H. Williams.*

For respondents: *Henry P. Sailer and Jonathan L. Wiener, Covington & Burling, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that PLNP Holdings, Inc., a corporation, and P. Leiner Nutritional Products, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent PLNP Holdings, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Respondent P. Leiner Nutritional Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Respondent PLNP

Holdings, Inc. dominates or controls, knew of and approved, or benefits from the acts and practices of its only and wholly-owned subsidiary, P. Leiner Nutritional Products, Inc., including the acts and practices hereinafter set forth. Both corporate respondents have their offices and principal places of business at 1805 West 205th Street, Torrance, California.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacture, offering for sale, and sale of nutritional supplements, including Octacol 4, and other products for personal or household use by members of the general public (hereinafter "consumer products").

PAR. 3. Respondents have caused to be prepared and placed for publication and have caused the dissemination of advertising and promotional material, including, but not limited to, the advertising and labeling referred to herein, to promote the sale of Octacol 4. As advertised, Octacol 4 is a "food" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. PLNP Holdings, Inc., and P. Leiner Nutritional Products, Inc., operate in various States of the United States and in the District of Columbia. Respondents' manufacture, offering for sale, sale, and distribution of nutritional supplements, including Octacol 4, mentioned herein constitutes maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their businesses, respondents have disseminated and caused the dissemination of advertisements for nutritional supplements, including Octacol 4, by various means in or affecting commerce, including national magazines, product labels, point of sale brochures, distributed by the mail and across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products.

PAR. 6. Typical statements in said advertisements, and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements and promotional materials attached hereto as Exhibits A through D. Specifically, the aforesaid advertisements contain the following statements:

- (a) Octacol 4 Helps Increase Endurance, Stamina and Vigor .
- (b) . . . Octacol 4 contains all *four* sports stamina factors reported in U.S. Patent No. 3,031,376—including high content octacosanol (Emphasis in Original).
- (c) To help you play stronger, play longer .
- (d) Octacol 4 contains all *four* sports stamina factors reported in U.S. Patent No. 3,031,376. Triacontanol. Tetracosanol. Hexacosanol. And high-content octacosanol. Result? Octacol 4 can help you get the most from your favorite sport—jogging, swimming, ~~and~~ ~~weight training~~ ~~tennis~~ ~~or~~ ~~skiing~~

(e) . . . [I]n long-term university studies and related research, published results indicate that the four performance factors now available in Octacol 4—including high content Octacosanol—have shown significant effects on several types of human endurance. Result? Athletes participating in these research studies were able to play and perform stronger, longer .

(f) In particular, Octacol 4 may benefit athletes and active people participating in these extra effort sports:

Aerobics	Racquet Sports
Basketball	Running
Dance	Soccer
Football	Swimming
Hockey	Skiing
Jogging	Weight Training

PAR. 7. Through the use, *inter alia*, of the statements referred to in Paragraphs Six (a) through Six (f), and other representations contained in advertisements or promotional materials not specifically set forth herein, respondents have represented, and now represent, directly or by implication, that the use of Octacol 4 will improve consumers' endurance, stamina, vigor, overall athletic performance, or overall physical fitness.

PAR. 8. Through the use, *inter alia*, of the statements referred to in Paragraph Six (b) and Six (d), respondents have represented, and now represent, directly or by implication, that Octacol 4 contains four sports stamina and performance factors—octacosanol, triacontanol, tetracosanol, and hexacosanol—that render Octacol 4 effective in improving consumers' athletic endurance or performance or physical fitness.

PAR. 9. Through the use, *inter alia*, of the statements referred to in Paragraph Six (a) through Six (f) respondents have represented, and now represent, directly or by implication, that they possessed and relied upon a reasonable basis consisting of competent and reliable evidence that substantiated the representations referred to in Paragraphs Seven through Eight, at the time they first disseminated those representations and at each subsequent dissemination. Through the use, *inter alia*, of the statements referred to in Paragraph Six (e), respondents further represented:

(a) that, at the time they made the representations referred to in Paragraphs Seven and Eight, they possessed and relied upon scientific studies, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results; and

(b) that the scientific studies referred to in Paragraph Nine (a) provided a reasonable basis consisting of competent and reliable

scientific evidence that substantiated the representations in Paragraphs Seven and Eight.

PAR. 10. The representation contained in Paragraph Seven is false, for the reason that the use of Octacol 4 will not improve consumers' athletic endurance, stamina, vigor, overall athletic performance or overall physical fitness.

PAR. 11. The representation contained in Paragraph Eight is false, for the reason that none of the four factors referred to in Paragraph Eight renders Octacol 4 effective in improving consumers' athletic endurance or performance or physical fitness.

PAR. 12. The representations contained in Paragraph Nine are false, for the reasons that respondents did not possess and rely upon a reasonable basis that substantiated the representations referred to in Paragraphs Seven and Eight at the time they made those representations. The representations referred to in Paragraph Nine (a) and (b) are false, for the reasons that the studies referred to:

(a) were not conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results; and

(b) did not provide a reasonable basis consisting of competent and reliable scientific evidence that substantiated the representations referred to in Paragraphs Seven and Eight.

PAR. 13. The use by respondent of the aforesaid acts and practices, directly or by implication, and the placement in the hands of others of the means and instrumentalities by and through which others may have used the aforesaid statements, representations, acts, and practices, have had and now have the capacity and tendency to mislead consumers and to induce such persons to purchase Octacol 4.

PAR. 14. The aforesaid acts and practices of respondents were and are to the prejudice and injury of the public, and constituted and now constitute unfair or deceptive acts or practices in or affecting commerce and false advertisements in violation of Sections 5 and 12 of the Federal Trade Commission Act.

EXHIBIT A

**IMPORTANT NEWS.
NEW OCTACOL 4 HELPS INCREASE ENDURANCE,
STAMINA AND VIGOR.**



OCTACOL 4 HELPS INCREASE ENDURANCE, STAMINA AND VIGOR.

Octacol 4 is important news for athletes. And active people.
Because Octacol 4 is a natural daily supplement with cold processed wheat germ oil that can help increase your personal sports stamina and endurance.
To help you play stronger, play longer.
In fact, Octacol 4 contains all four sports stamina factors reported in U.S. Patent No. 3,031,376— including high content Octacosanol.
Result? Octacol 4 can help you get the most from your favorite sport—jogging, swimming, tennis, dancing or weight training.
New Octacol 4 from Your Life®

SAVE \$1

WHEN YOU BUY ANY SIZE BOTTLE OF OCTACOL 4! PRESENT THIS COUPON AND \$1 WILL BE TAKEN OFF THE MARKED RETAIL PRICE!

74990 100108

STORE COUPON

**MORE GOOD NEWS!
SAVE \$1 ON OCTACOL 4 AT THESE QUALITY STORES.**

**BI-MART
FRED MEYER
K MART
PAY 'N SAVE**

And other fine stores.

Complaint

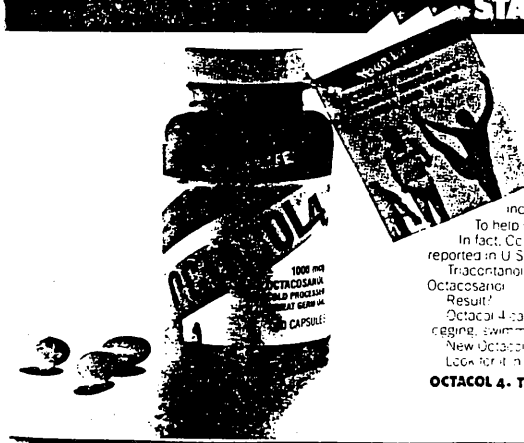
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EXHIBIT B

YOUR LIFE OCTACOL 4.

AS SEEN IN:
SPORTS ILLUSTRATED
PEOPLE
RUNNER'S WORLD

IMPORTANT NEWS
NEW OCTACOL 4 HELPS INCREASE ENDURANCE, STAMINA AND VIGOR.



Octacol 4™ is important news for athletes and active people.
Because Octacol 4 is a natural, daily nutritional supplement that can help increase your personal sports stamina and endurance. To help you play stronger, play longer.

In fact, Octacol 4 contains all four sports stamina factors reported in U.S. Patent No. 3,031,375: Tricosanol, Tetracosanol, Hexacosanol, and nonyl menthyl Octacosanol.

Result?
Octacol 4 can help you get the most from your body in sport, aging, swimming, dancing, weight training, tennis or fishing. New Octacol 4 from 1984-1985.

Look for it in the stamina section of leading sports magazines.

OCTACOL 4. The edge in sports. The edge in life.

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Complaint

EXHIBIT C

YOUR LIFE OCTACOL 4.

AS SEEN IN:
SPORTS ILLUSTRATED
PEOPLE
RUNNER'S WORLD

**IMPORTANT NEWS.
NEW OCTACOL 4 HELPS INCREASE ENDURANCE,
STAMINA AND VIGOR.**

Octacol 4™ is important news for athletes. And active people. Because Octacol 4 is a natural daily supplement with cold processed wheat germ oil that can help increase your personal sports stamina and endurance.

To help you play stronger, play longer.

In fact, Octacol 4 contains all four sports stamina factors reported in U.S. Patent No. 3,031,376. Triacontanol. Tetracosanol. Hexacosanol. And high-content Octacosanol.

Result?

Octacol 4 can help you get the most from your favorite sport—jogging, swimming, dancing, weight training or tennis.

New Octacol 4 from Your Life®.

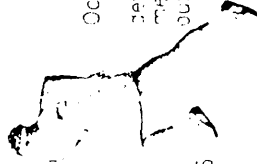
Look for it in the vitamin section of leading stores everywhere.

OCTACOL 4. The edge in sports. The edge in life.

EXHIBIT D

OCTACOL 4. THE EDGE IN SPORTS. THE EDGE IN LIFE.

Octacol 4 is an
 octacosanol
 product which
 has been shown
 to be effective
 in increasing
 endurance
 and stamina
 in men and
 women athletes
 and in men and
 women who are
 active in sports.



Tricosanol
 Tetacosanol
 Hexacosanol
 And high content
 Octacosanol
 A product specially
 developed to aid
 men and women
 athletes in their
 endurance and
 stamina in sports.

**OCTACOL 4TM
 INCREASE ENDURANCE,
 STAMINA AND VIGOR.**



**OCTACOL 4TM
 The edge in sports.
 The edge in life.**



**OCTACOSANOL.
 THE ATHLETE'S EDGE.**

**OCTACOL 4. A NATURAL
 FOOD PRODUCT.**

Who should consider Octacol 4?

Men and women athletes
 who are active in sports
 and men and women
 who are active in
 sports.

Octacol 4 is a natural food product
 which has been shown to be effective
 in increasing endurance and stamina
 in men and women athletes and in
 men and women who are active in
 sports.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL PERTSCHUK* ON
COMPLAINT IN P. LEINER NUTRITIONAL PRODUCTS, INC.

I fully support the Commission's decision to issue a complaint in this matter. At the same time, I am disturbed that the Commission has scrapped its traditional practice of pleading a failure to have a reasonable basis for an advertising claim as both an *unfair* as well as a deceptive practice. The complaint issued today charges only that the respondent's claims (both express and implied) that it had substantiation for its advertising claims were false.

One concern is that this unwarranted change in the Commission's standard pleading will cause confusion and uncertainty. Among others, the administrative law judges will naturally wonder whether the Commission intended in some way to change the standard traditionally used to judge unsubstantiated ads.

Further, while the staff have stated that the changes only reflect what staff in fact intend to prove in this particular case, given Chairman Miller's repeated concerns about the advertising substantiation doctrine, this change may also be a step toward abandonment of unfairness as a basis for the advertising substantiation doctrine. If that is the case, it marks a radical departure for the Commission, which has recently plainly stated in its unfairness policy statement sent to Congress that unfairness is a cornerstone of the advertising substantiation doctrine.

No adequate justification has been given for such a change in our legal theory for requiring advertising substantiation. No analysis has been presented on whether such a change will make it more difficult for the Commission to win its cases. And certainly no rationale has been given for making this decision now, rather than waiting for the Commission's review of the comprehensive comments recently filed concerning the Commission's advertising substantiation program.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violations of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for

* Michael Pertschuk, Commissioner 1977-1984.

settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent P. Leiner Nutritional Products Corp., 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 1805 West 205th Street, Torrance, California.

2. Respondent P. Leiner Nutritional Products, Inc., of Delaware, is a corporation 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 1805 West 205th Street, Torrance, California.

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

I

It is ordered, That respondents P. Leiner Nutritional Products Corp., a corporation, and P. Leiner Nutritional Products, Inc., of Delaware, a corporation, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale or distribution of Octacol 4, or any other product of substantially similar composition, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that the product can help consumers improve vigor, stamina, endurance, any aspect of athletic performance, or any aspect of physical fitness.

B. Representing, directly or by implication, that the following in-

redients contained in the product are related in any way to athletic endurance or performance or physical fitness—octacosanol, triacontanol, hexacosanol, tetracosanol.

II

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for personal or household use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research, or article, or any other scientific opinion or data.

III

A. *It is further ordered,* That respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for personal or household use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, concerning any benefit to be derived from using any such product with respect to athletic performance or endurance or any improvement in physical capability to be derived from using such product or from comparing any such products to any product or products of one or more competitors concerning the benefits from using any such products with respect to athletic performance or endurance or any improvement in physical capability to be derived from using such product unless, at the time of such representation, respondents possess and rely upon reliable and competent evidence that substantiates each such representation of the type and quantum appropriate for the representation.

B. For the purposes of Part III (A) to the extent evidence consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "reliable and competent" only if those tests, analyses, research, studies, or other evidence are conducted and

evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

IV

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, offering for sale, sale, or distribution of any product for personal or household use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain accurate records:

1. Of all materials that were relied upon by respondents in disseminating any representation covered by this order.

2. Of all test reports, studies, surveys, or demonstrations in their possession or control or of which they have knowledge that contradict any representation made by respondents that is covered by this order.

Such records shall be retained by respondents for three years from the date that the representations to which they pertain are last disseminated. It is further ordered that any such records shall be retained by respondents and that respondents shall make such documents available to the Commission for inspection and copying upon request.

V

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed changes in respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the Order.

VI

It is further ordered, That respondents shall forthwith distribute a copy of this Order to each of their operating divisions and to all distributors of Octacol 4 or any other product of substantially similar composition.

VII

It is further ordered, That respondents shall, within sixty (60) days after service of this Order, 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

It is further ordered, That no provision of this Order shall be interpreted as precluding respondents from making statements or disclosures on their labels or labeling where those statements or disclosures are required by regulations promulgated by the Food and Drug Administration (FDA) or by statutes the FDA enforces.

Complaint

105 F.T.C.

IN THE MATTER OF
THE CITY OF MINNEAPOLIS

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

Docket 9180. Complaint, May 10, 1984—Order Withdrawing Complaint, May 7, 1985

This order withdraws the complaint alleging that the City of Minneapolis had combined, contracted or agreed with taxicab companies to pursue certain anticompetitive policies in violation of Section 5 of the Federal Trade Commission Act. The Commission held that changes now made in the City's municipal Code, which includes raising the number of taxicab licenses to be made available to operators, "significantly relieves the injury to competition alleged in the complaint and . . . may eliminate the need for further Commission action." Thus, continuing the matter would not be in the public interest. In withdrawing its complaint, the Commission expressed no opinion as to whether the "liability of the City of Minneapolis could have been established at trial."

Appearances

For the Commission: *Jerry A. Philpott.*

For the respondent: *John French, French, Faegre & Benson, Minneapolis, Minn. and Robert J. Alfton and Scott Reeves, City of Minneapolis, Minn.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the City of Minneapolis, a municipal corporation subject to the jurisdiction of the Commission, hereinafter sometimes referred to as Respondent or the City, has violated the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

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

(A) *Taxicab* means any motor vehicle, except a limousine, regularly engaged in the business of carrying passengers for hire, having a seating capacity of less than ten (10) persons and not operated on a fixed route or schedule.

(B) *License* means the annual taxicab vehicle license issued by the

City of Minneapolis that authorizes the holder thereof to operate a taxicab within the City of Minneapolis.

(C) *Owner-operator* means an individual or company that owns at least one taxicab and taxicab license issued by the City of Minneapolis.

(D) *Leasing* means the practice by taxicab owner-operators of entering into an agreement with a person who is authorized by the City of Minneapolis to drive a taxicab, wherein for a rental fee paid to the owner-operator, said driver is entitled to use a taxicab and its corresponding taxicab license for a specified time and retain all fares collected from passengers.

(E) *CPCN* means the certificate of public convenience and necessity issued by the Minneapolis City Council that is the prerequisite for issuance by the City of Minneapolis of a taxicab license.

(F) *Taxicab company* means any business organization, corporation, partnership, cooperative or person that at present (or sometime in the past) has a trade name and color scheme registered with the City of Minneapolis for the purpose of operating taxicabs or providing services related to the business of owning, operating and/or leasing taxicabs to taxicab owners, operators and/or drivers authorized to do business by the City.

PARAGRAPH 1. Respondent is a municipal corporation organized under the laws of the State of Minnesota and is a person or corporation within the meaning of the Federal Trade Commission Act, as amended (15 U.S.C. 45). The City has passed and enforces certain ordinances that regulate the taxicab business in Minneapolis.

PAR. 2. At all times relevant herein, Respondent's acts and practices have affected the businesses of taxicab companies and taxicab owners, operators, drivers or lessees that maintain, and have maintained, substantial courses of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, and Respondent is subject to the jurisdiction of the Federal Trade Commission. The acts and practices alleged herein are in or affect commerce by affecting at least the following activities that are in or affect commerce:

(A) Taxicabs and taxicab companies provide a primary method of transportation for interstate travelers between Minneapolis-St. Paul International Airport and destinations in Minneapolis.

(B) Taxicabs and taxicab companies provide transportation for interstate travelers between Minneapolis and nearby cities in Minnesota and Wisconsin.

