

Complaint

116 F.T.C.

IN THE MATTER OF

ION SYSTEMS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3451. Complaint, July 29, 1993--Decision July 29, 1993*

This consent order prohibits, among other things, a California corporation from misrepresenting the contents, validity, results, conclusions or interpretations of any test or study with respect to the NO-RAD System or any other radon-remediation device, or from knowingly selling components of the system to others who make unsubstantiated performance claims about them. The consent order requires the respondent to have competent and reliable scientific evidence to substantiate representations it makes about any performance characteristics of any radon-remediation device.

Appearances

For the Commission: *Phoebe D. Morse* and *Pamela A. Wood*.
For the respondent: *Mark Ostrau, Fenwick & West*, Palo Alto,
CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Ion Systems, Inc., a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Ion Systems, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California. Respondent's office and principal place of business is located at 2546 Tenth Street, Berkeley, California.

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

PAR. 3. Respondent advertised, offered for sale, sold and distributed a device for removing the harmful byproducts of radon gas from the room in which it is operating. The device is called the NO-RAD Radon Removal System (hereinafter, the “NO-RAD System”). Respondent also offers for sale, sells, and distributes components of the NO-RAD System for use by third parties in the manufacture of NO-RAD Systems.

PAR. 4. In the course and conduct of its business, in order to induce the sale of the NO-RAD System, respondent has disseminated or caused the dissemination of advertisements and promotional materials. Respondent’s advertisements and promotional materials for its NO-RAD System include, but are not necessarily limited to, the advertisements and promotional materials attached hereto as Exhibits A and B. These advertisements and promotional materials contain the following statements:

1. Tested by the Harvard University School of Public Health, this compact floor unit removes up to 90% of the dangerous radon decay particles in your home. (Complaint Exhibit A).

2. The NO-RAD Radon Removal System was developed by Drs. Moeller, Maher, and Rudnick at the School of Public Health, Harvard University, in collaboration with Ion Systems, Inc. The NO-RAD System is the only system that has been proven in their laboratory and field tests to be up to 90% effective in removing both attached and unattached radon decay products and in reducing the associated dose to the lungs. ...Proven effective in removing 90% of the radon decay product concentrations. (Complaint Exhibit B).

3. Proven effective in removing 90% of the radon decay product concentrations. (Complaint Exhibit B).

4. The NO-RAD System has been designed and developed by Ion Systems, Inc. in collaboration with a team of researchers at the Harvard School of Public Health. . . . In tests performed in a special laboratory test chamber at the Harvard School of Public Health, the NO-RAD system produced up to a 90% reduction in airborne radon decay product concentrations. (Complaint Exhibit B).

5. TECHNICAL SPECIFICATIONS. Radon Removal Effectiveness: Up to 90% reduction in radon decay product concentrations. (Complaint Exhibit B).

PAR. 5. Through the use of statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that:

1. Tests prove that the NO-RAD System removes 90% or up to 90% of the radon decay products in the home.
2. Tests prove that the NO-RAD System reduces the user's risk of developing radon-related lung cancer by up to 90%.
3. The NO-RAD System has been tested and proven effective by the Harvard University School of Public Health.

PAR. 6. In truth and in fact:

1. Tests do not prove that the NO-RAD System removes 90% or up to 90% of the radon decay products in the home.
2. Tests do not prove that the NO-RAD System reduces the user's risk of developing radon-related lung cancer by up to 90%.
3. The NO-RAD System has not been tested and proven effective by the Harvard University School of Public Health.

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

PAR. 7. Through the use of statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that:

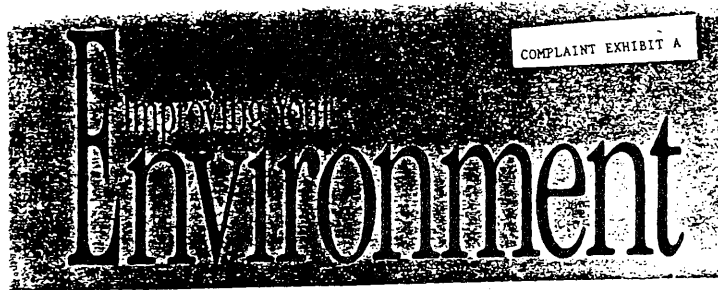
1. The NO-RAD System reduces radon decay products in the home by 90% or close to 90% in an appreciable number of cases under circumstances normally and expectably encountered by consumers.
2. The NO-RAD System reduces the user's risk of developing radon-related lung cancer by 90% or close to 90% in an appreciable number of cases under circumstances normally and expectably encountered by consumers.

PAR. 8. Through the use of statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph seven, respondent possessed and relied upon a reasonable basis for such representations.

PAR. 9. In truth and in fact, at the time respondent made the representations set forth in paragraph seven, respondent did not possess and rely upon a reasonable basis for such representations. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. The dissemination by respondent of the aforesaid false and misleading representations constituted, and now constitutes, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A



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A. RADON REMOVING/AIR CLEANING SYSTEM. Tested by the Harvard University School of Public Health, this compact floor unit removes up to 90% of the dangerous radon decay particles in your home. Its patented ionizing system combines positive ion emissions and an intermittent negative cycle with a dual-stage filtration system and 3-speed fan to collect and trap radon particles more effectively than high-efficiency filters and electrostatic cleaners. In addition, the system also removes particles of dust, smoke and pollen as small as 1/1000 of a micron. Its 3-speed bassock fan and 360° vent design allows optimal air cleaning and circulating effectiveness in areas as large as 300 square feet. Height: 12". Diameter: 16". Weight: 19 lbs.
30617H \$350.00