(C) Taxicabs and taxicab companies provide transportation to inter-

state travelers between train stations, bus terminals and other destinations in Minneapolis.

(D) Taxicabs and taxicab companies provide transportation to interstate travelers between hotels, motels, places of business, convention centers, and tourist attractions and other destinations in and around Minneapolis.

(E) Taxicabs are manufactured in other states and are sold for use in and are transported into Minnesota.

(F) Items and services purchased in substantial quantities such as gasoline, tires, taximeters, two-way radios and various replacement parts for taxicabs originate in other states and have been transported into Minneapolis.

(G) Employment opportunities as a Minneapolis taxicab driver have attracted persons from other states.

PAR. 3. For many years and continuing up to and including the date of the issuance of this complaint, the City has combined, contracted or agreed with taxicab companies, to pursue the following policies and do the following acts, among others:

(A) To permit and encourage taxicab companies to combine and to agree upon proposals to increase fares for taxicabs in Minneapolis.

(B) To adopt uniform fares applicable to all taxicabs upon request by taxicab companies.

(C) To limit the number of taxicab licenses in Minneapolis and to prohibit by other means, new entry of taxicab drivers, owners and operators into Minneapolis.

(D) To raise unreasonable barriers to entry to new taxicab companies in Minneapolis.

(E) To prohibit competition from vehicles-for-hire licensed outside Minneapolis.

PAR. 4. The acts and practices of Respondent, as alleged in Paragraph Three, have been and are now having the effects, among others, of:

(A) eliminating and preventing substantial competition between competitors and potential competitors in the operation of taxicabs in Minneapolis;

(B) strengthening the market power of currently authorized taxicab companies operating in the Minneapolis taxicab market;

(C) raising, fixing, stabilizing, maintaining, or otherwise interfering or tampering with the rates charged for taxicab service in and from Minneapolis; and

(D) depriving interstate and intrastate consumers of taxicab services in and from Minneapolis of the benefits of free and open competition in taxicab services.

PAR. 5. The acts and practices of Respondent, as alleged herein, were and are to the prejudice and injury of the public and constituted and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. The acts and practices, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

STATEMENT OF CHAIRMAN JAMES C. MILLER III

After extensive consideration of the issue, I have voted today to issue complaints in accordance with my statutory responsibility to act when there is reason to believe that the law has been violated.

The action taken by the Commission today is based upon allegations of monopoly power and alleged violations of the U.S. antitrust laws in the taxi markets of Minneapolis and New Orleans [105 F.T.C. 1]. As a technical matter, the way a case is brought most effectively in such situations is to address regulations enacted by the city governments. I wish to stress that our concern is with allegations of monopoly power in taxi markets, and is not driven by any interest in limiting the lawfully-exercised powers of the cities themselves.

I also wish to stress that our concern is solely with restraints on *competition*; we have no concerns with rules affecting safety, insurance, and other related service standards.

The Commission's decision today comes after a 10-year staff study of taxi markets, after extensive inquiries and discussions with city officials and taxi operators, and after thorough briefing of the Commission by the agency's career staff.

STATEMENT OF COMMISSIONER MICHAEL PERTSCHUK* DISSENTING
FROM THE ISSUANCE OF COMPLAINTS AGAINST THE CITIES OF
MINNEAPOLIS AND NEW ORLEANS

I dissent from the Commission's decision to issue complaints against the cities of Minneapolis and New Orleans [105 F.T.C. 1] charging each city with an illegal combination or conspiracy in violation of the Sherman and FTC Acts. The complaints allege that each city conspired with taxicab owners and drivers to restrain trade in the provision of taxicab services through the enactment of municipal regulations that establish fixed taxi fares and create barriers to entry into the market.

For the Commission to succeed under the theories alleged in these complaints, it must first prove that the challenged regulations were the result of an illegal combination or conspiracy rather than lawful

* Michael Pertschuk, Commissioner 1977-1984.

actions taken by the cities in the interest of their citizens. I am troubled by the idea that a city's adoption of taxi regulations after consultation with the industry—when consultation is a necessary element of responsible government—transforms the city's regulations into an illegal conspiracy.

Second, when the federal antitrust laws come in apparent conflict with regulations enacted by a governmental entity such as a municipality, the Commission must be especially confident that federal intervention is warranted. Here it is at the very least unclear whether the economic theory of these complaints fits the facts as we know them. Studies commissioned by the Department of Transportation and others of cities where taxi service was deregulated do not demonstrate that the public benefited. Fares often rose and there is considerable doubt whether service improved. Finally, Congress is currently considering legislation which would exempt most municipal regulations from antitrust scrutiny. I note that the Assistant Attorney General in charge of the Antitrust Division has recently testified in support of that legislation. While the Commission need not consider pending legislation when deciding whether to act, the unpredictable effects of the Commission's action on the taxi market and the legitimate regulatory interests of the cities counsel restraint in these cases.

ORDER

Complaint counsel have moved for withdrawal of the complaint in this matter, on the ground that a new municipal ordinance that the City of Minneapolis recently enacted "significantly relieves the injury to competition alleged in the complaint and . . . may eliminate the need for further Commission action." The Administrative Law Judge has certified that motion to the Commission, with the recommendation that the Commission grant the motion. The complaint alleges that the City of Minneapolis has combined, contracted or agreed with taxicab companies in a number of respects relating to fare increases, fare uniformity, limitations on the number of taxicab licenses issued in Minneapolis, barriers to entry, and competition from vehicles-for-hire licensed outside Minneapolis, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. In the Notice of Contemplated Relief that accompanied the complaint, the Commission indicated that as part of any relief it might order, it might prohibit enforcement of three separate groups of Minneapolis Code provisions: (1) Section 341.710 *et seq.* (with some exceptions), which generally regulate fares; (2) portions of Section 341.260 and Section 341.280, which established a variety of criteria for determining whether new

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341.310, which established 248 as the maximum number of taxicab licenses (other than 48 "winter licenses") available to operators in any given year.

The City of Minneapolis has now amended its Code to repeal Section 341.260 and Section 341.280. It has also amended Section 341.300 of the Code to raise the number of taxicab licenses from 248 to 323 by February 1, 1986, and by as many as an additional 25 licenses every year thereafter, beginning on July 1, 1986.¹ These changes offer the prospect of preventing the anticompetitive conduct alleged in the complaint by strongly facilitating new entry into the Minneapolis taxicab market. The Commission has therefore determined that continuing this matter would not presently serve the public interest, and that the complaint should be withdrawn. In taking this action, we express no opinion as to whether the liability of the City of Minneapolis could have been established at trial.

Accordingly, *it is ordered* that the complaint issued against the City of Minneapolis in Docket No. 9180 be, and it hereby is, withdrawn.

Commissioner Azcuenaga did not participate.

¹ Section 341.290(b) has been amended to require that all license holders must be "a member of a company, cooperative, or association" with at least eight taxicabs licensed by Minneapolis; at least fifteen licensed taxicabs "operated under a common color scheme with common radio dispatching facilities;" and a total of at least fifteen such taxicabs licensed in Minneapolis within one year of issuance of the first eight licenses. Section 341.290(c) exempts taxicabs already holding licenses from this requirement.

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IN THE MATTER OF

ASSOCIATED DRY GOODS CORPORATION

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

Docket C-3153. Complaint, May 7, 1985—Decision, May 7, 1985

This consent order requires a New York City merchandise retailer, among other things, to cease failing to disclose to an applicant who has been denied credit on the basis of information contained in a consumer report (including non-derogatory information or no file response), that the adverse action was based wholly or partly on information reported by a credit bureau; and provide rejected applicants with the name and address of the reporting agency. The order additionally requires that a copy of the letter attached to the order as Appendix A be completed to include the name and address of the appropriate consumer reporting agency, and mailed within 90 days to credit applicants who were denied credit by Robinson's of Florida or Hahne and Company, divisions of Associated Dry Goods Corporation, between January 1, 1982, and December 31, 1983, on the basis of information submitted by a consumer reporting company.

Appearances

For the Commission: *Paul K. Davis.*

For the respondents: *Joseph J. Schumm, New York City.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Associated Dry Goods Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Associated Dry Goods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 417 Fifth Avenue, New York, New York.

spondent. Robinson's principal office and place of business is located at Tyrone Square, St. Petersburg, Florida.

Hahne and Company ("Hahne's") is also a division of proposed respondent. Hahne's principal office and place of business is located at 609 Broad Street, Newark, New Jersey.

PAR. 2. Respondent Associated Dry Goods Corporation, through its aforesaid Hahne's and Robinson's divisions, advertises, sells and distributes retail merchandise to the public.

PAR. 3. At all times relevant hereto, respondent in the course of business did and ordinarily does regularly extend and offer to extend consumer credit. In conjunction with the offer and extension of consumer credit, respondent has obtained and is obtaining "consumer reports" as that term is defined in Section 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

PAR. 4. Respondent maintains and has maintained a substantial course of business, including the acts and practices set forth herein, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

DEFINITIONS

For the purposes of this Complaint, the following definitions are applicable:

A. The terms *consumer*, *consumer report*, and *consumer reporting agency* shall be defined as provided in Sections 603(b), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(b), 1681a(d) and 1681a(f) (1970).

B. The term *no file response* shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given applicant indicating that the consumer reporting agency has no credit history information in its files under the name and other identifiers supplied.

C. The term *non-derogatory information* shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency, consisting of the presence of new credit accounts with credit histories too short to meet the respondent's criteria for granting credit, insufficient credit history, or insufficient credit file.

PART I

Alleging violations of the Fair Credit Reporting Act and of the Federal Trade Commission Act, the allegation of Paragraphs One through Four are incorporated by reference as if fully set forth verbatim.

PAR. 5. Respondent, through its divisions, in the ordinary course

and conduct of its business, obtains and has obtained "consumer reports" from consumer reporting agencies. Respondent uses in whole or in part information contained in these reports to accept or deny applications for credit. In a substantial number of instances subsequent to January 1, 1982, respondent has denied consumers credit for personal, family, or household purposes based in whole or in part on non-derogatory information and "no file response" supplied by a consumer reporting agency. Although Robinson's of Florida and Hahne's advised the consumers that they were denied credit because they had no credit history, insufficient credit history, or insufficient credit file, in many instances, Robinson's of Florida and Hahne's failed to advise the consumer of the name and address of the consumer reporting agency making the report.

PAR. 6. By and through the use of the practices described in Paragraph Five, during the period of January 1, 1982, to December 31, 1983, Robinson's of Florida and Hahne's have denied applications for credit for personal, family or household use either wholly or partly because of information contained in a consumer report without advising the consumer of the name and address of the consumer reporting agency making the report. Therefore, respondent, through its divisions Robinson's of Florida and Hahne's, has violated the provisions of Section 615(a) of the Fair Credit Reporting Act.

PAR. 7. By its aforesaid failure to comply with Section 615(a) of the Fair Credit Reporting Act and pursuant to Section 621(a) thereof, respondent has thereby engaged in unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said 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 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. Proposed respondent Associated Dry Goods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 417 Fifth Avenue, New York, New York.

Robinson's of Florida ("Robinson's") is a division of proposed respondent. Robinson's principal office and place of business is located at Tyrone Square, St. Petersburg, Florida.

Hahne and Company ("Hahne's") is also a division of proposed respondent. Hahne's principal office and place of business is located at 609 Broad Street, Newark, New Jersey.

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

ORDER

For the purposes of this Order the following definitions are applicable:

A. The terms *consumer*, *consumer report*, and *consumer reporting agency* shall be defined as provided in Sections 603(b), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(b), 1681a(d) and 1681a(f) (1970).

B. The term *no file response* shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given applicant indicating that the consumer reporting agency has no credit history information in its files under the name and other identifiers supplied.

C. The term *non-derogatory information* shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency, consisting of the presence of new credit accounts

with credit histories too short to meet the respondent's criteria for granting credit, insufficient credit history, or insufficient credit file.

I.

It is ordered, That respondent Associated Dry Goods Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any application for credit that is primarily for personal, family or household purposes, do forthwith cease and desist from:

1. Failing, whenever credit for personal, family or household purposes involving a consumer is denied wholly or partly because of information contained in a consumer report from a consumer reporting agency (including non-derogatory information or no file response), to disclose to the applicant at the time the adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report.

2. Failing, within ninety (90) days after the date of service of this Order, to mail a copy of the letter attached hereto as Appendix A, completed to provide the name and address of the consumer reporting agency supplying the report, to each applicant who was denied credit by Robinson's of Florida or Hahne's between January 1, 1982, and December 31, 1983, based in whole or in part on information contained in a consumer report from a consumer reporting agency (including applicants denied credit based in whole or in part on non-derogatory information or no file response). The letter shall be sent by first class mail to the last known address of the applicant which is reflected in respondent's files. *Provided, however,* if the applicant was later extended credit or given the notice required by Section 615(a) of the Fair Credit Reporting Act, a copy of the letter attached as Appendix A need not be sent. Nothing in this Order shall prohibit respondent from adding to Appendix A a paragraph that resolicits the previously rejected applicants.

II.

It is further ordered, That respondent, its successors, and assigns shall maintain the following:

1. For at least two (2) years, documents that will demonstrate compliance with the requirements of Paragraph I.1. of this Order

2. For at least three (3) years, documents that will demonstrate compliance with the requirements of Paragraph I.2. of this Order.

Upon request, such documents shall be made available to the Federal Trade Commission for inspection and copying. Such documents shall include, but are not limited to, all credit evaluation criteria instructions given to employees regarding compliance with the provisions of this Order, any notices provided to consumers pursuant to any provisions of this Order, and the complete application file to which they relate.

III.

It is further ordered, That Robinson's of Florida and Hahne's shall deliver a copy of this Order to all present employees engaged in reviewing or evaluating consumer reports in connection with applications for credit to be used for personal, family or household purposes. In addition, respondent shall deliver a copy of this Order to all present and future Directors of Credit of each division, at least once per year, for a period of four (4) years from the date of this Order.

IV.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or divisions or any other change in the corporation which may affect compliance obligations arising out of the Order. This provision shall remain in effect for a period of four (4) years from the date of this Order.

V.

It is further ordered, That respondent, within one hundred fifty (150) days after service upon it of this Order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this Order.

APPENDIX A

Dear Customer:

Our records show that [Division of Associated Dry Goods] denied your application for consumer credit within the last four years. The Fair Credit Reporting Act gives persons

Decision and Order

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nied consumer credit the right to know whether the denial was based on information supplied by a consumer reporting agency and, if so, the name and address of such agency. Credit reports provide a variety of information to creditors, including information about how many and what type of credit accounts you have.

Our records show that we may not have informed you that your [Division of Associated Dry Goods] application was denied because of information contained in a credit report. This report showed either no credit history or an insufficient credit record for you. The consumer reporting agency that furnished the report is:

Name of Consumer Reporting Agency]

Street Address]

If you want more information about the federal credit laws, write the Federal Trade Commission, Division of Credit Practices, Washington, D.C. 20580.

Thank you.

IN THE MATTER OF
YOUNG & RUBICAM/ZEMP, INC.

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

Docket C-3154. Complaint, May 10, 1985—Final Order, May 10, 1985

This consent order requires a St. Petersburg, Fla. advertising agency, among other things, to cease, in connection with the advertising and sale of the Ecologizer CA/90 Series 2000 Air Treatment, representing falsely through the use of terms such as "eliminates," or by other means, that the portable household air cleaning appliance removes substantially all or most formaldehyde gas and tobacco smoke from the air people breathe under household living conditions. The order also bars the firm from misrepresenting the ability of any such appliance or equipment to clean the air of formaldehyde gas or tobacco smoke, and from representing the performance characteristics of any air cleaning appliance unless it possesses and relies upon competent and reliable substantiating evidence for such claims. Respondent is additionally required to cease failing to maintain written records of both substantiating materials and materials that contradict or qualify performance claims for a period of three years.

Appearances

For the Commission: *Judith Wilkenfeld*

For the respondent: *Sidney S. Rosdeitcher, Paul, Weiss, Rifkind, Wharton & Garrison, Washington, D.C.*

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

PARAGRAPH 1. Respondent Young & Rubicam/Zemp, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1213 16th Street North, St. Petersburg, Florida.

PAR. 2. Respondent was at all times relevant to this complaint an advertising agency of Rush-Hampton Industries, Inc.

PAR. 3. Respondent caused to be prepared and placed for publication and caused the dissemination of advertising and promotional material, including but not limited to the advertising referred to herein, to promote the sale of a portable, electric household air cleaning appliance, the Ecologizer CA/90 Series 2000 Air Treatment System (hereinafter referred to in the complaint as "air cleaning appliance").

PAR. 4. Respondent operates in various States of the United States and in the District of Columbia. Respondent's dissemination of advertisements for the air cleaning appliance mentioned herein constituted maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business and for the purpose of promoting the sale and distribution of household air cleaning appliances, respondent disseminated and caused the dissemination of advertising for household air cleaning appliances in national magazines, newspapers and catalogs distributed by the mail and across state lines, and in radio broadcasts transmitted by radio stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines. Respondent also placed air cleaning appliance advertisements with television stations having sufficient power to broadcast across state lines and into the District of Columbia. In addition, respondent distributed by mail or other means, product brochures and other sales literature directly to consumers or to dealers for display or distribution to consumers prior to or at the time of sale.

PAR. 6. Typical statements and representations in said advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements and promotional materials attached hereto as Exhibits A, B, C, D, E, F, G, H and I.

PAR. 7. Through the use of the statements and representations referred to in Paragraph Six, and other representations contained in advertisements and promotional materials not specifically set forth herein, respondent represented, directly or by implication, the following claims:

a. The air cleaning appliance "gets rid of" or eliminates formaldehyde gas and tobacco smoke from the air people breathe under household living conditions.

b. The air cleaning appliance cleans the air of or removes most formaldehyde gas and tobacco smoke from the air people breathe under household living conditions.

PAR. 8. In truth and in fact, the direct or implied representations set forth in Paragraph Seven are false, for reasons including but not limited to the following:

a. The air cleaning appliance does not eliminate and does not remove most formaldehyde gas from the air people breathe under household living conditions. Tests conducted by Rush-Hampton Industries and independent tests, when extrapolated by generally accepted procedures to advertised room conditions, show that the air cleaning appliance optimally can remove no more than 5% of formaldehyde gas from the indoor air people breathe.

b. The air cleaning appliance does not eliminate and does not remove most tobacco smoke from the air people breathe under household living conditions. Independent tests, when extrapolated by generally accepted procedures to advertised room conditions, show that the air cleaning appliance optimally can remove no more than 15% of tobacco smoke from the indoor air people breathe.

Therefore, the direct or implied representations set forth in Paragraph Seven are false and misleading.

PAR. 9. As the representations referred to above are false, and respondent knew or should have known that they were false at the time of their dissemination, such representations are deceptive, misleading, and unfair.

PAR. 10. Through the use of the advertisements and promotional materials referred to in Paragraph Six, and other advertisements and promotional materials not specifically set forth herein, respondent represented, directly or by implication, that it possessed and relied upon a reasonable basis for the representations set forth in Paragraph Seven at the initial dissemination of the representations and each subsequent dissemination. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making such representations, and respondent knew or should have known that it did not possess and rely upon a reasonable basis. Therefore, respondent's representations are false and misleading.

PAR. 11. The use by respondent of the aforesaid false and misleading representations, and the placement in the hands of others of the means and instrumentalities by and through which others may use the aforesaid representations, had the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said representations are true and complete and to induce such persons to purchase air cleaning appliances sold by Rush-Hampton Industries, Inc. by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, were all to the prejudice and injury of the public, and con-

stituted unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

EXHIBIT A

TRANSCRIPT OF RADIO COMMERCIALS

1. "Socks"

A: Hello, this is Good Air Talk, you're on the air.
B: Good Air Talk.
A: Go ahead, sir, go ahead.
B: Listen, I have this great idea I want to talk to you about.
A: Well, does it have anything to do with good air?
B: Yes it does.
A: Okay, go ahead.
B: Well you know all the tobacco smoke, dust, odors and pollen in your indoor air?
A: You mean inside your house?
B: Right. What if somebody invented a thing to get rid of all that stuff?
A: They have sir. It is called the ECOLOGIZER*, it's an indoor air treatment system—
B: You know, something you just plug into the wall, I mean, with all the tobacco smoke—
A: Sir, it already exists. Its called the ECOLOGIZER*.
B: What do I know, maybe this thing could even get rid of unseen harmful gases?
A: You mean like formaldehyde and ammonia that you're probably breathing right now?
B: That's the idea.
A: Look, besides tobacco smoke, dust, odors and pollen, the ECOLOGIZER* with CA/90* also gets rid of those harmful gases. It's the only one that does. That's why it's worth more.
B: I'm no science guy, but I know that that technology has to exist.
A: Look, it does exist, sir, and its all in the ECOLOGIZER* CA/90*.
B: Now if you don't like this idea, here's another one.
A: Go ahead.
B: How come nobody's invented digital socks yet, I'm asking.
A: Look, you are just going to have to call Digital Socks Talk, okay?
B: How's that?
A: And that's it for Good Air Talk.
B: Hello?

ANNOUNCER:

Now get a bonus CA/90* filtering system with purchase of an ECOLOGIZER*

2. "Snooze"

A: Hello, this is Good Air Talk.
B: Is this Good Air Talk?
A: Good Air Talk—

* Registered trademark.

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B: Now listen, give me one good reason to buy that ECOLOGIZER* air treatment system you always talk about.

A: Okay, CA/90*.

B: CA/90*?

A: Right, CA/90* is a powerful, natural odor-absorbing substance that makes the ECOLOGIZER* better than anything else going.

B: You mean its better than—

A: Right.

B: Well what about—

A: It's much better. It's the only air treatment system that removes harmful gases.

B: Gases?

A: Right. Like formaldehyde and ammonia.

B: Formaldehyde? Hold on.

A: [Sotto voice] He's holding on.

B: I don't see any formaldehyde in here.

A: Of course you don't. But it's there.

B: Where?

A: In just about every indoor environment. You're probably breathing it right now.

B: You mean I'm breathing harmful gases right now?

A: Probably.

B: Boy, how can I get rid of them?

A: Listen to me. Get an ECOLOGIZER*. It's the only air treatment system with CA/90*.

B: And that'll get rid of indoor gases?

A: Right. Plus tobacco smoke, dust, odors and pollen.

B: Now listen, what does it cost?

A: Well, an ECOLOGIZER* costs a little bit more but, believe me, it's worth it.

B: Yeah. I know what you mean. I tried to save a few bucks once on a cheap alarm clock.

A: Uh-huh.

B: But every time I pushed the snooze alarm the clock fell asleep.

A: Yes, and that's it for Good Air Talk.

B: I like your show by the way.

ANNOUNCER:

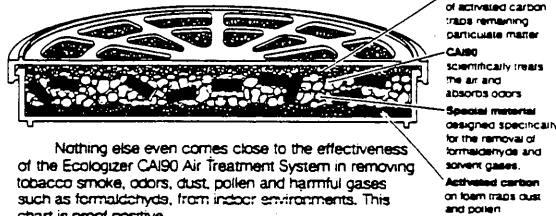
Now get a bonus CA/90* filtering system with purchase of an ECOLOGIZER*.

EXHIBIT B

GOOD TRY
NORELCO
POLLENEX
REVLINGTON
ROBESON
SUNBEAM
VAPORTEK.

BUT NOT GOOD ENOUGH

Only the new Second Generation CA90[®] Air Filtering System removes harmful gases, formaldehyde, acetic acid, ammonia and other solvents from indoor air.



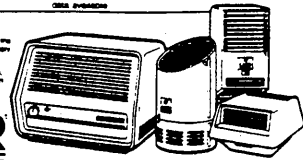
Nothing else even comes close to the effectiveness of the Ecologizer CA90 Air Treatment System in removing tobacco smoke, odors, dust, pollen and harmful gases such as formaldehyde, from indoor environments. This chart is proof positive.

You'll see that Ecologizer is scientifically superior to anything else on the market. No doubt about it.

Here's laboratory tested proof.

	Section 5-1 Resistance to Microorganisms	Section 5-2 Odor Control H ₂ S Absorption Hydrogen Sulfide	Section 5-3 Noise Level	Section 5-4 Capacity	Section 5-6 Formaldehyde Absorption % Reduction
Ecologizer CA90 Air Treatment System	passes	passes	passes	passes	77%
Honeywell Clean Air Microaire	fail	fail	fail	insufficient data available	fail
Pollenex Pure Air "30"	insufficient data available	fail-no gas absorption capabilities	Low speed fail High speed fail	insufficient data available	fail
Honeywell Air Purifier	fail	fail-no gas absorption capabilities	Low speed fail High speed fail	insufficient data available	fail
Sunbeam Fresh Airview	insufficient data available	passes	Low speed fail High speed fail	insufficient data available	fail
Robeson Country Fresh Air	fail	fail	fail	insufficient data available	fail
Honeywell Air Purifier	insufficient data available	fail	fail	insufficient data available	fail

*not designed to be resistant to microorganisms
COMPARATIVE TEST RESULTS Conducted in chambers and microscopes at
 Fluoromycin Industries, laboratories. All tests were conducted under standard
 test conditions and procedures. Fluoromycin Industries and others of such
 nature do not intend to be used in the test procedures and results in any manner
 whatsoever for or level, except formaldehyde reduction, referred to the
 National Sanitation Foundation C-10 Criteria for Quality Air Treatment Claims,
 Section Five. The National Sanitation Foundation is an independent organization
 and the test results conducted by Fluoromycin Laboratories gives no
 indication of discrimination in any manufacturer's product.



ECOLOGIZER
 CA 90 AIR TREATMENT SYSTEMS NOW MORE THAN EVER, ANYTHING ELSE IS LESS.

EXHIBIT C

eye. But some of them have odor. Household odors, pet odors, lingering tobacco smoke or musty odors caused by bacteria and fungi are common.

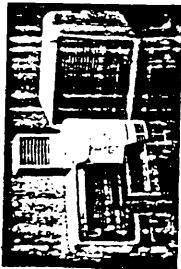
The pilot thickens. Some invisible molecular pollutants don't smell either. Formaldehyde is a harmful gas found in household products, synthetic fibers, dry cleaning and household cleaning products. You don't see it. You may not smell it. But it's there. And it's certainly not good for you.

To make matters worse. You may have unknowingly contributed to the pollution problem in your home. Maybe you've painted, insulated, and weather stripped your home. Or you've used a new carpet. These steps reduce free exchange of indoor air. They also reduce harmful pollutants already trapped inside in exchange for fresh air. In a typical family, you spend 70 to 90 percent of your time indoors. Just amounts to breathing a lot of polluted air. Just about all day. Every day.

Indoor air pollution. It's everywhere. You say, "huh, you say?" Even a spotless clean home has indoor air pollution. It comes from all sorts of things you never suspect. Sure, you already know about tobacco smoke and dust and pollen. There's also mold, radon, and carbon monoxide. Comes from dry cleaning and car exhaust. Pollution comes from the walls of your house. More about the oily gritty particles later. Suffice it to say, indoor air pollution is a big problem.

Indoor air pollution: An important cause of illness caused by indoor pollution is increasing daily. **a definition.** Strictly speaking, it is made up of nitrogen (78%) and oxygen (21%). Anything else is a pollutant. It's basically as simple as that. So, what are the pollutants by air and weight? Particulate matter is "smoke" pollution. That, pollen, tobacco and wood smoke. Molecular pollutants are invisible to the naked

The inside story on indoor air pollution.



Cleaner air everywhere.

Ecologizer® air is the cleanest air you can breathe that's right for every room in your home or office. You'll want the Ecologizer® series R600 or 4000 for large areas, like family rooms or a conference room. For smaller areas, like bedrooms, use the Ecologizer® series R200 or 1000. They're suited to tabletop or wall mounted operation.

The Ecologizer® series 2000 or 3000 are tabletop models. They're suited to desktop use. The series 1000 is ideal for small closed-in areas. The series 1000 is designed for use in bedrooms, bathrooms, or offices. Use the Ecologizer® auto air treatment system to help reduce smoke, odors, dust, pollen, and bacteria. It automatically filters out of the air in your car, truck, van, or trailer. Ecologizer® systems. Setting the standard for indoor air treatment.



Ecologizer

Ecologizer® Series R600 or 4000 are tabletop models. They're suited to desktop use. The series 1000 is ideal for small closed-in areas. The series 1000 is designed for use in bedrooms, bathrooms, or offices. Use the Ecologizer® auto air treatment system to help reduce smoke, odors, dust, pollen, and bacteria. It automatically filters out of the air in your car, truck, van, or trailer. Ecologizer® systems. Setting the standard for indoor air treatment.

14478



Increased air flow.
By creating a constant flow of air from outside, you can reduce many common indoor pollution problems. Sometimes, however, you exchange polluted outdoor air for polluted outdoor air. And, in all the while you think, outside air flow is bad, it's also true.

Eliminate the sources.
Restrict the use of certain chemicals and certain types of building materials that help, but it is virtually impossible to eliminate all pollution-causing elements from our indoor environments.

'Maybe I'll just quit breathing.'
Well, that's one solution, but here's a better one. Ecologizer™ air treatment systems.

They're the only systems that do the total indoor air treatment job. They continuously remove the most pollutants ever been talked about from the air—smoke, odors, dust, pollen, and harmful gases.

Science that magic.
It wasn't easy to solve the tough problem of indoor air pollution. It's not as simple as taking a fan and putting it in a plastic bag and saying "make the air cleaner, man!"

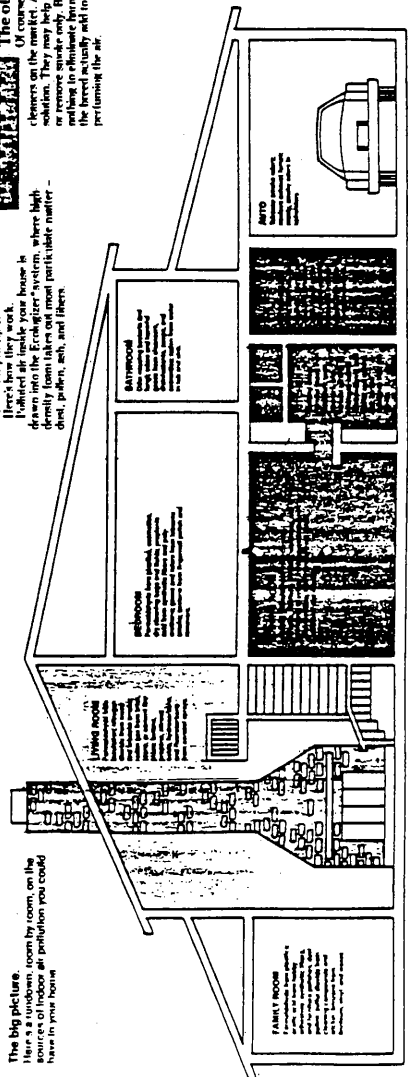
Development of the Ecologizer™ systems took years of laboratory research. Ecologizer™ systems are based on the science of catalytic action.

Induced air inside your house is drawn into the Ecologizer™ system, where high density foam takes out most particles like dust, pollen, ash, and fibers.

That's the easy part. Lots of air cleaners can meet or beat that. Then, the air passes through a layer of CAAP™ (Carbon Activated Air Purifier) formed with activated carbon. Here's where the science comes in. The CAAP™ formula has a built-in ability to adsorb and destroy pollutants with special unique air treatment properties. The CAAP™ formula has even removed odors caused by household pets and lamps. A special gas absorbing layer removes formaldehyde, acetone, and other harmful pollutants. Then, one last pass through foam removes many particles that matter.

At the end of the Ecologizer™ system, a whole lot of clean, fresh air comes out.

The other guys.
Of course there are other air cleaners on the market. All but one, they offer built-in solutions. They may be able to remove particulate matter and odors, but they can't remove the most harmful pollutants. The best way to get rid of the harmful pollutants is to look for air pollution by performing the air.



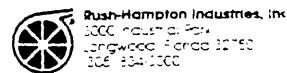
The big picture.
The Ecologizer™ system by room, on the source of indoor air pollution you could have in your home.

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EXHIBIT D

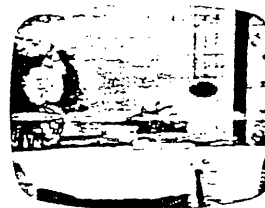
**STOCK UP ON THE
ONLY SERIOUS SOLUTION
TO INDOOR AIR POLLUTION.
YOUR CUSTOMERS WILL ASK
FOR IT BY NAME:
ECOLOGIZER® CA 90 AIR TREATMENT SYSTEMS.
ANYTHING ELSE IS LESS.**



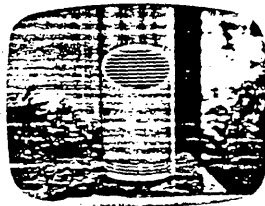
Music up under



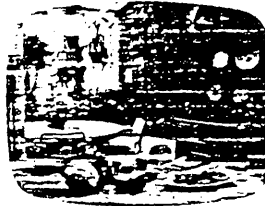
Music up under



Music up under



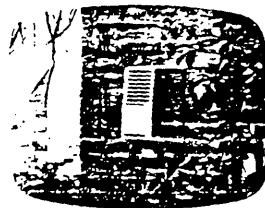
The only serious solution to indoor air pollution.



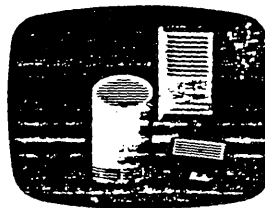
Ecologizer® CA 90® Air Treatment Systems.



The unique CA 90 natural cleansing system is scientifically superior to anything else.



It removes tobacco smoke, odors, dust and pollen from the air continuously.



Ecologizer CA 90 Air Treatment Systems for home, office and auto.



Anything else is less.

EXHIBIT E

Network television emphasizes the superiority of the Ecologizer® with the CA 90® Air Filtering System



Rush-Hampton Industries, Inc.
3000 Industrial Park
Longwood, Florida 32750
305.834.3000



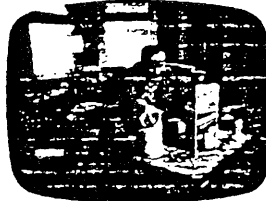
MILLIE YELLING FROM KITCHEN:
Did you get the right air cleaner, Harry?
-HARRY: Got the Ecologizer®



MILLIE: That's the one that costs more, Harry.
HARRY: That's because it does more, Millie. It takes tobacco smoke, dust, odors and pollen.



MILLIE: That's what the cheaper ones said too, Harry.



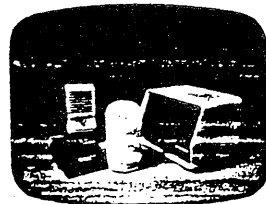
-HARRY: The cheaper ones don't have CARBO® and that's the difference. It does a better job removing formaldehyde.



MILLIE: Do we have formaldehyde?
HARRY: Almost any home could have formaldehyde and other household gases.



MILLIE: The Ecologizer® you got the right air cleaner Harry.



-ANNOUNCER V.O.: You did get the right air cleaner, Harry. And get now you'll get a bonus filter with the Ecologizer.



MILLIE: formaldehyde

Complaint

EXHIBIT F

The Good-Air CA90 ECOLOGIZER
Recirculating Air Cleaner Deodorizer

Removes unpleasant odors, tobacco smoke, dust and pollen continuously.

Unique dual filter contains CA190 powerful pollenizer plus activated charcoal.

CONTENTS: ONE AIR-CLEANING APPLIANCE

Unique dual filtering system with CA190® removes unpleasant odors, tobacco smoke, dust and pollen from indoor air continuously.

Even kills odors caused by harmful fungi and bacteria.