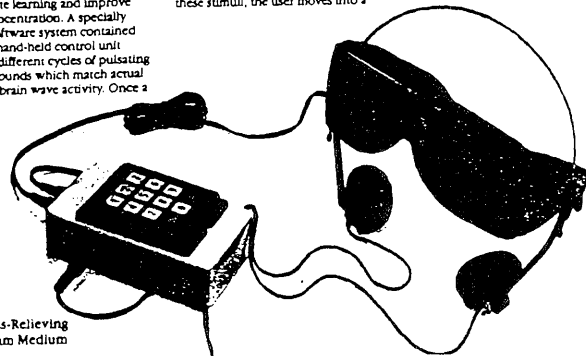
A. Radon Removing/Air Cleaning System

B. STRESS-RELIEVING DREAM MEDIUM. The only device of its kind available for personal use, this computer-directed audio/visual component system guides your mind into a state of deep relaxation to reduce stress, enhance creativity, accelerate learning and improve levels of concentration. A specially designed software system contained within the hand-held control unit directs ten different cycles of pulsating lights and sounds which match actual patterns of brain wave activity. Once a

program is chosen, a series of soothing lights, seen through closed eyes behind tinted glasses, synchronizes in the user's mind with easy-listening sounds channeled into the headset. Mentally harmonizing with the frequencies of these stimuli, the user moves into a

state of deep relaxation and heightened creativity normally experienced while dreaming. Programs vary from 15 to 75 minutes. Adaptor included. A rechargeable battery pack may be purchased separately for use outdoors or while traveling. Weight: 1.15 lbs.
33574H \$350.00
33575H Rechargeable Battery Pack \$65.00

C. EARTHQUAKE DETECTION ALARM. This compact wall-mounted device effectively detects the sonic waves that precede a major earthquake and warns you ahead of time with a loud, pulsating alarm. Sensing the low-frequency "P"-type waves that travel twice as fast as an earthquake's devastating shock waves, it affords up to 30 seconds of warning time before a quake of 5.0 or more on the Richter scale actually strikes. Runs on one 9-volt battery (included); automatic reset. Hardware for wall or ceiling mounting is included. Width: 6". Height: 5 1/2". Depth: 1 1/2".
32553H \$34.95



B. Stress-Relieving Dream Medium

ION SYSTEMS INC.

740

745

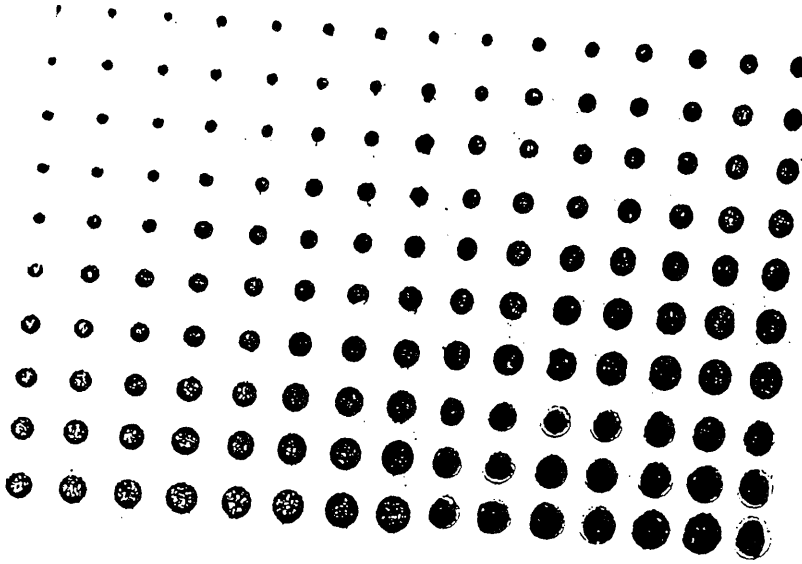
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EXHIBIT B

NO-RAD™
RADON REMOVAL SYSTEM

COMPLAINT EXHIBIT B
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MODEL
1000



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EXHIBIT B

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B143266**NO-RAD™**
RADON REMOVAL SYSTEMMODEL
1000

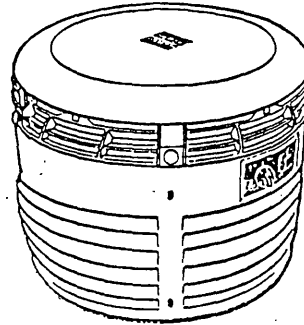
The NO-Rad Radon Removal System was developed by Drs. Moeller, Maher and Rudnick at the School of Public Health, Harvard University. In collaboration with Ion Systems Inc. The NO-RAD System is the only system that has been proven in laboratory and field tests to be up to 90% effective in removing both attached and unattached radon decay products, reducing the associated dose to the lungs; NO-RAD also acts as a powerful air cleaner and ionizer; cleaning the air of other pollutants including dust, smoke, pollen and bacteria and helping to replenish the number of ions lost from the air. In fact, because of its unique characteristics, the NO-RAD Radon Removal System has been granted a patent by the U.S. Patent Office.

NO-RAD is 90% effective in removing 90% of the radon decay product concentrations. *Harvard Research Report available upon request.

NO-RAD removes airborne pollution including dust, smoke, pollen and bacteria; filtering out particles as small as 1/1000 micron. NO-RAD acts as an ionizer, replenishing the natural supply of air ions. NO-RAD has a longer filter life due to 2-stage filtration system. NO-RAD is easy to operate. NO-RAD has a 1-year warranty.