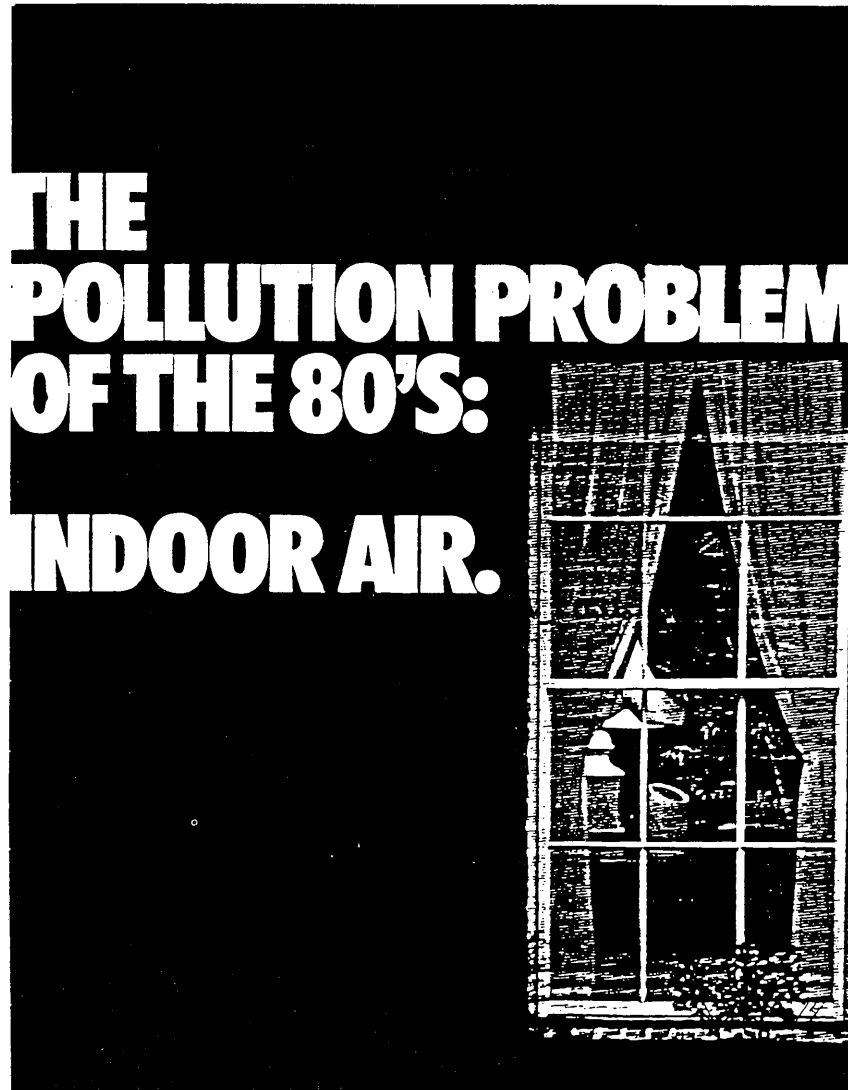
Keeps the air you breathe in home or office fresher and cleaner all the time.

The unique dual filtering system built into the Good-Air CA90® recirculating air cleaner deodorizer kills odors, dust and pollen from indoor air continuously. The CA90® contains a powerful pollenizer plus activated charcoal. The CA90® also contains a powerful pollenizer plus activated charcoal. The CA90® also contains a powerful pollenizer plus activated charcoal.



From the Good-Air People
 Information Industries, Inc.
 Longwood, Florida 32750

Unique dual filtering system with CA190® removes unpleasant odors, tobacco smoke, dust and pollen from indoor air continuously. The CA90® contains a powerful pollenizer plus activated charcoal. The CA90® also contains a powerful pollenizer plus activated charcoal.



The Pollution Problem of the 80's: Indoor Air.

Indoor air pollution could soon be a bigger problem than outdoor pollution.

Most people spend 70 to 80% of their time indoors, so quality of indoor air is crucial. And that quality is becoming worse at an alarming rate.

Contaminants are continuously being added to the indoor air we breathe from an increasing number of sources. And the problem is being amplified by demands for energy saving measures. Homes, apartments, condominiums, offices, hotels and motels are being built tighter, with less ventilation and reduced air flow in order to conserve energy. People are caulking, weather stripping and insulating older homes and offices, tightening them up to keep out warm air in the summer and cold air in the winter. Fresh air exchange is reduced with each measure of energy conservation. Noxious fumes produced in indoor environments are trapped.

The increasing public and government concern about indoor air pollution is reflected in the recent organization of a national workshop on indoor air quality, sponsored by the Environmental Protection Agency and other interested government agencies. The workshop's task is to accurately define the problem of indoor air pollution and explore solutions.



Indoor Air Pollution: Defined.

Indoor air pollution consists of dust, pollen, bacteria and other microorganisms, tobacco smoke, skin cells, hair, ozone in smog, nitrogen oxide from gas appliances, formaldehyde, sulfur oxides from burning coal, acids, organic compounds from smoke or from human respiration.

Items people use daily - petrochemical based products like floor wax and furniture polish, detergents and spray cleaners, bug spray - all contribute to indoor pollution. The list goes on and on.

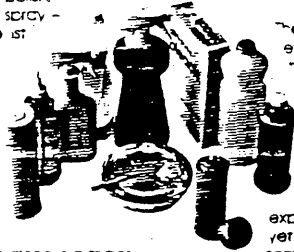
In fact, almost every familiar object in your home or office is a potential source of indoor air pollution. Indoor environments are continuously polluted in ways most people don't suspect.

A case in point: formaldehyde, a cancer-causing, irritating gas, it evolves from household standards such as glue, wallboard, cloth string, insulation. Formaldehyde alone is a major contributor to the sickening level of contaminants

in indoor air.

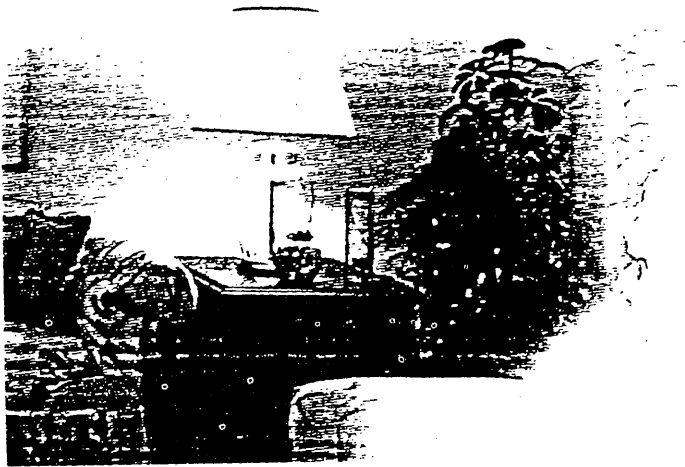
Polluted indoor air is always and essentially generally unhealthy.

Indoor Air Pollution and Health.



The first problem that comes to most everyone's mind when considering the quality of indoor air and health is tobacco smoke. Many people suffer allergic reactions to it and there are, of course, well-known links between second-hand tobacco smoke in the air and the risk of lung cancer.

Other ill effects from continuous exposure to indoor air pollution are not yet known. But it is safe to say that continuous exposure to indoor air pollution can poison people.



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Complaint

"My Job Makes Me Sick!"

There have been numerous documented instances where indoor air pollution has caused headaches, hives, scratchy throats and drowsiness.

Employees in the newly constructed Social Services building in San Francisco complained that they got sick just being in the building. Doctors examined the group and found high levels of inflammation, shortness of breath, chest tightness and nose and throat problems. Measurements and tests of air inside the building linked dust, formaldehyde gas and other particulates to the problems.

Many employees at NBC in New York became sick after they moved into their newly remodeled offices. Headaches, hives, drowsiness and scratchy throats were reported. Experts again concluded that polluted indoor air was the culprit.

There have been cases where people built new, energy saving homes, well insulated and tightly constructed with thermal windows and all the latest energy savers. Then they found that the homes were virtually uninhabitable because of the pollutants given off by everyday items were unable to escape the sealed indoor environment.

Almost daily the roster of documented cases of indoor pollution causing health problems is lengthened.

How the Little Buggers Bug You.

Indoor air pollutants are indeed the And they do cause irritation and sickness when breathed into lungs.

There are basically two types of pollutants: particulate and molecular. Anything the human nose perceives as odor is molecular. Particulate matter does not in itself have an odor.

The customary way of describing air pollutants is by size, because size determines how the pollutant travels in the air and how deeply they penetrate the human respiratory system.

Particles are the large air pollutants. Molecules are the small air pollutants.

Some particles are large and heavy enough to fall out of the air. Other particles are small, lighter and easily breathed into our lungs. These are the particulates that make up some dust and pollen, bacteria and other organisms, smoke and skin cells.

Molecules are even smaller than the airborne particles, so they have absolutely no difficulty getting into our lungs. Molecules are everywhere. Air-polluting molecules include ozone in smog, nitrogen oxides from gas appliances, organic compounds from smoke.



Solving the Indoor Air Pollution Problem.

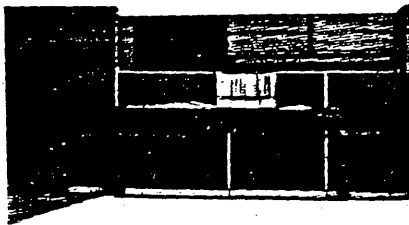


Obviously, indoor air pollution is a problem of increasing magnitude that affects the quality of everyone's life. It's a problem that needs to be addressed and solved. Quickly.

One solution would be to see that all living and work areas are properly ventilated. However, in many situations that is simply not possible nor practical.

Another solution is to use air treatment devices such as the Rush-Hampton CA-90® Air Treatment System.

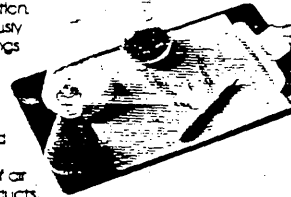
The Ecologizer® CA-90 Air Treatment Systems are appliances designed for home, office and auto use. The Ductless Fan CA-90 Air Treatment System is built-in during new construction or remodeling. It's the only building-code approved ductless fan - the only one that meets C-10 criteria.



Rush-Hampton: The Indoor Air Pollution Experts.

Although the problem of indoor air pollution has been with us for years, it's only recently come to the attention of the public. Consequently, few people have seriously studied the problem and are truly knowledgeable in the field.

Rush-Hampton Industries is one of the few who has a clear understanding of indoor air pollution. Since 1969, our chemists have been doing extensive research and testing in the field of indoor air pollution. From meticulously recorded findings accumulated through years of scientific study, we have developed and marketed a broad range of air treatment products and systems.



CA 90. The Key.

CA-90 is a patented chemical developed by Rush-Hampton Industries' scientists. It's a natural derivative of citrus with unique odor-control and air treatment properties.

Here's how it works to rid the air of odors.

As you remember, odors are made of molecules. There are ways of what chemists refer to as "scrubbing" molecules from the air. CA-90 can perform several of the known methods.

Adsorption. The CA-90 surface is highly attractive to molecules. They actually stick to it.

Dissolution. CA-90 provides a solvent that dissolves molecules.

Chemical Change. CA-90 chemically changes molecules to non-volatile, innocuous substances.

Basic Principles of Effective Treatment of Polluted Indoor Air.

The Ecologizer® and Ductless Fan use the unique CA-90® natural air cleansing system.

A small electric motor runs a fan which pulls the air through an opening at the base of the Ecologizer or bottom of the Ductless Fan. Polluted air is pulled through a layer of activated charcoal. This pretreats the air and removes such particulates as dust and pollen. Then the air passes through a layer filled with CA-90 saturated particles that remove pollutant molecules. A final layer traps more contaminants before fresher, cleaner air is recirculated.

A Potentially Dangerous Situation.

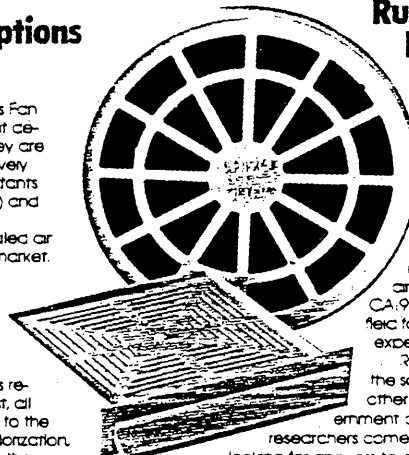
There are two problems to be faced. First, the growing problem of indoor air pollution. And, second, the irresponsible "solutions" to the problem that recklessly proliferating.

Successful responsible treatment of indoor air requires the application of sophisticated science and technology. It requires painstaking research and careful scrutiny of the resulting data. It requires a thorough understanding of the science - the chemistry - of air treatment and deodorization.

Consider the Options Carefully.

The Ecologizer and Ductless Fan aren't the only air treatment devices on the market. But they are the only ones which effectively remove both types of pollutants (particulate and molecular) and have a long life.

There are several so called air treatment devices on the market. None of them does the total air treatment job. At best they do half a job. That is they may remove some of the large particulates but leave the molecules, hence the odors remain. That's at best. At worst, all they do is add a fragrance to the air to mask odors. That is odorization, not deodorization. In effect, they worsen the problem they purport to solve.



Rush-Hampton Industries. The Leader.

At Rush-Hampton Industries, we're the recognized leader in the field of indoor air treatment.

Our company was formed specifically for the purpose of developing, testing, manufacturing and marketing a broad range of air treatment products utilizing CA-90. We've been involved in the field for years. We're the established experts.

Rush-Hampton is the source. The place other scientists, government agencies and researchers come when they're looking for answers to indoor air pollution problems.

We have the answers. Answers to indoor pollution problems. We can tell you exactly how our products work. And why our products work.

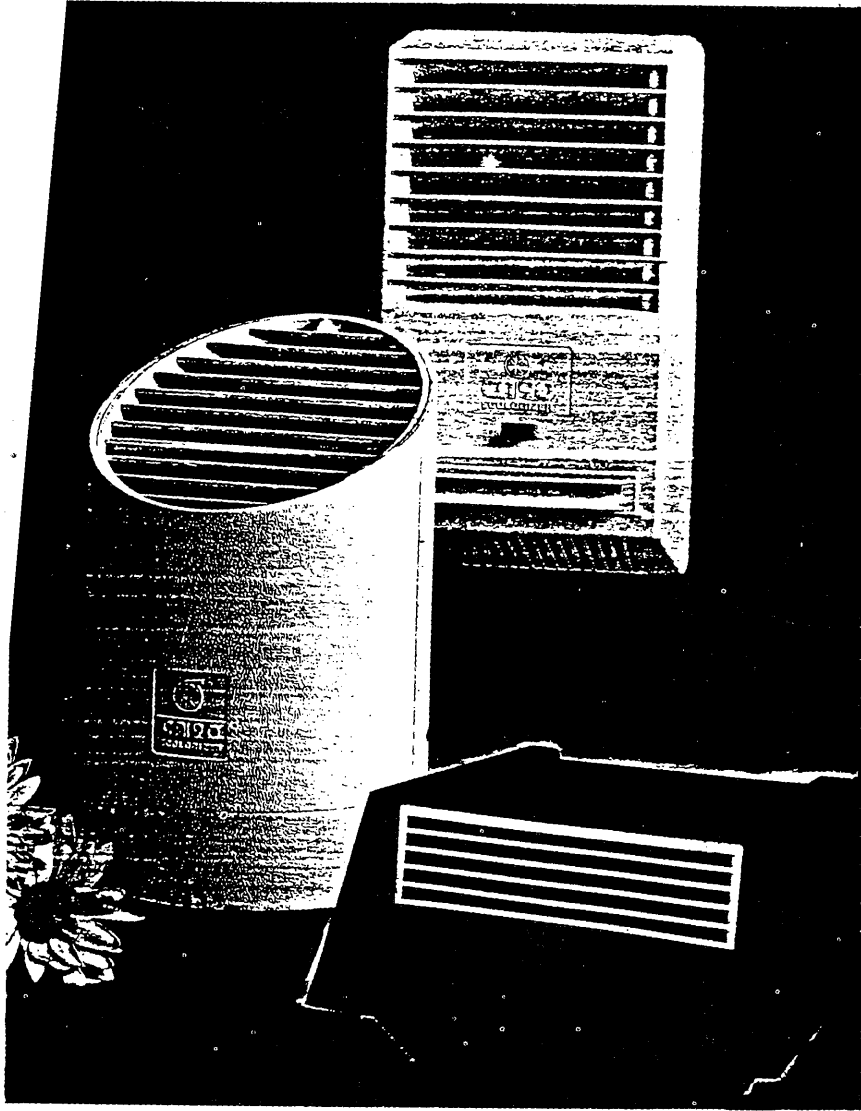
Rush-Hampton Industries is working to help in the understanding and conquering of the indoor air pollution problem.



FEDERAL TRADE COMMISSION DECISIONS

Complaint

105 F.T.C.



The original ECOLOGIZER[®]

CA190 AIR TREATMENT SYSTEM

Anything else is less.

Hundreds of thousands of delighted customers have helped make the Ecologizer the number one small air treatment system in the world. The reason is simple. It works.