TECHNICAL SPECIFICATIONS:

Capacity: Up to 300 sq. ft. (15 ft. x 20 ft. room—8 ft. ceilings). Can handle coverage of larger volumes but with reduced effectiveness.
Ionization Output: 388,000 ions/cc measured at 1 meter.
Product Data: 12" high by 16" diameter; weight 19 lbs.
Voltage: 115 V AC; 65 Watts
Model Number: 4,596,585



Ion Systems, Inc. 2546 Tenth Street, Berkeley, CA 94710 Made in USA. © 1987

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EXHIBIT B

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No-Rad™ Warranty Registration

Please return this card within 30 days of purchase to register your warranty.

1. Name _____

Address _____

City _____

State _____ Zip _____

2. Date Acquired _____, 19____

3. Model Number Purchased _____

4. Location of use Home Office

5. Purchased at:
 Dept. Store Mail Order Other _____
 Catalog Hardware _____


6. Name of Store _____
City _____ State _____

7. User is Female Male

8. Age of user Under 18 18-25
 26-35 36-45 46-64 65 & over

9. Size of Purchaser's Household:
 1 2 3 4 or more

10. How did you first find out about No-Rad?
 Friend Store Display Ad Read about it
 A Radon Testing Service Other: _____

 Ion Systems, Inc.

019


Ion Systems, Inc.
2546 Tenth Street
Berkeley, CA 94710

Form
Purchase
1988

EXHIBIT B



Ion Systems, Inc.
 2546 Tenth Street
 Berkeley, California 94710

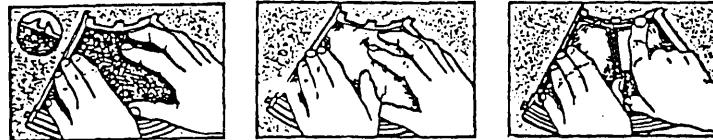
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FILTER REMOVAL

The two stage filter on your air processor is designed to be effective for several months of use in normal environment. Suggested filter replacement with normal usage is 3 to 4 months. The filters should be changed when dirt and debris fall off when tapped lightly on a hard surface. The filters can be removed and replaced as shown below. **CAUTION:** Unplug the processor before removing filter packs. Replace all parts in reverse order to assemble.



FILTER REPLACEMENT



1. FIRST APPLY BLACK FOAM INTO FRAMEWORK. PUSH UNDER TABS AS SHOWN IN CIRCLE

2. APPLY WHITE FIBER OVER FOAM INSIDE FRAMEWORK

3. WITH FRAMEWORK RESTING FIRM ON FLAT SURFACE PLACE PLASTIC INSERT OVER FIBER AND SNAP IN PLACE

REPLACEMENT PARTS ORDER FORM

NAME _____

ADDRESS _____

() CHECK OR MONEY ORDER FOR \$ _____ PAYABLE TO ION SYSTEMS, INC.

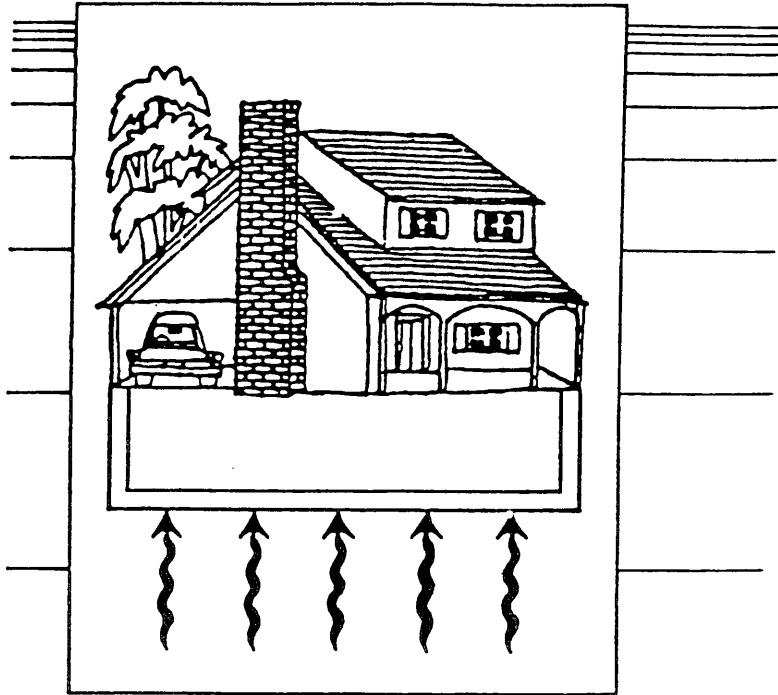
() CHARGE TO: () VISA () MC ACCT.# _____

CARD EXP. DATE: _____ SIGNATURE: _____

() 4 PACK FILTER SET	\$12.50	\$ _____
() EMITTER BRISTLE - EA.	\$ 3.50	\$ _____
() SPECIAL ONE YEAR SUPPLY (FOUR FILTER SETS)	\$43.50	\$ _____
	TOTAL	\$ _____

Tax/Shipping costs included in price

EXHIBIT B



THE ABC'S OF RADON

Prepared as a public service by:



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C-3451
B143266**WHAT IS RADON?**

Radon is a natural phenomenon. It's a colorless, odorless and tasteless radioactive gas that's a by-product of the natural breakdown of radioactive decay of uranium. It's found in high concentrations in soils and rocks containing uranium bearing minerals such as granite, shale, phosphate and pitchblend as well as in soils contaminated with certain types of industrial wastes containing these same mineral byproducts.

Outdoors, radon is diluted to such low concentrations that it's not a health risk. Indoors, it can accumulate and cause problems. Radon can enter a house in many ways. Because it's a gas, it can seep in through small cracks in the soil or rock on which a house is built. It can come in through dirt floors, cracks or joints in concrete walls and floors, floor drains, and sumps. It may also be released from the drinking water used in the home or from materials used in its construction.

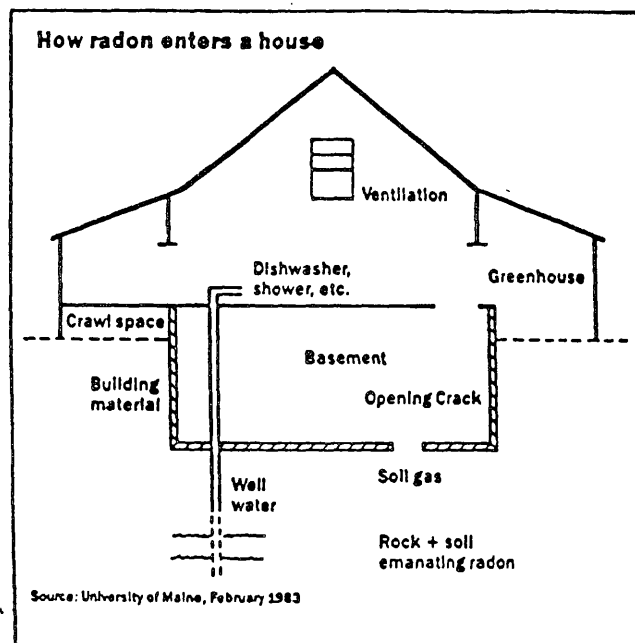


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WHY IS RADON A HEALTH RISK?

Radon can be deadly. The known health effect when exposed to elevated levels of radon is increased risk of developing lung cancer. According to the Environmental Protection Agency, 20,000 people in the U.S. will die of radon-related lung cancer this year. In fact, it has been estimated that exposures to radon cause 25% of the lung cancers in the non-smoking U.S. population. Despite some uncertainty in the risk estimates for radon, it is widely believed that the greater your exposure, the greater the risk of developing lung cancer.

Just how does radon cause lung cancer? Radon itself continues to break down, forming a series of decay products which include atoms of polonium, bismuth and lead. When initially formed, these decay products exist as freely floating atoms in the air. If permitted to remain in the air, these radioactive atoms subsequently become attached to dust and smoke particles. Whether in the free-floating state or in combination with the dust particles, radon decay products are readily deposited and retained in the lungs. Each time you take a breath, the particles enter your lungs and become lodged inside where they continue to release small bursts of radiation. In turn, the radiation produces chemical and biological changes in your lung tissue and this can lead to the development of lung cancer.

WHEN DID RADON BECOME A PROBLEM

Radon has always been around. However, it didn't gain recognition as a potentially serious health problem until recently. It was first thought to be a problem only to people living or working near uranium-mine wastes or on land mined for phosphate. Then it was discovered that houses in various parts of the country have high indoor radon levels caused by either the natural deposits of uranium in the soil on which they were built or by high concentrations of radon in their drinking water supplies.

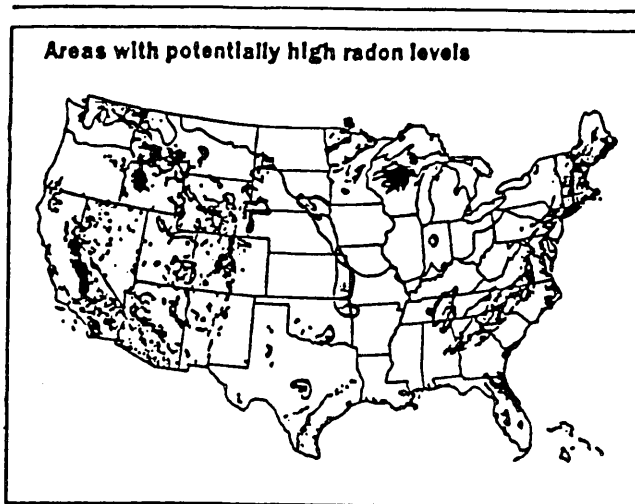
In recent years, scientists have discovered that energy efficiency aggravates the radon problem. Houses that are tightly sealed and weather-proofed allow for little exchange of indoor and outdoor air and this can lead, under certain circumstances, to indoor airborne radon concentrations that can be dangerous. Simply caulking and weather-proofing a house can increase airborne radon concentrations by 20%.

Radon has been found in all 50 states at widely varying levels. The highest concentration of radon has been found in houses

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located on the Reading Prong, a uranium-rich vein of granite that runs through Pennsylvania, New Jersey, New York and lower Connecticut. Above average radon levels have also been found in homes in Montana, Colorado, Washington, North Dakota and Maine as well as in parts of Florida in homes which sit atop reclaimed phosphate mining land. While the Environmental Protection Agency (EPA) estimates that about 1 million homes in the U.S. may have unsafe radon levels, some scientists believe that the figure may be closer to 8 million.

SHOULD YOU HAVE YOUR HOME TESTED?

It's important to realize that most houses in this country are not likely to have a radon problem. The dilemma is that right now, no one knows which houses have radon and which don't. If you are concerned that you may have an indoor radon problem, you can consider having your home tested. A variety of companies offer such services and the EPA has a program for certifying which of these groups are technically qualified to provide such services. You can contact: The Office of Radiation Programs, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D. C. 20460. Your state public health department may also be able to provide you with information on the availability of detector devices or services.

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Most testing services require that the homeowner purchase one of the do-it-yourself testing devices. These at-home kits usually consist of a canister for absorbing the radon gas, or a plastic material for recording the radiations it emits. Testing can take either days or months depending upon the type of product and the manufacturer's recommendation. In any case, both devices must subsequently be returned to the supplier for analysis. The results are then mailed to you.