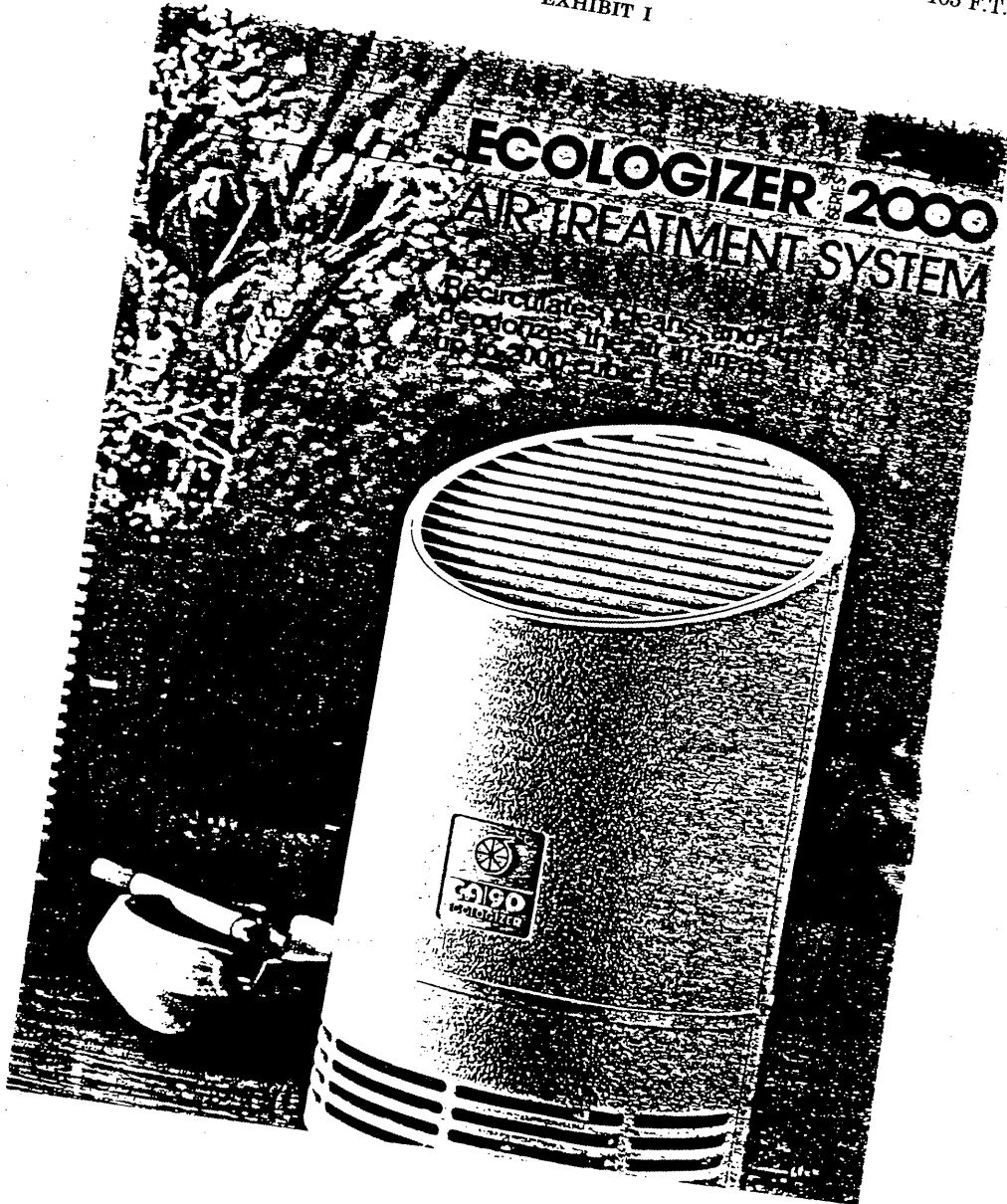
Now you can control tobacco smoke, odors, dust and pollen in your home or office. The Ecologizer's quiet fan pulls polluted air into the unique CA190 Air Cleansing System where contaminants are trapped and clean fresh air is released. In a closed 18' x 14' room, the air will be completely recirculated, filtered and freshened every 33 minutes.

The Ecologizer is most effective if it runs constantly. Under normal conditions, the replaceable CA190 filtering system will last up to 3 months.

The Ecologizer is 9" high and 5" in diameter. Available in dark brown and almond white.

- #3300 Almond White Ecologizer \$39.95
- #3310 Dark Brown Ecologizer \$39.95
- #3320 Citrus Scent CA190 Replacement Filtering System \$ 3.95
- #3326 Unscented CA190 Replacement Filtering System \$ 3.95

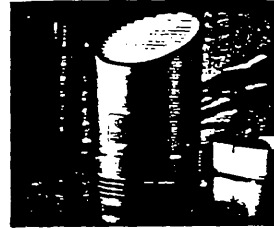
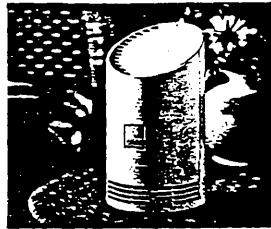




**Unsurpassed
air treatment and
odor control in
home or office.**

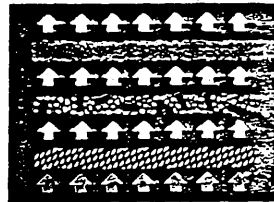
The Ecologizer® series 2000 air treatment system is perfect for home or office use. It utilizes the most effective filtering system available—the second generation filtering system with CA190® advanced scientific formula.

One unit continuously recirculates, treats, cleans, and deodorizes the air in areas up to 2000 cubic feet. And the Ecologizer® system is portable, so it can be used wherever effective odor control and air treatment are needed.



**Second generation
filtering system
removes harmful
gases and solvents,
plus household odors,
tobacco smoke odors,
dust, and pollen.**

This unique filtering system is composed of individual filtering layers—each performing a specific air treatment function. As polluted air is pulled into the unit, high-density foam pretreats the air and removes dust and pollen particles. An intermediate layer of CA190® formula treats the air and removes odors—even odors caused by harmful bacteria and fungi. This layer also contains a special gas absorbing material that absorbs harmful gases found in everyday indoor environments, including formaldehyde, ammonia, acetic acid, and solvent gases. A final filtering layer traps even



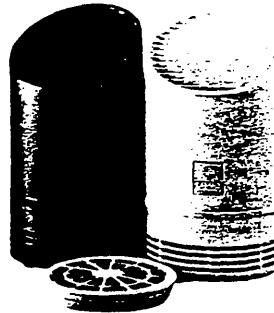
more contaminants before fresher, cleaner air is recirculated.

Together, these specialized filtering layers do the total indoor air treatment job. And the filtering system keeps its effectiveness for months.

**Special features.
Appealing colors.**

The Ecologizer® system is available in light beige or brown, colors that complement any decor. The unit features a convenient on/off switch that allows the unit to be run only when needed.

The top of the unit separates from the bottom for quick and easy replacement of the filtering system. And to keep the Ecologizer® system working at its best, a special filter life indicator is included. Affixed to the unit or filtering system, the indicator changes color when it's replacement time.



**Model 7305 (Light Beige)
Model 7315 (Brown)**



Rush-Hamilton Industries, Inc.
3000 Industrial Park
Longwood, Florida 32750
305/834-3000

© 1982 Rush-Hamilton Industries, Inc.
ECOLOGIZER and CA190 are registered

**ECOLOGIZER® 2000
AIR TREATMENT SYSTEM**

The Ecologizer® series 2000 air treatment system has been shown to remove greater than 50% of

DECISION AND ORDER

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

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

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

1. Respondent Young & Rubicam/Zemp, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1213 16th Street North, St. Petersburg, Florida.

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

PART I

It is ordered, That respondent Young & Rubicam/Zemp, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Ecologizer CA/90 Series 2000 Air Treatment System, in or affecting commerce, as "commerce"

is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, contrary to fact, that the Ecologizer CA/90 Series 2000 Air Treatment System removes substantially all formaldehyde gas or tobacco smoke from the air people breathe under household living conditions through the use of the word "eliminates" or other phrases that the reasonable consumer would interpret as "substantially all."

B. Representing, directly or by implication, contrary to fact, that the Ecologizer CA/90 Series 2000 Air Treatment System cleans the air of or removes most formaldehyde gas or tobacco smoke from the air people breathe under household living conditions.

PART II

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Ecologizer CA/90 Series 2000 Air Treatment System or any other air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the ability of any such appliance or equipment to clean the air of or remove formaldehyde gas or tobacco smoke.

PART III

A. *It is further ordered,* That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Ecologizer CA/90 Series 2000 Air Treatment System or any other air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, the performance characteristics of any such appliance or equipment unless respondent possesses and relies upon a reasonable basis for such representation, consisting of competent and reliable evidence which substantiates such representation.

B. To the extent the evidence of a reasonable basis consists of scientific or professional tests, experiments, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" for purposes of Part III(A) only if those tests, experiments, analyses, research,

studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

C. For purposes of Part III(A) of this order, the term "performance characteristics" means the cleaning, filtration, or removal ability of the appliance or equipment, with respect to formaldehyde gas or tobacco smoke, whether expressed in terms of the filtering media or mechanism, or in terms of the appliance itself.

Provided, however, That in circumstances where the scientific or professional tests, experiments, analyses, research, studies, or any other evidence based on the expertise of professionals in the relevant area was not directly or indirectly prepared, controlled, or conducted by respondent, it shall be an affirmative defense to an alleged violation of Part III of this Order for respondent to prove that it reasonably relied on the expert judgment of its client or of an independent third party in concluding that it had a reasonable basis in accordance with Part III of this Order. Such expert judgment shall be contained in a written document prepared by a person qualified by education or experience to render the opinion. Such opinion shall describe the contents of such evidence upon which the opinion is based.

Provided further, That nothing in this Order shall be deemed to deny or limit respondent with respect to any right, defense, or affirmative defense to which respondent otherwise may be entitled by law in a compliance action or any other action, including any right, defense, or affirmative defense based upon the legal standards applicable to advertising agencies.

PART IV

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any air cleaning appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain written records:

1. Of all materials that were relied upon in disseminating any representation covered by this Order, insofar as the text of such representation is prepared, authorized, or approved by any person who is an officer or employee of respondent, or of any division, subdivision or subsidiary of respondent.

... or demonstrations in its

possession or control that contradict, qualify, or call into question any representation made by respondent that is covered by this Order.

Such records shall be retained by respondent for a period of three years from the date the representations to which they pertain were last disseminated, and may be inspected by the staff of the Commission upon reasonable notice.

PART V

It is further ordered, That respondent shall forthwith distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation and placement of advertisements or other sales materials.

PART VI

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

PART VII

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

FEDERAL TRADE COMMISSION DECISIONS

Interlocutory Order

105 F.T.C.

IN THE MATTER OF

WARNER COMMUNICATIONS, INC., ET AL.

Docket 9174. Interlocutory Order, May 24, 1985.

ORDER

Respondents have filed several motions requesting that this matter be terminated, either by dismissal of the complaint or by consideration and eventual acceptance of a proposed consent agreement.

In disposition of these and related motions *it is hereby ordered* as follows:

1. Respondents' application pursuant to Section 3.23(b) of the Commission's Rules for review of the administrative law judge's order of March 27, 1985, is granted.

2. Respondents' motion to dismiss the complaint is denied. Section 7 of the Clayton Act, 15 U.S.C. 18, prohibits acquisitions having certain anticompetitive effects. The Commission is empowered by Section 11 of the Clayton Act, 15 U.S.C. 21, to enforce compliance with Section 7. The Commission is similarly empowered by 15 U.S.C. 45(a) to enforce compliance with the FTC Act. The complaint in this case alleges that the acquisition proposed by the respondents would violate these statutes. The fact that the respondents have not consummated their proposed transaction, and claim to have abandoned it, does not oust this statutory grant of jurisdiction. The Commission's subject-matter jurisdiction depends on the nature of the alleged illegal conduct, and not on whether it is ongoing at any particular point during the trial. To hold otherwise would mean that a Commission law enforcement action could be brought to a halt at any time, even after a complaint and injunction have issued, by an abandonment, even a temporary one, of the challenged conduct. The cases indicate that voluntary cessation of unlawful activity is not a basis for halting a law enforcement action. *See United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199 (1968); *United States v. Trans-Missouri Freight Ass'n*, 166 U.S. 290, 309 (1897) (Sherman Act cases). Indeed, Section 13(b) of the Clayton Act, 15 U.S.C. 53(b), expressly contemplates adjudication of the merits of the legality of unconsummated mergers when it provides for enjoining a proposed merger pending administrative hearings. And, in fact, the consummation of this transaction has been preliminarily enjoined pursuant to Section 13(b) pending Commission adjudication of the matter. *FTC v. Warner Communications, Inc.*, 742 F.2d 1156 (9th Cir. 1984).

The nonconsummation of the proposed transaction does not affect the Commission's subject-matter jurisdiction, but it may on an appropriate showing justify a conclusion that the matter is moot. Here, however, the claim that the allegedly unlawful transaction has been abandoned does not make the matter moot. At a minimum, questions of fact remain which prevent us from concluding that "it [is] absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur," in either identical or functionally-equivalent form. *United States v. Phosphate Export Ass'n*, *supra*, 393 U.S. at 203; see *United States v. W.T. Grant Co.*, 345 U.S. 629 (1953).

Respondents' additional arguments for dismissal are not persuasive. First, we believe that complaint counsel's demand for a prior-approval term in any final order is not made inappropriate by the Hart-Scott-Rodino Act, since that statute was intended only to ensure that the enforcement agencies receive prior notice of mergers, and nothing in its legislative history suggests that it was intended to supersede the use of fencing-in provisions imposed after a merger has actually been found improper. Second, while we express no view as to the appropriate remedy in this case, we see nothing requiring dismissal in the fact that complaint counsel have offered to settle on terms that were more or less favorable to respondents at different stages of the litigation, since any settlement offer will reflect the party's assessment of the strength of his case as of that particular point in the trial. Finally, we find that continuation of the administrative hearings would be in the public interest, because, as we have said, there exist substantial questions of fact as to the risk that a violation may recur.

Nothing in this order, however, precludes the administrative law judge from subsequently concluding on an appropriate showing that mootness has been demonstrated or that relief is unnecessary. See *United States v. Phosphate Export Ass'n*, *supra*, 393 U.S. at 203-04.

3. Respondents' motion to withdraw this matter from adjudication for consideration of a proposed consent agreement pursuant to Section 3.25(d) of the Commission's Rules is denied. Because the proposed settlement is on terms significantly different from the terms of Commission orders in similar cases, and because questions of fact concerning appropriate remedy remain, we are not satisfied that there is a likelihood of settlement on the terms proposed.

4. Respondents' motion for leave to reply to complaint counsel's answer to respondents' motion for dismissal of the complaint is granted.

5. Complaint counsel's motion for leave to reply to the motion of respondents to withdraw this matter from adjudication was filed with the Commission on March 25, 1985. A motion for leave to file a statement of Bureau of Competition Director Timothy J. Muris was filed

with the Commission on April 18, 1985, with the statement attached. The second motion sought leave to address the same questions as the first. Because the Bureau Director is the chief counsel supporting the complaint, we have treated the second motion as a duplicate of the first, which we have granted, and we have treated the statement attached to the second motion as complaint counsel's reply.

6. Respondents' request that their opposition to the motion for leave to file statement of Bureau Director Timothy Muris be considered as a response to that statement is granted.

7. The administrative law judge is directed to terminate the stay of the adjudicative hearing without unnecessary delay.

It is so ordered.

IN THE MATTER OF
GREAT LAKES CARBON CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8805. Final Order, June 5, 1973—Modifying Order, June 4, 1985

This order reopens the proceeding and modifies the Commission's order issued on June 5, 1973 (82 F.T.C. 1529) to provide that the order, which was scheduled to expire in June of 1993, will terminate immediately upon entry of the modifying order. After considering respondent's petition requesting termination of the 1973 order, together with other relevant information, the Commission determined that the requested modification would serve the public interest. Changes in the market indicated that the order, which among other things required the companies to restrict their contracts for the purchase and sale of industrial quality petroleum coke to terms of three years, was no longer necessary and impeded the ability of respondent companies to compete effectively.

ORDER REOPENING AND MODIFYING ORDER ISSUED JUNE 5, 1973

By a petition filed on January 3, 1985, respondent Great Lakes Carbon Corporation joined by respondents Standard Oil Company (Indiana), Conoco, Inc., Derby Refining Company, Farmland Industries, Inc., Sun Refining and Marketing Company, Texaco, Inc., and Mobil Oil Corporation (by its separate submission filed on January 7, 1985), request that the Commission reopen the proceeding in Docket No. 8805 and modify Paragraph X of the order to provide that the order terminate immediately. Upon consideration of Great Lakes' petition and other relevant information, the Commission now finds that the public interest warrants reopening the proceeding and modifying Paragraph X of the order as requested.

The record describes an industry in which the respondents' use of long-term sales and purchase contracts by and between the respondents and others for industrial quality petroleum coke would not appear likely to have anticompetitive effects during the next eight years. Changes in the market indicate that the order is no longer necessary and the order has accomplished all it is likely to do. At the same time, the order now appears to be limiting respondents' ability to compete effectively for, among other things, participation in cogeneration and waste heat recovery projects, development of new markets, and export sales. As a result, we conclude that it is in the public interest to set aside this order.

Accordingly,

It is ordered, That this matter be and it hereby is reopened, and that

Modifying Order

105 F.T.C.

Paragraph X of the Commission's order issued on June 5, 1973, be modified as follows:

X.

This order shall terminate and cease to be effective immediately upon entry of this order reopening and modifying the order issued on June 5, 1973.

IN THE MATTER OF

THE KORMAN CORPORATION

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

Docket C-3155. Complaint, June 12, 1985—Decision, June 12, 1985

This consent order requires a Trevoze, Pa. homebuilder, developer and real estate manager, among other things, to cease representing that it will correct any problems due to faulty materials, workmanship or design, unless the firm corrects the problems within a reasonable time after being informed of the defect by the homeowner. The firm is also barred from failing to perform its warranty obligations within a reasonable period of time and remedy non-warranted problems that the company has represented that it will correct. Should a written warranty be offered in connection with the sale of a home, a notice has to be conspicuously displayed in sales offices advising that a free copy of the warranty is available upon request. All limitations on, disclaimers of, or exclusions from coverage under the written warranty would have to be clearly and conspicuously disclosed within both the warranty and each sales contract used by the firm. If homes are covered by a written warranty, the firm has to use a prescribed dispute settlement process to resolve warranty disputes, and provide a written description of that process to each home purchaser. The order additionally requires the company to provide repairs or reimbursements, in accordance with redress procedures set forth in the order, to eligible homeowners who bought their homes since Oct. 1, 1978 and still own those homes; and to maintain specified files for a period of three years.

Appearances

For the Commission: *James K. Leonard.*

For the respondent: *Steven A. Arbittier and Roberta D. Liebenberg, Wolf, Block, Schorr & Solis-Cohen, Philadelphia, Pa.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by such Act, the Federal Trade Commission, having reason to believe that The Korman Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Korman Corporation is a corporation organized, existing and doing business under and by virtue of the

aws of the State of Pennsylvania with its principal place of business located at 2 Neshaminy Interplex, Trevese, PA.

Respondent is now, and for some time past has been engaged, in the development of real estate; the construction of homes; the management of commercial and residential buildings; and the offering for sale and/or sale of these products and services to the public in the states of Pennsylvania and New Jersey. Gross revenues of respondent in 1981 were approximately \$40 million.

PAR. 2. In the course and conduct of its business, respondent has caused its property, goods and services to be offered for sale and sold in New Jersey, Pennsylvania and other states to purchasers and prospective purchasers located in New Jersey, Pennsylvania and other States of the United States by means of advertisements placed in newspapers of interstate commerce.

Respondent maintains and has maintained a substantial business, including the acts and practices as hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

COUNT I

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

PAR. 3. In the course and conduct of its business, respondent has been, directly or by implication, granting or disseminating certain warranties to purchasers of its homes.

1. Respondent has since 1976 provided purchasers with a written warranty under which it will repair, replace, or reimburse for:

a. Specific defects in the home's masonry, landscaping, driveways and walkways, water infiltration in the basement and crawl spaces, and excessive warping of structural members, doors, counter tops and vanities for a period of one year;

b. Specific defects in the roof and in any workmanship or prime materials in the electrical, heating, cooling and plumbing systems for a period of two years; and

c. Major construction defects, as defined in respondent's warranty, for a period of ten years.

2. Respondent has since 1972, by force of Pennsylvania common law, warranted that its new homes in Pennsylvania are fit for habitation.

3. Respondent has since 1979, by force of New Jersey statutory law, warranted that its new homes in New Jersey are:

- a. Free from defects caused by faulty workmanship and defective materials for one year after purchase;
- b. Free from defects caused by faulty installation of plumbing, electrical, heating and cooling delivery systems for two years after purchase; and
- c. Free from major construction defects for ten years after purchase.

PAR. 4. By and through the granting and dissemination of the warranties described in Paragraph Three, respondent has represented, directly or by implication, that:

1. Respondent will correct all defects covered by its written warranty within a reasonable time after it receives notice of the defects.
2. Respondent will correct all defects covered by the warranties under Pennsylvania State law within a reasonable time after it receives notice of the defects.
3. Respondent will correct all defects covered by the warranties under New Jersey State law within a reasonable time after it receives notice of the defects.

PAR. 5. In truth and in fact, respondent has not performed its obligations under the warranties described in Paragraph Three.

1. Respondent has frequently failed to correct defects covered by the warranties described in Paragraph Three. Typical and illustrative of the uncorrected defects are:

- a. Excessive ponding and severe washouts in yards due to insufficient and/or improper grading for water drainage;
- b. Basement water leakage due to improper grading, failure to install foundation drainage tile, failure to properly patch foundation form tie holes, and/or failure to provide drainage in areaways adjacent to basement windows and doors;
- c. Basement foundation cracks due to poor ground preparation and/or excessively wet concrete;
- d. Roof leaks due to faulty workmanship, lack of flashing and counter flashing materials at roof intersections, and/or improper installation of roofing felts, plywood roof sheathing or shingles;
- e. Roof depressions due to undersized and/or improperly installed roof rafters;
- f. Bellied or buckled walls due to undersized or overspaced wall studs, resulting in inadequate support for the floor construction plus the roof load;
- g. Inadequate heating due to undersized heating plants and/or a lack of, or improperly located, heating vents or return registers;
- h. Frozen water pipes due to a lack of insulation and/or the improper placement of insulation in exterior walls;

i. Cracked concrete driveways and garage floor slabs and cracked and pitted asphalt driveways due to improper ground preparation and/or a lack of correctly located expansion and control joints; and

j. Spalling and pitting of sidewalks and flat concrete surfaces due to improper ground preparation and/or the use of unclean materials.

2. Where respondent has corrected defects covered by the warranties described in Paragraph Three, purchasers have frequently encountered long delays, often exceeding five months, from the time respondent received notice of the defect to the time respondent corrected the defect.

PAR. 6. Respondent's failure to perform its obligations under the warranties described in Paragraph Three has caused and causes substantial injury to consumers which they could not have reasonably avoided.

PAR. 7. Therefore, the statements, representations, acts and practices alleged in Paragraphs Three, Four and Five were and are unfair, in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Five are incorporated by reference.

PAR. 8. The statements, representations, acts and practices alleged in Paragraphs Three and Four, directly or by implication, have had, and now have, the capacity and tendency to mislead the public and were, and now are, to the prejudice and injury of the public.

PAR. 9. Respondent continued to grant or disseminate the warranties described in Paragraph Three to purchasers of its homes even though respondent knew or should have known of its failure to perform warranty obligations with respect to past purchasers' homes.

PAR. 10. Therefore, the statements, representations, acts and practices alleged in Paragraphs Three and Four were and are deceptive, in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two and Three (1.) are incorporated by reference.

PAR. 11. In its written warranty respondent has further warranted that it will correct the following defects if notified by means of a registered letter within three days ("three-day letter") after settle-

1. Significant defects in the appearance of interior and exterior finished surfaces, or in lighting fixtures.
2. Chipping of porcelain, tile, vitreous china, laminated plastic, counter and vanity tops.
3. Broken glass, light covers and mirrors.
4. Loose screws, nuts and bolts.
5. Missing items.

PAR. 12. By and through the granting and dissemination of its written warranty, respondent has represented that it will correct the defects listed in Paragraph Eleven within a reasonable time after it receives notice of the defects in a three-day letter.

PAR. 13. In truth and in fact, respondent has not performed its obligations with respect to items listed by purchasers in their three-day letters.

1. Respondent has frequently failed to correct listed defects.
2. Respondent has frequently failed to furnish missing items listed.
3. Respondent has frequently failed to replace defective items listed.
4. Where respondent has corrected, furnished, or replaced items listed, purchasers have frequently encountered long delays, often exceeding five months, from the time respondent received the three-day letter to the time respondent corrected the item.

PAR. 14. Respondent's failure to perform its obligations under the three-day letter has caused and causes substantial injury to consumers which they could not have reasonably avoided.

PAR. 15. Therefore, the statements, representations, acts and practices alleged in Paragraphs Eleven, Twelve and Thirteen were and are unfair, in violation of Section 5 of the Federal Trade Commission Act.

COUNT IV

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three (1.), Eleven, Twelve and Thirteen are incorporated by reference.

PAR. 16. The statements, representations, acts and practices alleged in Paragraphs Eleven and Twelve, directly or by implication, have had, and now have, the capacity and tendency to mislead the public and were, and now are, to the prejudice and injury of the public.

PAR. 17. Respondent continued to grant or disseminate the written warranty described in Paragraphs Three (1.) and Eleven to purchasers of its homes even though respondent knew or should have known of its failure to perform its obligations with respect to items listed by past purchasers in their three-day letters.

PAR. 18. Therefore, the statements, representations, acts and prac-

tices alleged in Paragraphs Eleven and Twelve were and are deceptive, in violation of Section 5 of the Federal Trade Commission Act.

COUNT V

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

PAR. 19. In the course and conduct of its business, respondent has provided purchasers with an opportunity to inspect its homes approximately three days before and approximately thirty days after settlement while accompanied by respondent's representative and to have all readily apparent defects or incomplete items listed on a "Pre-/Post-Settlement Inspection Report" or other inspection report provided by respondent.

PAR. 20. Respondent has represented, directly or by implication, that it will correct or complete all listed items within a reasonable time after the post-settlement inspection.

PAR. 21. In truth and in fact, respondent has not performed its obligations with respect to listed items.

1. Respondent has frequently failed to correct defects listed. Typical and illustrative of the uncorrected defects are the following: uneven or bulging floors; buckling or poorly installed carpeting; severely cracked drywall surfaces; damages or defective shingles or siding; and improperly installed or poorly fitted windows and doors.

2. Respondent has frequently failed to complete all incomplete items listed. Typical and illustrative of the incomplete items are the following: missing insulation; missing doors, screens and storm windows; unfinished driveways; missing tile or fixtures; and missing gutters, downspouts or splash blocks.

3. Where respondent has corrected or completed listed items, purchasers have frequently encountered long delays, often exceeding five months, from the time of the post-settlement inspection to the time respondent corrected or completed the item.

PAR. 22. Respondent's failure to perform its obligations with respect to items listed on the Pre-/Post-Settlement Inspection Report or other inspection report has caused and causes substantial injury to consumers which they could not have reasonably avoided.

PAR. 23. Therefore, the statements, representations, acts and practices alleged in Paragraphs Nineteen, Twenty and Twenty-One were and are unfair, in violation of Section 5 of the Federal Trade Commission Act.

COUNT VI

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Nineteen, Twenty and Twenty-One are incorporated by reference.

PAR. 24. The statements, representations, acts and practices alleged in Paragraphs Nineteen and Twenty, directly or by implication, have had, and now have, the capacity and tendency to mislead the public and were, and now are, to the prejudice and injury of the public.

PAR. 25. Respondent continued to use the inspection procedure described in Paragraph Nineteen even though respondent knew or should have known of its failure to perform its obligations to past purchasers with respect to items listed on the Pre-/Post-Settlement Inspection Report or other inspection report.

PAR. 26. Therefore, the statements, representations, acts and practices alleged in Paragraphs Nineteen and Twenty were and are deceptive, in violation of Section 5 of the Federal Trade Commission Act.

The acts and practices of respondent alleged in Counts I through VI are continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

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

Respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and 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 respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the

procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent The Korman Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 2 Neshaminy Interplex, in the City of Trevese, State of Pennsylvania.

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

ORDER

For purposes of this order and all appendices attached hereto, the following definitions shall apply:

1. *Korman* shall mean respondent The Korman Corporation and its successors and assigns.

2. *Home* shall mean a new single-family residential unit in the United States which is a detached structure or an attached or semi-attached townhouse or twin unit and which is offered for sale or is sold to the general public by Korman.

3. A *specific problem* shall mean any single problem or any set of problems resulting from the same cause and involving the same component(s) or defect(s). For example, two or more leaking windows caused by improper installation shall be deemed a *specific problem*.

I.

It is ordered, That respondent The Korman Corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the construction, advertising, offering for sale, or sale of any home in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing, directly or by implication, that Korman will correct or otherwise remedy any problem due to faulty materials, workmanship or design unless Korman does, in fact, correct or otherwise remedy such problem within a reasonable time after the homeowner

may specify the method(s) that a homeowner must use to so notify Korman.

B. Failing to perform any warranty obligation, including correction of any problem inadequately repaired by Korman, within a reasonable time after the homeowner has made a request for warranty work; *provided, however*, that Korman may specify in its warranty the method(s) that a homeowner must use to make such a request, and *provided further*, that nothing herein shall preclude Korman from denying or contesting in good faith a warranty claim reasonably believed to be without merit, or in such cases from invoking any rights provided by law.

C. Failing, when Korman represents, directly or by implication, that it will correct or otherwise remedy any problem not covered by a warranty, to correct or otherwise remedy such problem within a reasonable time after the homeowner has notified Korman of the problem; *provided, however*, that Korman may specify the method(s) that a homeowner must use to so notify Korman.

II.

It is further ordered, That, in connection with any offering for sale of a home for which Korman provides a written warranty, Korman shall:

A. Clearly and conspicuously display in each sales office a notice that a copy of the warranty may be obtained free of charge upon request.

B. Provide a copy of the warranty to each prospective purchaser upon request.

C. Provide a copy of the warranty to each purchaser before or at the time of execution of the sales contract for the home.

D. Disclose clearly and conspicuously within the warranty and within each sales contract used by Korman any limitations on, disclaimers of, or exclusions from coverage under the written warranty or under any warranty under state law; *provided, however*, that Korman shall not make any representation, written or oral, concerning any such limitation, disclaimer or exclusion where such limitation, disclaimer or exclusion is prohibited by state or federal law.

III.

It is further ordered, That, in connection with any sale after the date of service of this Order of a home for which Korman provides a written warranty, Korman shall use a dispute settlement process

conforming to Appendix A of this order to handle disputes concerning Korman's performance under the warranty and shall provide each purchaser with a written description of such dispute settlement process before or at the time of execution of the sales contract for the home; *provided, however*, that nothing herein shall prohibit Korman from using a form of sales contract which clearly and conspicuously provides that the homeowner agrees to resort to such dispute settlement process before pursuing any other remedy provided by law.

IV.

It is further ordered, That if after the date of service of this order Korman denies a request for warranty work Korman shall, within forty-five (45) days after receipt of the request, provide the homeowner with a detailed written statement of reasons for the denial, together with notice of the homeowner's right to submit any warranty dispute to a dispute settlement process conforming to Appendix A of this order and with notice that at the homeowner's request Korman will send the homeowner a written description of such process and the form(s) needed to initiate such process; *provided, however*, that Korman shall not be deemed to have denied a request for warranty work if it informs a homeowner who has made an oral complaint that a complaint must be made in writing.

V.

It is further ordered, That, for each homeowner who purchased a home from Korman from October 1, 1978, to the date of service of this order and who is still an owner of that home as of the date of service of this order, Korman shall establish and abide by redress procedures conforming to Appendix B of this order for any claim relating to the pre- or post-settlement inspection of such homeowner's home or made by such homeowner under Korman's written warranty, *provided*, that:

A. In the case of a claim relating to a pre- or post-settlement inspection, the problem had been listed on the Pre-/Post-Settlement Inspection Report or other inspection report at the time of the pre- or post-settlement inspection; or in the case of a warranty claim, the homeowner made the claim to Korman within the time period required by the warranty and there is credible written evidence in Korman's or the homeowner's possession to establish that the claim was then made; *provided, however*, that a record of a telephone mes-

sage in Korman's possession shall not by itself establish that the claim was then made;

B. The claim has not been satisfied, and the value of the unsatisfied claim relating to a specific problem is established by credible written evidence to be \$500 or more, measured:

1. For repairs already made, by the homeowner's out-of-pocket expenses to make the repairs or have them made; and
2. For repairs not yet made, by the estimated cost of repair by a contractor; and

C. In the case where the homeowner has modified the home in a manner that substantially increases the cost of repairing or otherwise correcting a problem, Korman shall not be required to bear the increase in cost of repair or correction resulting from the modification.

VI.

It is further ordered, That Korman shall maintain the following records and shall make such records available to the Commission for inspection and copying upon reasonable notice:

A. For three years after the date of service of this order, all documents related to requests for redress under Part V of this order, including action taken in response thereto; and

B. For three years after the sale of any home, all documents relating to any such home and to:

1. Korman's issuance of a written warranty to any purchaser;
2. Any request for warranty work, including action taken in response thereto; and
3. Any dispute handled under the dispute settlement process required by Part III of this order.

VII.

It is further ordered, That Korman shall notify the Commission at least thirty (30) days before any proposed change in Korman's corporate status, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

VIII.

It is further ordered, That Korman shall, within thirty (30) days of the date of service of this order, distribute a copy of this order to (a) each of Korman's operating subsidiaries and divisions, and (b) each officer and supervisory employee of Korman and of said subsidiaries and divisions who is engaged in the construction, advertising, offering for sale, or sale of any home or in customer service related to any home sold by Korman.

IX.

It is further ordered, That within ninety (90) days after the date of service of this order, and again within ninety (90) days after the completion of Korman's obligations under Part V of this order or within two years after the date of service of this order, whichever comes first, Korman shall file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this order.

X.

It is further ordered, That all provisions of this order except Part I shall expire ten (10) years after the date of service of this order.

APPENDIX A

Dispute Settlement Process

The dispute settlement process required by this order shall include the following:

1. The process shall be organized and staffed to ensure the fair and timely disposition of all disputes.
2. The process shall be available to homeowners for a filing fee of up to \$75 during the three years after the date of service of this order, a fee of up to \$100 during the fourth through sixth years after the date of service of this order, and a fee of up to \$125 thereafter. One filing fee shall cover multiple disputes that are filed simultaneously. The filing fee shall be refunded if each dispute filed under the fee is settled before a hearing is held under Paragraph 6 below.
3. After a homeowner files a dispute, written acknowledgement of the filing shall be sent to the homeowner.
4. The process shall use an independent Dispute Settler who is knowledgeable about home construction.
5. The Dispute Settler shall:
 - (a) Be bound by the provisions of Korman's written warranty and any express or implied warranties arising from state law and
 - (b) Use a consistent set of standards, such as the Home Owners Warranty Program

Quality Standards, relevant provisions of the building code in the jurisdiction in which the home is located, and other relevant information to interpret the warranty provisions.

6. Unless otherwise agreed to by the homeowner and Korman, the Dispute Settler shall hold a hearing and render a decision in writing within sixty (60) days after the dispute is filed or, if Korman is a participant in an informal dispute settlement procedure for which the Commission has granted an exemption to the 40-day requirement in 16 C.F.R. 703.5(d), within the time period established by such exemption, whichever is longer. The decision shall determine:

(a) What corrective action, if any, Korman shall take in response to the homeowner's warranty claim(s); and

(b) The time allowed after Korman receives the homeowner's acceptance of a decision for Korman to perform such corrective action or otherwise settle the dispute.

A copy of the decision shall be mailed to the homeowner within one week after the Dispute Settler renders the decision. If the homeowner is required by the sales contract to resort to this dispute settlement procedure before pursuing any other remedy provided by law, he/she will be deemed to have fulfilled that requirement if a decision is not rendered within the required time period.

7. The Dispute Settler's decision shall be binding on both Korman and the homeowner if the homeowner accepts the decision. If the homeowner rejects the decision, he/she shall have the right to pursue any other legal remedies available. At the time the homeowner receives a copy of the decision, he/she shall be provided with a form enabling him/her to accept the decision, along with notice that if the homeowner does not accept the decision by signing and returning it to Korman within forty-five (45) days of receiving a copy of the decision and the aforesaid form, the homeowner shall be deemed to have rejected the decision, and Korman shall be under no obligation to comply with the decision.