Because of their mode of operation, essentially all of the commercial radon monitoring services provide information only on the concentrations of the radon gas in the air inside the home. They do not include measurements of the concentrations of the radon decay products, nor do they provide direct information on the "Working Level," a unit developed to provide a better indication of the associated health hazard.

EVALUATING RADON'S RISK

The Federal Government hasn't established any mandatory safety levels for radon nor has it set up regulations limiting non-occupational exposures to this gas. What it has done is establish a series of guidelines that individual states can use to determine the extent of the problem. Radon is generally measured in picocuries per liter of air (pCi/l) or Working Levels (WL). The EPA recommends that occupants of any houses containing radon in excess of 4 pCi/l (.002 WL) take remedial action.

STEPS YOU CAN TAKE TO REDUCE RISKS FROM RADON

Your risk of lung cancer from exposure to radon depends on the amount of radon entering your home, how long it remains there, and the length of time you remain in your home and breathe it. The higher the radon level, the faster you should take action to reduce the exposure. Listed below are some of the actions you might take to reduce your risk:

- **Stop Smoking**—Discourage smoking in your home. Epidemiological studies show that the combined risk of smoking and radon is synergistic, that is the combined risk is significantly more dangerous than the sum of the individual risks.
- **Ventilation**—Whenever practical, open windows and vents and turn on fans to increase the air flow. You can also ventilate the house with an air-to-air heat exchanger.

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Radon Risk Evaluation Chart

pCi/l	WL	Estimated number of lung cancer deaths due to radon exposure (out of 1000)	Comparable exposure levels	Comparable risk
200	1	440-770	1000 times average outdoor level	More than 80 times non-smoker risk 4 pack-a-day smoker
100	0.5	270-630	100 times average indoor level	20,000 chest x-rays per year
40	0.2	120-380	100 times average outdoor level	2 pack-a-day smoker
20	0.1	60-210	10 times average indoor level	1 pack-a-day smoker
10	0.05	30-120	10 times average outdoor level	5 times non-smoker risk
4	0.02	13-50	10 times average outdoor level	200 chest x-rays per year
2	0.01	7-30	Average indoor level	Non-smoker risk of dying from lung cancer
1	0.005	3-13	Average indoor level	20 chest x-rays per year
0.2	0.001	1-3	Average outdoor level	

- **Wall and Floor Sealants**—Apply epoxy resin paint or sealant to the walls and floors of the basement, and around any cracks or crevices, including floor drains.
- **External and Internal Exhaust Systems**—Install fans to exhaust the air from the walls of the basement, or install a similar system to create negative pressure in the soil beneath the basement floor or outside the basement walls. Installation of any of these systems, however, can be expensive and its success is dependent on a thorough understanding of the specific sources of radon in the house.
- **Air filtration**—There are a number of air cleaning products currently available—everything from filters to small table top cleaners—that will collect and remove airborne radon decay products. Limited studies however, show that systems, such as filters and electrostatic precipitators that are designed to primarily remove the dust from the air, may actually increase

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the dose to the lungs. The reason for this is that such systems increase the overall concentration of free-floating radon decay product atoms in the air because there are no dust particles to which these atoms can attach.

The NO-RAD™ Radon Removal System, developed by Drs. Moeller, Maher and Rudnick in collaboration with Ion Systems, Inc., is the only system that effectively removes both the freely floating radon decay products as well as those that have become attached to dust particles. For this reason, it is the only system that has been proven in laboratory and field tests, to be up to 90% effective in removing airborne radon decay products and in reducing the associated dose to the lungs. In fact, because of its unique characteristics, the NO-RAD Radon Removal System has been granted a patent by the U.S. Patent Office.

It is important to note that the NO-RAD system does not affect the concentration of the radon gas (which itself is essentially harmless). As a result, monitoring a home for the concentrations of radon gas, before and after the installation of a NO-RAD system, will not provide a measure of the effectiveness of this removal system.

The only monitoring system that can provide a true evaluation is an instrument that provides data on the concentrations of radon decay products such as the type of instrumentation used in the Harvard research tests. Such instruments are expensive, require a skilled operator and take approximately 24 hours for an accurate and representative measurement.

The information in this booklet has been compiled from the following sources:

Citizen's Guide to Radon, produced by the U.S. Environmental Protection Agency, August '86; *Nation*, December 22, '86; *New Shelter*, January '86; *Nuclear News*, September '86; *Science News*, January 18, '86; and *U.S. News & World Report*, March 17, '86.

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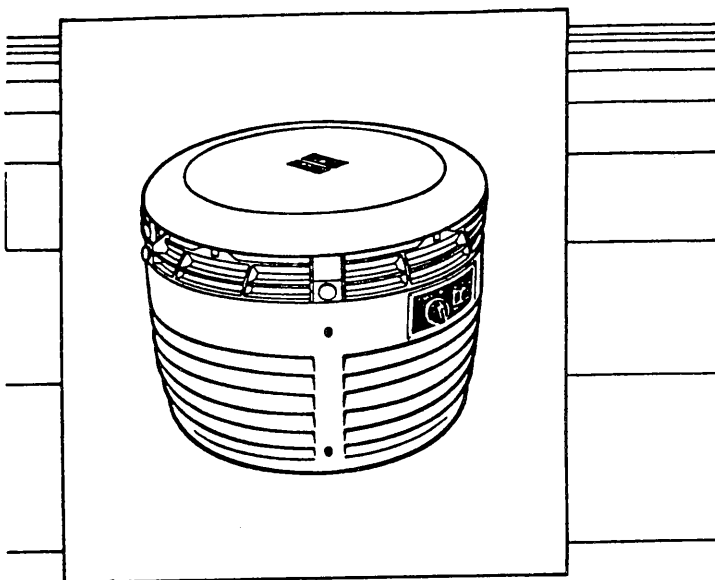


Ion Systems, Inc., 2546 Tenth Street, Berkeley, CA 94710

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B143266**NO-RAD™ RADON
REMOVAL SYSTEM**
MODEL 1000

Up to 90% effective in removing lung-
damaging radon decay products

In order to derive maximum benefit
from your NO-RAD Radon Removal Sys-
tem, please take a few minutes to read
the following information and operating
instructions.



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THE RADON RISK

Radon, an invisible, odorless and tasteless radioactive gas becomes deadly when trapped inside your home. A natural by-product of radioactive decay of uranium-bearing minerals in the soil, it can creep into your home through cracks in the foundation, through gas, sewer and pipe lines, through openings around sump pumps and drains, and even through your water supply.

Outside, it dissipates into the atmosphere and becomes diluted to harmless concentrations. However, within a home, particularly one that is tightly-sealed for energy-efficiency, radon can accumulate to toxic levels or concentrations over a period of time. The greater your exposure to radon, the greater the risk of developing lung cancer.

Although radon is an inert gas, it is radioactive. As it decays, it breaks down into solid radioactive atoms. These atoms are initially produced in a free-floating state but subsequently become attached to particles of dust and smoke in the air. When you inhale these particles, they become lodged in your lungs where they continue to give off harmful radiation.

THE PATENTED NO-RAD™ RADON REMOVAL SYSTEM

The NO-RAD System has been designed and developed by Ion Systems, Inc. in collaboration with a team of researchers at the Harvard School of Public Health. Using a patented system of ionization, filtration, and air circulation, NO-RAD is highly effective in removing airborne radon decay products and in reducing the associated radiation dose to the lungs. In tests performed in a special laboratory test chamber at the Harvard School of Public Health, the NO-RAD system produced up to a 90% reduction in airborne radon decay product concentrations. (Harvard test results are available upon request.)

NO-RAD functions as more than a radon remover. It's also a highly effective ionizer, air cleaner and air circulator. NO-RAD helps to clean the air of other pollutants, including dust, smoke, pollen, and bacteria, filtering out particles as small as 1/1000 of a micron. And when used as a fan, it pleasantly cools your home during the summer and helps circulate hot air during the winter.

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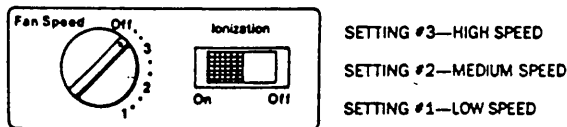
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A Word About Ionization: Ions are electrically charged air molecules which are constantly being created through the dynamic interaction of natural forces—waterfalls, rain, ocean surf, wind and cosmic rays. Ions act like magnets for dust, dirt and radon, causing airborne pollutants to bond together and settle out of the air. But in an indoor environment, there's very little opportunity to maintain or replenish the number of ions lost from the air. The NO-RAD system removes potentially harmful indoor pollutants and replaces air ions. The result—air that is as fresh and clean as nature intended.

EASY-TO-OPERATE

The NO-RAD System has a simple control panel consisting of a 4-position fan control and a separate ionization control.



Fan Speed Control—The 4-position control (including OFF) allows for varying speeds for air circulation. When using NO-RAD as a radon remover or air cleaner, it's recommended that the fan speed be switched to Position #3 (High Speed) for the first hour for maximum effectiveness. You can then lower your NO-RAD to Position #2 (Medium Speed) for average room use, especially if the room is large. Turn it down to Position #1 (Low Speed) for continual low-level maintenance. Low speed is perfect for bedtime use or for winter use when "wind chill" is a factor.

Ionization Control—When NO-RAD is used as a radon remover or air cleaner, both the fan and the ionizer should be turned on. Once switched on, the ionizer will continue to emit a steady stream of ions. There is no need to turn the ionizer on if your NO-RAD is being used only as an air circulator. And both the ionizer and the fan should be turned off when NO-RAD is not in use.

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Filters—The easily removable two-stage filters are designed to be effective for several months of constant use before they need to be replaced. The entire filter pack is actually more efficient and longer lasting due to the 2-stage filter. Most of the dirt and pollution is trapped by the first filter before it passes through to the second.

Filter Removal—Filters should be removed and changed when dirt and debris fall out when the filter pack is lightly tapped. Follow the steps shown in the diagrams below when removing and replacing filters. **CAUTION:** Always unplug the unit before removing the filter packs.

FILTER REMOVAL



FILTER REPLACEMENT



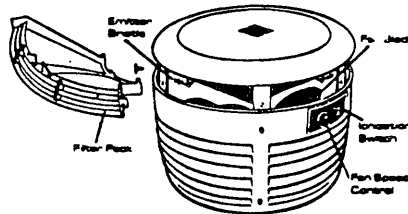
- a. Always turn off and unplug the NO-RAD first.
- b. Turn the ridged knobs counter-clockwise.
- c. Slide out the filter pack (total of 4 packs with two filters each). Take off plastic insert.
- d. Peel off the white filter, then the black foam and discard both. The radon decay products on the filters are essentially harmless and require no special precautions for disposal.
- e. Replace with clean black foam that's placed into framework. Make sure it's secure by pushing it under the tabs shown in the circle.
- f. Take a clean white filter and place it over the black foam.
- g. Replace plastic insert over white filter and snap into place.
- h. Slide the filter pack back in.
- i. Tighten the knobs.

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CLEANING

The NO-RAD System works best when cleaned on a regular basis. Depending upon the amount of dirt and radon in the air, your NO-RAD system should be cleaned as often as needed.