8. If the homeowner accepts the decision, Korman shall comply with the decision.

APPENDIX B

Redress Procedures

The redress procedures required by this order shall include the following:

1. Within sixty (60) days after the date of service of this order, Korman shall send by postage-paid first-class mail addressed to the original owner(s) of any home sold by Korman from October 1, 1978, to the date of service of this order a letter identical in content to that in Appendix C together with a copy of the written warranty for such home and claim forms identical in content to those in Appendix D; *provided, however*, that Korman is not required to make such a mailing to any home which Korman knows is no longer owned, in whole or in part, by any person who purchased the home from Korman.

2. Within sixty (60) days after the date of the mailing required by Paragraph 1, the homeowner shall mail or deliver a claim to Korman or forfeit any right to repairs or reimbursement under this order.

3. Within sixty (60) days after receipt of any claim for redress, Korman shall provide the homeowner with a written description of the dispute settlement process required by Paragraph 5 of this Appendix and with the form(s) needed to initiate such process and shall respond in writing to the homeowner by either:

(a) Offering to settle the claim within a stated time by performing specified remedial measures and/or paying an amount of money, and at the same time informing the homeowner of his/her right to accept or reject the offer, along with notice that:

(i) If the homeowner accepts the offer, he/she has the right to submit any dispute over Korman's performance under the offer to the dispute settlement process; and

(ii) If the homeowner rejects the offer, he/she has the right to submit the disputed claim to the dispute settlement process; or

(b) Denying the claim and at the same time giving the homeowner a detailed written statement of reasons for the denial, along with notice that the homeowner has the right to submit the denied claim to the dispute settlement process.

4. If the homeowner accepts the offered remedy, Korman shall perform the remedy within the time promised.

5. The dispute settlement process shall include the following:

(a) The process shall be organized and staffed to ensure the fair and timely disposition of all disputes.

(b) The process shall be available to homeowners for a filing fee of up to \$75. One filing fee shall cover multiple disputes that are filed simultaneously. The filing fee shall be refunded if a decision rendered under subparagraph (f) below includes an award of reimbursement of the filing fee.

(c) After a homeowner files a dispute, written acknowledgement of the filing shall be sent to the homeowner.

(d) The process shall use an independent Dispute Settler who is knowledgeable about home construction.

(e) To decide warranty claims and to decide claims relating to a pre- or post-settlement inspection, the Dispute Settler shall:

(i) Be bound by the provisions of Korman's written warranty, the relevant pre- or post-settlement inspection report, and any express or implied warranties arising from state law and

(ii) Use a consistent set of standards, such as the Home Owners Warranty Program Quality Standards, relevant provisions of the building code in the jurisdiction in which the home is located, and other relevant information to interpret the warranty provisions and the pre- or post-settlement inspection report.

(f) Unless otherwise agreed to by the homeowner and Korman, the Dispute Settler shall hold a hearing and render a decision in writing within sixty (60) days after the dispute is filed. The decision shall:

(i) Include reimbursement of the filing fee unless the arbitrator determines that each of the homeowner's claims was not substantially justified;

(ii) Determine what corrective action, if any, Korman shall take in response to the homeowner's warranty claim(s) or claim(s) relating to a pre- or post-settlement inspection; and

(iii) Determine the time allowed after Korman receives the homeowner's acceptance of a decision for Korman to perform such corrective action or otherwise settle the dispute.

A copy of the decision shall be mailed to the homeowner within one week after the Dispute Settler renders the decision.

(g) The Dispute Settler's decision shall be binding on both Korman and the homeowner if the homeowner accepts the decision. At the time the homeowner receives a copy of the decision, he/she shall be provided with a form enabling him/her to accept the decision, along with notice that:

(i) If the homeowner accepts the decision, both he/she and Korman shall be bound by the decision, and the homeowner shall have the right to submit any dispute over the actual performance of the decision to the dispute settlement process at no cost to the homeowner; *provided, however*, that the homeowner's submission of such dispute must be made within sixty (60) days after Korman's performance of the decision;

(ii) If the homeowner does not accept the decision, neither he/she nor Korman shall be bound by the decision, and the homeowner shall have the right to pursue any other legal remedies available; and

(iii) If the homeowner does not accept the decision by signing and returning it to Korman within forty-five (45) days of receiving a copy of the decision and the aforesaid form, the homeowner shall be deemed to have rejected the decision, and Korman shall be under no obligation to comply with the decision.

(h) If the homeowner accepts the decision, Korman shall comply with the decision.

APPENDIX C

Redress Letter

Dear Korman Homeowner:

This letter is to notify you that you may be entitled to have certain repairs made to your home at no cost to you. You may also qualify for reimbursement of money you have already spent repairing your home. Korman is doing this because of an agreement with the Federal Trade Commission and our desire to make you, the Korman homeowner, a comfortable and satisfied homeowner.

If you purchased your home from us on or after October 1, 1978, and if you were still the owner on (date of service of the order), you may be entitled to certain repairs or reimbursement for claims you made under Korman's written warranty or for items listed during the pre- or post- settlement inspection of your home. A copy of the warranty is enclosed.

For a warranty claim to be eligible for repairs or reimbursement, it must be a claim covered by the warranty and there must be credible written evidence that you made the claim within the time period required by the warranty. A claim related to a pre- or post-settlement inspection must be for a problem that was listed on your inspection report.

A claim is eligible for repair or reimbursement only if the claim relates to a specific problem and the value of the claim is \$500 or more. A "specific problem" is any single problem or a set of problems resulting from the same cause and involving the same component(s) or defect(s). For example, two or more leaking windows caused by improper installation would be a "specific problem." To determine whether a claim meets the \$500 requirement, you can measure the value of the claim like this:

For repairs which have already been done, the value of a claim is measured by your out-of-pocket expenses to make the repairs or have them made. You must have written evidence (cancelled checks, receipts, etc.) of your out-of-pocket expenses and must submit this evidence with your claim.

For repairs which have not yet been done, the value of a claim is measured by the

estimated cost of repair by a contractor. The contractor's estimate must be in writing and must be detailed enough to show how the estimate was calculated. You must submit the estimate with your claim.

Please note that if you have modified the part of your home affected by a problem, and if you made the modification in a manner that substantially increases the cost of repairing the problem, we will not bear the increase in repair cost resulting from the modification. For example, if you finished your basement and thus covered up a problem, we are not responsible for the cost of refinishing your basement after our repair work.

The eligibility requirements for warranty claims and for claims related to your pre- or post-settlement inspection are summarized below.

Warranty Claims

You are eligible for repairs or reimbursement under the warranty if all of the following are true:

1. You experienced a problem that was covered by the warranty. See the enclosed warranty for a description of covered problems.
2. You or Korman has credible written evidence that you made a claim concerning the problem within the time period required by the warranty. If you do not have a copy of a letter or some other record showing that you made a claim, we will check our customer files for any record of your complaint about the problem. If our files contain, for example, a letter from you or a Korman work order authorizing repair of the problem, this would show that you made a warranty claim. But a phone message in our files will not by itself establish that you made a claim.
3. The value of a claim related to a specific problem is \$500 or more.
4. Korman did not repair the problem or inadequately repaired the problem. Repair is considered to be inadequate if it failed to meet industry standards.

Claims Related to the Pre- or Post-Settlement Inspection

You are eligible for repairs or reimbursement for this type of claim if all of the following are true:

1. The problem was listed on your "Pre-/Post-Inspection Report" or other inspection report. If you do not have a copy of your inspection report, we will check our files for it.
2. The value of a claim related to a specific problem is \$500 or more.
3. Korman did not repair the problem or inadequately repaired the problem. Repair is considered to be inadequate if it failed to meet industry standards.

WHAT YOU MUST DO

If you think you are eligible for repairs or reimbursement, please fill out the enclosed "Claim Form" and mail it in the enclosed pre-addressed envelope to:

(Name)
The Korman Corporation
2 Neshaminy Interplex
Trevose, PA 19407

You must mail or deliver this claim form to us by (60 days from the mailing date of this

letter). If you miss this deadline, you will not be eligible for repairs or reimbursement. Remember to keep a copy of your claim and a record of the date you mail it, just in case your claim gets lost in the mail.

Korman will review your claim(s) in accordance with industry standards for home-builders. Within 60 days of receiving your letter we will tell you whether we will honor your claim. If we dispute any part of your claim, we will tell you why. If you are not satisfied with what we offer you as a repair or reimbursement, you will have the right to take the dispute to an impartial arbitrator. We will explain the details of the arbitration program when we reply to your claim.

If you have any questions about this repair and reimbursement program, call (name of Korman representative) at (phone number) between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday.

Very truly yours,

The Korman Corporation

Enclosures: Copy of your warranty
Claim forms
Self-addressed envelope

APPENDIX D

Claim Form

This claim form must be mailed or delivered to us by (60 days from the mailing date of the letter of notification). If you miss this deadline, you will not be eligible for repairs or reimbursement.

Today's date _____

I. HOMEOWNER INFORMATION

Name(s) of Homeowner(s) _____

Telephone (Home) _____

(Work) _____

Mailing Address _____

(Street)

(City)

(State)

(Zip Code)

II. ADDRESS OF KORMAN HOME

The address of my (our) Korman home is:

(Street)

(City)

(State)

(Zip Code)

(Name of Subdivision)

III. ELIGIBILITY TO SUBMIT A CLAIM

A. I (we) bought my (our) home:

MARK ONE () From Korman

() From another party

NOTE: To be eligible for repairs or reimbursement, you must have bought *directly* from Korman.

B. The date of settlement/closing on my (our) Korman home was:

(Enter date you took title)

NOTE: To be eligible for repairs or reimbursement, you must have bought your home *on or after October 1, 1978*.

C. On (date of service of the Order):

MARK ONE () I was (we were) the owner of this Korman home.

() I was (we were) no longer the owner of the Korman home.

NOTE: To be eligible for repairs or reimbursement, you must have been the owner as of (date of service of the Order).

IV. WARRANTY CLAIMS

Instructions

- List each problem separately, using additional sheets of paper if necessary.
- Remember that each problem must have a value of \$500 or more.
- Describe in detail the nature of each problem.
- Attach a copy (*not* originals) of any written evidence you have that shows you made a claim concerning the problem within the time period required by the warranty. This can be a copy of a letter or any other record showing that you notified us about the problem. If you do not have written evidence that you made a warranty claim about a problem, we will check our customer files to see if we have any record showing that you made a claim within the warranty time period. A telephone message in our files will not by itself establish that you made a timely warranty claim. *If there is no other written evidence in either our possession or yours that you made a timely claim, we can deny your claim for a problem.*
- If you are requesting repair of a problem, describe the repair below and attach a copy (*not* the original) of a contractor's estimate of the cost of repair. The contractor's estimate must be detailed enough to show how the estimate was calculated.
- If you are requesting reimbursement of money you spent for repairs, describe the repairs and your expenses below and attach a copy (*not* originals) of cancelled checks or receipts showing that you paid for repairs. Also attach a copy (*not* originals) of any other document(s) showing what repairs were made and what you paid for them.

Claim(s) for repairs or reimbursement under the warranty

I (we) request The Korman Corporation to make repairs or reimbursement under the warranty for the following problem(s):

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Decision and Order

[Describe the repairs which you request and/or the repairs and expenses for which you request reimbursement]

V. CLAIMS RELATED TO THE PRE-SETTLEMENT OR POST-SETTLEMENT INSPECTION

Instructions

- List each problem separately, using additional sheets of paper if necessary.
- Remember that each problem must have a value of \$500 or more.
- Describe in detail the nature of each problem.
- Attach a copy (*not* originals) of your "Pre-/Post-Settlement Inspection Report" or other inspection report. If you do not have your inspection report, we will look for it in our files. If a problem was not listed on the inspection report, it is *not* eligible for repair or reimbursement.
- If you are requesting repair of a problem, describe the repair below and attach a copy (*not* the original) of a contractor's estimate of the cost of repair. The contractor's estimate must be detailed enough to show how the estimate was calculated.
- If you are requesting reimbursement of money you spent for repairs, describe the repairs and your expenses below and attach a copy (*not* originals) of cancelled checks or receipts showing that you paid for repairs. Also attach a copy (*not* originals) of any other document(s) showing what repairs were made and what you paid for them.

Claim(s) for repairs or reimbursement under the pre- or post-settlement inspection

I (we) request The Korman Corporation to make repairs or reimbursement for the following problem(s) related to the pre- or post-settlement inspection:

[Describe the repairs which you request and/or the repairs and expenses for which you request reimbursement]

IN THE MATTER OF

CRAFTMATIC/CONTOUR ORGANIZATION, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF THE
FEDERAL TRADE COMMISSION ACT AND THE MAGNUSON-MOSS
WARRANTY—FEDERAL TRADE COMMISSION IMPROVEMENT ACT

Docket C-3156. Complaint, June 13, 1985—Decision, June 13, 1985

This consent order requires two Trevoise, Pa. sellers of electric adjustable beds and their individual owner, among other things, to cease denying responsibility of their written warranties; failing to fully and promptly honor valid warranty claims; and failing to disclose relevant information concerning any other guarantor. The firms are required to clearly and prominently disclose in advertisements and promotional materials offering any product warranty, either the nature and extent of all material limitations and exclusions of the warranty (including any requirement that consumers seeking to obtain warranty performance are obliged to arrange for shipping and/or pay shipping charges) or a statement advising that the warranty contains major limitations and exclusions and should be consulted by the prospective buyer prior to purchase. The order also bars the companies from disseminating to their door-to-door sellers written promotional materials that do not contain copies of all written warranties offered and disclose to prospective buyers that the sales representative has copies of such warranties available for the consumer's inspection. The companies are further required to comply fully with the Pre-Sale Availability Rule; maintain specified records concerning warranty performance for a period of four years; and provide their current distributors and retailers with a copy of the order and the attached notice.

Appearances

For the Commission: *Rachel Miller.*

For the respondents: *Charles B. Chernofsky, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, amended, and of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act ("Warranty Act") and the implementing Rules promulgated under the Warranty Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Craftmatic/Contour Organization, Inc., Craftmatic Comfort Mfg. Corp., corporations, and Stanley Kraft, individually and as an officer and director of said corporations, respondents") have violated the provisions of those Acts and implementing Rules, and it appearing to the Commission that a proceeding

by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

I

PARAGRAPH 1. Respondent Craftmatic/Contour Organization, Inc., ("Craftmatic/Contour") is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania. Respondent Craftmatic/Contour is wholly-owned by below-named respondent Stanley Kraftsow. Respondent Craftmatic/Contour was formerly named Craftmatic Wholesale, Inc., ("CWI"), and was a wholly-owned subsidiary of Kraftsow Organization, Inc., ("KOI"), a Delaware corporation, which in turn was wholly-owned by respondent Stanley Kraftsow. On or about April 1, 1984, CWI was merged with KOI and with Contour Inc. of Pa. ("Contour"), a former Pennsylvania corporation and wholly-owned subsidiary of KOI. Prior to January 1, 1982, Contour was wholly-owned by respondent Stanley Kraftsow.

Respondent Craftmatic Comfort Mfg. Corp. ("CCM") is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania. Prior to January 1, 1982, respondent CCM was wholly-owned by respondent Stanley Kraftsow. From January 1, 1982 to April 1, 1984, respondent CCM was a wholly-owned subsidiary of KOI. Since April 1, 1984, respondent CCM has been a wholly-owned subsidiary of Contour Chair-Lounge Co., Inc., a Missouri corporation whose common stock is wholly-owned by respondent Stanley Kraftsow.

The principal office and place of business of the two corporate respondents is 2500 Interplex Drive, Trevese, PA.

Respondent Stanley Kraftsow ("Kraftsow") is an individual and is, and for some time past has been, the principal officer and director of respondents Craftmatic/Contour and CCM. Respondent Kraftsow was also the principal officer and director of Contour and KOI during their existence. Respondent Kraftsow also is and has been the sole shareholder of respondent Craftmatic/Contour and of Contour Chair-Lounge Co., Inc. Individually, or in concert with others, respondent Kraftsow has directed, controlled and formulated the business practices of respondents Craftmatic/Contour and CCM, and of Contour and KOI during their existence, including the acts and practices alleged in this complaint. His business address is the same as that of the corporate respondents. His residential address is 120 Surrey Road, Melrose Park, PA.

PAR. 2. Respondents Craftmatic/Contour and Kraftsow are now, and for some time past have been, engaged in the business of distribu-

tion, advertising, offering for sale and sale of electric adjustable beds and other products to the public directly and through distributors and retailers.

Respondent CCM was also engaged in such business until about January 1, 1982.

Respondents have cooperated and acted together as a single business entity in carrying out the acts and practices set forth below.

PAR. 3. In the course and conduct of their business, respondents have distributed, advertised, offered for sale or sold, or caused to be distributed, advertised, offered for sale or sold, respondents' products in more than 25 states. Respondents therefore have engaged in a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business, respondents have offered and advertised warranties identifying respondents as warrantor, both to consumers who purchase respondents' products from respondents or their representatives and to consumers who purchase respondents' products through distributors or retailers. Respondents' products are "consumer products," the warranties described herein are "written warranties" offered to "consumers" on "consumer products" distributed in "commerce," and respondents are "warrantors", as these terms are defined in the Warranty Act. Respondents' products are also "consumer products," the warranties described herein are "written warranties," and respondents are "warrantors," as defined in the Federal Trade Commission's Rule on Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Availability Rule"), 16 C.F.R. 702, implementing Section 102(b)(i)(A) of the Warranty Act. Respondents have also offered for sale and sold their products for purposes other than resale or use in the ordinary course of the buyer's business, by means of personal solicitation by respondents or their sales representatives at the buyer's home. Respondents are therefore "sellers" of "consumer products" by means of "door-to-door sales," as these terms are defined in the Pre-Sale Availability Rule.