1. Always turn off and unplug the NO-RAD first.
2. Exterior parts may be wiped clean with warm water and a mild detergent. **CAUTION:** Don't use solvents or

industrial strength cleaners as they may damage the plastic parts. Don't get the electrical parts wet.

3. In order to clean the interior parts, you will have to disassemble your NO-RAD. Your task will be simplified if you follow these steps:
 - a. Remove the 4 filter packs.
 - b. Remove the 3 side panels, not including the side panel containing the controls.
 - c. Wipe the blade and deflector cone with warm water and mild detergent. Don't get the motor or other electrical parts wet.
 - d. Lightly grasp the emitter bristles with a pair of pliers and remove them.

Soak them in detergent and warm water and carefully rinse clean. Shake the elements a few times to remove the water from its bristles. Make sure they're thoroughly dry before replacing. The emitter bristles need to be kept clean to ensure proper operation of the ionization system.
 - e. You can wipe the power cord clean with a damp cloth.
 - f. Reassemble unit in reverse order. Don't plug in your NO-RAD until all the parts are totally dry.

Replacement filters and bristles can be obtained from Ion Systems, Inc. Just send a check or money order for \$12.00 per 4-pack filter kit or \$3.50 per emitter bristle (cost includes postage, handling and any applicable sales tax). Mail to: **Ion Systems, Inc.**, 2546 Tenth Street, Berkeley, CA 94710.

EXHIBIT B

C-3451
B143266

PLACEMENT

Your NO-RAD Radon Removal System will work best when you follow these general guidelines:

Generally it is recommended that at least one NO-RAD remover be installed in a central location in each occupied room of a house. However, if you have purchased a single unit, you can move your NO-RAD in and out of the rooms that you spend the most time in. It's preferable to place your NO-RAD near the center of the room and plug it into a 120 volt outlet. It can also be placed towards the edge of a room as long as the unit is still a couple of feet away from the wall.

Your NO-RAD should be turned on to maximum speed and left running in that position for at least one hour to quickly reduce radon product concentrations. Your NO-RAD unit can then be turned down to medium speed for average use or you can run it on low speed for continual low-level maintenance.

NOTE: When the air in a home is unusually dirty, normal operation of NO-RAD will cause some of the dirt to accumulate on the walls. This can be minimized by keeping the NO-RAD in the center of the room and only running it when the room is occupied.

SAFETY PRECAUTIONS

- Don't operate the fan without the filter packs in place.
- Don't insert fingers or objects through the blade guards.
- Don't get the electrical parts wet.
- Do not use your NO-RAD in an explosive atmosphere.
- Always unplug it before changing filters or cleaning the unit.
- NO-RAD operates on electrostatic charges created by air ionization. It is possible to get a slight shock of static electricity if you're in close proximity or if you directly touch the emitter bristles. This is similar to the shock from walking across a new carpet and touching a door knob. Whether you will feel this depends on the clothes you are wearing, the humidity, and a number of other factors. This is normal to the operation of the NO-RAD and is not an indication of malfunction.
- Keep your NO-RAD at least 3 feet away from computers, floppy disks, calculators, telephones, answering machines and other sensitive electronic equipment because the ions may affect their operation. *Always disconnect the NO-RAD and wait two minutes before opening the cover of any personal computer.*

EXHIBIT B

C-3451
B143266

TECHNICAL SPECIFICATIONS

Radon Removal Effectiveness: Up to 90% reduction in radon decay product concentrations

Coverage: Up to 300 sq. ft. (15' x 20' room - 8' ceiling). Can provide coverage of larger areas but with reduced removal effectiveness.

Ionization Output: 388,000 ions/cc measured at 1 meter

Product Data: 12" high by 16" diameter; weight 19 lbs.

120V AC; 65 Watts

*Harvard Research Report available upon request.

Patent Number 4,596,585.



Designed and manufactured in the United States by
Ion Systems, Inc., 2546 Tenth Street, Berkeley, CA 94710

If you'd like more information on radon and its effects—
please write for our booklet "The ABC's of Radon."

Warranty: NO-RAD Radon Removal System is warranted to be free from defects in materials and workmanship for a period of one year from the date of purchase. Within the warranty period, Ion Systems, Inc. (ISI) will replace or repair any component of the NO-RAD defective in material and/or workmanship. For warranty service, package the unit carefully in its original carton and send, postage-paid to ISI. This warranty does not apply to any defects caused by negligence, accident or failure to properly follow instructions. To be valid, registration card must be completed and returned to ISI within 30 days of the purchase date. ISI neither assumes nor authorizes any representative or other person to assume for it any other liability for loss or damages in connection with the sale or shipment of its products. ISI makes no claim for its radon remover products other than those expressed in this literature.

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 respondent having been furnished thereafter with a copy of a draft of complaint which the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 of facts, other than jurisdictional facts, or of violations of law as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules.

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. Ion Systems, Inc. is a corporation organized, existing, and doing business under and by virtue of the law of the State of California. Respondent's office and principal place of business is located at 2546 Tenth Street, Berkeley, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent Ion Systems, 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, labelling, packaging, offering for sale, sale or distribution of the NO-RAD Radon Removal System (“NO-RAD System”) in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, that:

A. Tests prove that the NO-RAD System removes 90% or up to 90% of the radon decay products in the home.

B. Tests prove that the NO-RAD System reduces the user’s risk of developing radon-related lung cancer by up to 90%.

C. The NO-RAD System has been tested and proven effective by the Harvard University School of Public Health.

II.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary or division or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of the NO-RAD System or any other radon or radon progeny remediation device 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 contents, validity, results, conclusions, or interpretations of any test or study.

III.