II

The allegations of Paragraphs One through Four above are incorporated by reference in this Part as though fully set forth below.

PAR. 5. By means of the offer and advertisement of said warranties, respondents have represented, directly or by implication, to consumers who purchase respondents' products through distributors, that respondents will fully and promptly honor the warranties extended to such consumers.

instances to honor, fully and promptly as represented, warranties issued to such consumers purchasing respondents' products through distributors.

PAR. 7. The acts and practices alleged in Paragraphs Four through Six above are misleading, deceptive and unfair.

PAR. 8. Further, respondents have expressly represented to consumers and to others that respondents have no obligation or legal liability under such warranties issued to consumers purchasing respondents' products through distributors.

PAR. 9. In truth and in fact, respondents are legally obligated to perform according to their warranties, under Section 107 of the Warranty Act and other laws. The representations alleged in Paragraph Eight above are therefore false, deceptive and misleading.

III

The allegations of Paragraphs One through Four above are incorporated by reference in this Part as though fully set forth below.

PAR. 10. Respondents have failed in numerous instances to make copies of their written warranties available, prior to sale, to prospective buyers of respondents' products from respondents or their sales representatives, as required by Section 702.3(d)(2) of the Pre-Sale Availability Rule.

PAR. 11. Respondents have failed in numerous instances to disclose, in their written materials that are shown to prospective buyers of respondents' products from respondents or their sales representatives, the availability of written warranties offered with respect to such products as required by Section 702.3(d)(2) of the Pre-Sale Availability Rule.

PAR. 12. Respondents have failed in numerous instances to provide to distributors of respondents' products copies of respondents' written warranties as needed for such distributors to comply with Section 702.3(d)(2) of the Pre-Sale Availability Rule. Such failure is in violation of Section 702.3(b)(1)(ii) of the Pre-Sale Availability Rule.

PAR. 13. Respondents' violations of the Pre-Sale Availability Rule as alleged in Paragraphs Ten through Twelve above violate the Warranty Act, and, by virtue of Section 110(b) of that Act, violate Section 5(a)(1) of the Federal Trade Commission Act as well.

IV

The allegations of Paragraphs One through Four are incorporated by reference in this Part as though fully set forth below.

PAR. 14. Respondents' warranties have contained provisions obli-

gating consumers seeking warranty performance to return the defective product or component for repair or replacement. Typical and illustrative of such provisions is the following:

If you believe that you have a claim under this Limited Warranty, you should . . . deliver back to the [selling] dealer the mattress or foundation. This Warranty does not include any responsibility for transportation of the said mattress or foundation, which will be the responsibility of the customer.

By means of such provisions, all costs and efforts of dismantling, packaging, shipping both directions and reassembly have been made the responsibility of the consumer. This obligation is a material term of respondents' warranties.

PAR. 15. Respondents have advertised certain of their warranties' terms in written materials provided or shown to prospective purchasers at or before sale. Typical and illustrative of such advertising is the following:

COIL SPRING MATTRESS COMES WITH 15-YEAR LIMITED WARRANTY. If during the first year after original delivery there should be any factory defect in material or workmanship, Craftmatic will repair or replace it free of charge for parts and labor. Between the second and fifteenth year, we will replace your mattress with a new one, making a prorata charge for the months beyond the first twelve after it had been first delivered. So far as we know, this is the most liberal guarantee of any manufacturer in the country.

These materials fail to disclose the obligation described in Paragraph Fourteen above to return a defective item at the consumer's cost.

PAR. 16. By means of the materials described in Paragraph Fifteen above, respondents have represented directly or by implication that the stated terms are a true and complete statement of the material warranty benefits and obligations offered by respondents as to respondents' mattresses.

PAR. 17. In truth and in fact, the stated terms as described in Paragraph Fifteen above are not a true and complete statement of the material warranty benefits and obligations offered by respondents as to respondents' mattresses. Therefore the representation alleged in Paragraphs Fifteen and Sixteen above is false and deceptive.

PAR. 18. The acts and practices as alleged herein all have the capacity and tendency to mislead members of the purchasing public.

PAR. 19. The acts and practices as alleged herein are all to the prejudice and injury of the public and constitute unfair and deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act. The acts and practices as alleged herein are continuing and will continue in the absence of the

U. S. District Court requested

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 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 Magnuson-Moss Warranty—Federal Trade Commission Improvement Act and the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 Craftmatic/Contour Organization, Inc., ("Craftmatic/Contour") is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania. Respondent Craftmatic/Contour is wholly-owned by below-named respondent Stanley Kraftsow. Respondent Craftmatic/Contour was formerly named Craftmatic Wholesale, Inc., ("CWI"), and was a wholly-owned subsidiary of Kraftsow Organization, Inc., ("KOI"), a Delaware corporation, which in turn was wholly-owned by respondent Stanley Kraftsow. On or about April 1, 1984, CWI was merged with KOI and with Contour Inc. of Pa. ("Contour"), a former Pennsylvania corporation and wholly-owned subsidiary of KOI. Prior to January 1, 1982, Contour was wholly-owned by respondent Stanley Kraftsow.

Respondent Craftmatic Comfort Mfg. Corp. ("CCM") is a corpora-

tion organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania. Prior to January 1, 1982, respondent CCM was wholly-owned by respondent Stanley Kraftsow. From January 1, 1982 to April 1, 1984, respondent CCM was a wholly-owned subsidiary of KOI. Since April 1, 1984, respondent CCM has been a wholly-owned subsidiary of Contour Chair-Lounge Co., Inc., a Missouri corporation whose common stock is wholly-owned by respondent Stanley Kraftsow.

The principal office and place of business of the two corporate respondents is 2500 Interplex Drive, Trevoise, PA.

Respondent Stanley Kraftsow ("Kraftsow") is an individual and is, and for some time past has been, the principal officer and director of respondents Craftmatic/Contour and CCM. Respondent Kraftsow was also the principal officer and director of Contour and KOI during their existence. Respondent Kraftsow also is and has been the sole shareholder of respondent Craftmatic/Contour and of Contour Chair-Lounge Co., Inc. Individually, or in concert with others, respondent Kraftsow has directed, controlled and formulated the business practices of respondents Craftmatic/Contour and CCM, and of Contour and KOI during their existence, including the acts and practices alleged in this complaint. His business address is the same as that of the corporate respondents. His residential address is 120 Surrey Road, Melrose Park, PA.

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

The definition of *commerce* contained in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, shall apply to this order.

The definitions of *written warranty*, *consumer*, and *consumer product* contained in Section 101 of the Magnuson-Moss Warranty Act ("Warranty Act"), 15 U.S.C. 2301, shall apply to this order except as noted below.

The definitions of *consumer product*, *written warranty*, *seller*, *door-to-door sale*, and *prospective buyer* contained in the Federal Trade Commission's Rule on Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Availability Rule"), 16 C.F.R. 702, implementing Section 102(b)(1)(A) of the Warranty Act, shall apply to Part IV of this

I

It is ordered, That respondents Craftmatic/Contour Organization, Inc., and Craftmatic Comfort Mfg. Corp., corporations, and Stanley Kraftsow, individually and as an officer and director of said corporations, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the distribution, advertising, offering for sale or sale of any bed or other consumer product in or affecting commerce, do forthwith cease and desist from representing, directly or by implication, that any such product carries a written warranty, if that warranty is offered or issued by anyone other than a respondent, its successor or assign, without:

a. Disclosing, clearly and prominently with such representation, that the warranty is not offered or issued by any respondent, its successor or assign; and

b. Identifying, clearly and prominently with such representation, who does offer the warranty.

II

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering or issuance of any written warranty with respect to any consumer product distributed, advertised, offered for sale or sold in or affecting commerce, do forthwith cease and desist from:

a. Denying that respondents, their successors and assigns are responsible for performance of such written warranty; and

b. Failing to honor and satisfy, fully and within a reasonable time, every valid claim arising under such written warranty;

Provided, That, if any respondent, its successor or assign designates any representative to perform duties under a written warranty, that respondent or its successor or assign and that representative may allocate among themselves costs for warranty performance in any manner consistent with the requirements of Section 107 of the Warranty Act, 15 U.S.C. 2307, but such designation or allocation shall not relieve respondents, their successors and assigns, and their officers, agents, representatives, and employees of their direct obligation to honor and satisfy, fully and within a reasonable time, every valid claim arising under the written warranty, and

Provided further, That, if any such product is offered for sale or sold

with a warranty that clearly and prominently identifies the selling dealer as the sole warrantor obligated to honor the warranty, and if the selling dealer for that product is not a respondent, its successor or assign, then this provision of the order shall not apply to that warranty on that product.

III

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives and employees, within thirty (30) days after receiving notice of a request for such satisfaction, shall honor and satisfy fully every valid claim arising under any outstanding written or implied warranty offered or issued by any respondent, its successor or assign with respect to any adjustable bed or chair, or component or accessory thereof, in or affecting commerce, if that claim was originally lodged with any distributor, retailer or respondent, its successor or assign, orally or in writing, prior to the date of service of this order; and, upon concluding reasonably and in good faith that any person requesting such satisfaction for such a claim is not entitled to all or part of the relief requested under any applicable written or implied warranty, and upon choosing to deny the request in whole or in part based upon such conclusion, shall send to the requester a written notice explaining the denial and the reasons therefor (a signed statement from the requester, or from another person with such knowledge, that such claim was lodged prior to the date of service of this order, shall be sufficient evidence of such lodging for purposes of this order provision); *provided,* that, if any respondent, its successor or assign designates any representative to perform duties under any warranty, that respondent or its successor or assign and that representative may allocate among themselves costs for warranty performance in any manner consistent with the requirements of Section 107 of the Warranty Act, 15 U.S.C. 2307, but such designation or allocation shall not relieve respondents, their successors and assigns, and their officers, agents, representatives, and employees of their direct obligation to honor and satisfy claims and provide notice of denials as specified herein.

IV

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in con-

any consumer product in or affecting commerce, do forthwith cease and desist from:

a. Failing to give to every buyer of any such consumer product in a door-to-door sale, prior to or upon execution of the sale, a copy of every written warranty offered or issued with respect to that consumer product, *provided*, that, giving to a buyer a copy of a sales contract with such a written warranty printed clearly and legibly on the reverse side, and with a clear and prominent reference on the face to the warranty on the reverse side, shall satisfy this requirement as to that warranty for that buyer.

b. Disseminating to any door-to-door seller any written materials intended to be shown to any prospective buyer of any such consumer product in a door-to-door sale offer, that fail to contain:

i. Copies of every written warranty offered or issued with respect to that consumer product; and

ii. A clear and prominent disclosure that the sales representative has copies of such warranties, which may be inspected by the prospective buyer at any time during the sales presentation.

c. Failing to comply fully with the Pre-Sale Availability Rule, as amended from time to time.

V

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the preparation, approval or dissemination of any advertising or promotional material that is mailed, shipped or shown to any consumer and that describes any written warranty offered or issued with respect to any consumer product distributed, advertised, offered for sale or sold in or affecting commerce, do forthwith cease and desist from failing to disclose, clearly and prominently, either:

a. The nature and extent of all material limitations and exclusions of the warranty, including any requirement that consumers arrange or pay any charge for shipping, or pay a servicer or truck travel or similar charge, in order to obtain performance under the warranty; or

b. The following:

i. That there are other major limitations and exclusions of the warranty and that customers should consult the warranty before making a purchase; and

ii. Where any such material describes the warranty as free of charge for parts and labor and the warranty requires any consumer to arrange or pay any charge for shipping, or to pay a servicer or truck travel or similar charge, in order to obtain performance under the warranty: the fact that there may be costs for shipping or such other requirement.

VI

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from requiring any consumer who purchased any adjustable bed, bed component, or bed accessory prior to the date of service of this order to arrange or pay any charge for shipping, or to pay any servicer or truck travel or similar charge, in order to obtain performance under any written warranty.

VII

It is further ordered, That respondents shall, within thirty (30) days of the date of service of this order, send to each current distributor and retailer of respondents' consumer products, a copy of this order together with the attached notice.

VIII

It is further ordered, That respondents and their successors and assigns shall maintain for at least four (4) years after the date of each record's generation, and upon request shall make available to the Federal Trade Commission for inspection and copying, the following records as to each consumer who purchases a consumer product with a written warranty offered or issued by any respondent, its successor or assign, or its officer, agent, representative or employee, directly or through any corporation, subsidiary, division or other device:

- a. The name and address of the consumer;
- b. The name of the dealer from whom the product is purchased;
- c. For each request for service or other action under any such written warranty or under any implied warranty, and for each complaint concerning any such written warranty or any implied warranty, whether submitted in writing or orally:
 - i. A description of the problem, the action requested, the firm or

firms receiving the request or complaint, and the date or dates of receipt;

ii. A copy or description of all replies given to the request or complaint, and by whom; a description of all actions taken, and by whom, in response to the request or complaint; and the date of each such reply and of each such action;

iii. A description of any payment sought from a consumer, the reason for seeking the payment, and the amount received from the consumer, if any; and

iv. Any later service requested or complaint made by or on behalf of the consumer concerning the product.

IX

It is further ordered, That respondents shall distribute a copy of this order to all of respondents' divisions and to all present and future officers, agents, representatives, and employees of respondents having responsibilities with respect to the subject matter of this order.

X

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

XI

It is further ordered, That respondent Stanley Kraftsow shall promptly notify, as described herein, the Commission of any discontinuance of his present business or employment and of his affiliation with any new business or employment, and that, for a period of ten (10) years from the date of service on him of this order, respondent Stanley Kraftsow shall promptly notify, as described herein, the Commission of each affiliation with a new business or employment whose activities include the offering or issuance of written warranties, or of his affiliation with any new business or employment in which his own duties and responsibilities involve offering or issuance of written warranties. Such notice shall include respondent Stanley Kraftsow's new business address and a statement of the nature of the business or

employment in which respondent Kraftsow is newly engaged as well as a description of respondent Kraftsow's duties and responsibilities in connection with the business or employment.

XII

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

ATTACHMENT TO ORDER

TO ALL OUR DISTRIBUTORS AND DEALERS

Craftmatic has recently signed an agreement with the Federal Trade Commission concerning our warranty policies. A copy of that agreement is attached for your information. The discussion below summarizes the agreement and tells you how the agreement affects you.

WARRANTY PERFORMANCE ON WARRANTIES NOW IN THE FIELD

We have agreed that we are responsible for making sure these warranties are fully and promptly honored, even where one of you has sold the product. Under the terms of our arrangement with you, you are responsible for providing full and prompt performance of these warranties. You should understand that when you handle these warranties, you do so as our representative, and we are required to make sure they are handled properly. We will keep you informed of all our policies and procedures for handling claims for these warranties.

We have also agreed to make sure that any outstanding warranty claims from any of your customers are properly taken care of within 30 days after we learn of such a claim. Please help us handle these claims, for any customer in your area.

In addition we have agreed that certain records about warranty performance under the outstanding Craftmatic warranty will be kept. You need to keep these records for your customers who receive that warranty. We are sure that these records will assist you in performing under the warranty and accounting for your performance should that ever become necessary. As to each customer you have sold, please keep:

The customer's name and address.

A record of each request for service or other action under warranty, and of each warranty complaint, regardless of whether it is made orally or in writing, including:

A description of the problem, what the customer asked for, and the date you received the request or complaint;

A copy or description of every reply made, and the date;

A description of every action taken about the matter, and the date;

Any charge (whether or not collected): the reason for the charge and the amount collected;

If the request or complaint was received or handled in any way by Craftmatic (Pennsylvania) or any other firm, similar records of such receipt and handling; and

Any later requests for service or complaints by or on behalf of that customer.

Keep in the file any letters you receive and a copy of any letters you send.

ISSUANCE OF FUTURE WARRANTIES

As you know, under our agreement with you, you have always been responsible to your customers for full and prompt performance of their warranties. We have decided that in the future any warranties on the products you sell will clearly state they are offered not by Craftmatic but by you. You will be responsible to your customers for performance of those warranties. We will only warrant the products we sell to our retail customers.

We plan to rewrite the warranty to make it clear that the warrantor, the only firm obligated to honor the warranty, is the selling dealer in each case. A sample copy of the revised warranty document is enclosed.

Of course, if you have a problem with a claim for warranty performance that you cannot handle comfortably, please feel free to contact us. We will still do our utmost to help you resolve the problem.

We also suggest that you continue to keep records like those described above for customers to whom you offer your warranty. Such records can assist you in ongoing performance of your warranty.

WARRANTY AVAILABILITY BEFORE SALE

We have agreed to give a copy of our warranty, at the sales presentation, to every customer who buys from us.

We have also agreed to include a copy of our warranty in every pitch book we send you, and to add to the sales pitch and sales materials we send you a statement that the warranty is available for customers to read before buying our products. You should know that, under federal law, door-to-door sellers must bring copies of any warranties on the products they sell to the sales presentation, and must disclose, both orally and in any written materials, that the customer can read the warranties before buying. We have enclosed revised sales materials that include the statement and the warranty itself. You should let us know how many sets of materials you need. Also, you must be sure to make these disclosures in every sales call.

ADVERTISING AND BROCHURE

We are revising our advertisements and sales materials to delete any impression that we offer a warranty on the products sold by selling dealers other than us. We have agreed that, if we make any reference in these materials to a warranty, we will make it clear who actually gives the warranty. You should be careful also, in your sales presentations, not to let your customers think that the warranty is from Craftmatic.

Also, we have agreed that, if we discuss a warranty in our brochure, New Dimensions in Bedroom Luxury, we will disclose any warranty term requiring customers with warranty claims to return the defective part at their cost. This would apply to any other mailers that discuss a warranty as well. We have enclosed samples of the revised brochure.

TRANSPORTATION CHARGES

We have agreed not to charge for transportation or truck travel for any warranty

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service needed, for beds now in the field. Since you do warranty service under our old warranty, this means that you will not be able to make those charges either. Beds sold after the date of this agreement are not subject to this restriction.

[signature]

Enclosures