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, labelling, packaging, offering for sale, sale or distribution of the NO-RAD System or any other radon or radon progeny remediation device 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, any performance characteristic(s) of any such product unless at the time of making such representation respondent possesses and relies upon competent and reliable scientific evidence which substantiates the representation. For purposes of this order, “competent and reliable scientific evidence” shall mean tests, experiments, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

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, labelling, packaging, offering for sale, sale or distribution of the NO-RAD System or any other radon or radon progeny remediation device 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, that said product can or will remove or reduce radon decay products in the area in which it is operating by any quantitative amount, unless respondent discloses, in close proximity to such representations, the following statement:

“IMPORTANT NOTICE: When you reduce [radon decay products] by any given amount, the reduction in risk of contracting radon-related lung cancer will always be less. The amount of risk reduction will vary.”

For purposes of this order, “quantitative amount” shall include any specific numerical amount or range and shall include any language containing descriptions of quantitative amounts or ranges, including but not limited to such terms as “all,” “most,” “majority,” “much of,” and “many.”

For purposes of this order, “radon decay products” shall include any descriptive term for the harmful byproducts of radon gas, including but not limited to such terms as “radon progeny,” “radon daughters,” and “potential alpha energy concentrations.” The same descriptive term(s) for such byproducts that is used in the representation shall be used in the required disclosure, with the appropriate term(s) substituted for the bracketed section of the above disclosure.

In any print advertisement or promotional material, the above disclosure shall be printed in a typeface and color that are clear and prominent, and, in multi-page documents, shall appear on the cover or first page.

In any advertisement disseminated on television broadcast, cablecast, home video or theatrical release, the above disclosure shall be displayed as a legible superscript with a simultaneous voice-over recitation of the disclosure in a manner designed to ensure clarity and prominence.

In any radio advertisement, the above disclosure shall be spoken in a manner designed to ensure clarity and prominence.

On the package label, the above disclosure shall be printed in a typeface and color that are clear and prominent and shall appear on the front panel of the package.

Nothing contrary to, inconsistent with, or in mitigation of the above disclosure shall be used in any advertisement in any medium or on the package label.

V.

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, do forthwith cease and desist from offering for sale, selling or distributing any components of the NO-RAD System or any other radon or radon progeny remediation device in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, to any corporation, licensee, distributor, or other entity that respondent knows or has reason to know represents, directly or by implication, any performance characteristic(s) of any radon or radon progeny remediation device manufactured from those component(s), unless at the time of the making of such representation such other entity possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

VI.

It is further ordered, That for three (3) years after the date of the last dissemination of the representation to which they pertain, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

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

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

VII.

It is further ordered, That respondent shall forthwith distribute a copy of this order to all operating divisions, subsidiaries, franchisees, officers, managerial employees, and all of its

employees, agents, licensees and distributors, engaged in the preparation and placement of advertisements or promotional materials covered by this order and shall obtain from each such employee, agent, licensee and distributor a signed statement acknowledging receipt of the order.

VIII.

It is further ordered, That for five (5) years after service upon it of this order, respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations under this order.

IX.

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

IN THE MATTER OF

PERFECTDATA CORPORATION

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

Docket C-3452. Complaint, Aug. 2, 1993--Decision, Aug. 2, 1993

This consent order prohibits, among other things, a California marketer of electronic office equipment care and maintenance products from representing that any product containing a Class I or Class II ozone-depleting substance -- as defined by the Clean Air Act Amendments of 1990 -- is ozone friendly, contains no ozone depleting CFCs, or has ozone guard, and from representing or implying that any such product will not damage or deplete the ozone in the upper atmosphere. The respondent also is prohibited from making any environmental benefit claims for any of its products unless the company possesses and relies upon competent and reliable scientific evidence to substantiate the claims.

Appearances

For the Commission: *Ralph E. Stone.*

For the respondent: *Lee R. Mannheimer*, President, Simi Valley, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that PerfectData Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. PerfectData Corporation is a California corporation, with its principal office or place of business at 1825 Surveyor Avenue, Simi Valley, California.

PAR. 2. Respondent has advertised, labeled, offered for sale, sold, and distributed computer and office equipment care and maintenance products containing the hydrochlorofluorocarbon ("HCFC") known as chlorodifluoromethane ("HCFC-22") to the public, including an aerosol cleaning product known as "Perfect Duster II."

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements, including product labeling, and other promotional materials for Perfect Duster II, including but not necessarily limited to, the attached Exhibit A.

The advertisements and product labeling (Exhibit A) include the following statements:

- A. "Ozone friendly."
- B. "With ozone guard."
- C. "Contains no ozone depleting CFC's."

PAR. 5. Through the statements referred to in paragraph four in advertisements and product labeling (Exhibit A), respondent has represented, directly or by implication, that:

- A. There are no ingredients in respondent's product that deplete the earth's ozone layer.
- B. Because respondent's product contains no CFCs (chlorofluorocarbons), respondent's product does not deplete the earth's ozone layer.

PAR. 6. In truth and in fact, respondent's product contains the ozone-depleting chemical HCFC-22, which harms or damages the environment by contributing to the depletion of the earth's ozone layer. Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the statements contained in paragraph four, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representations.

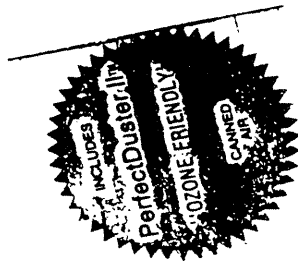
PAR. 8. In truth and in fact, at the time it made the representations set forth in paragraph five, the respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

772

Complaint
EXHIBIT A

C-3452
B143355



PerfectDuster II

PerfectDuster II

PerfectDuster II

PerfectDuster II
WITH OZONE GUARD

- FOR DUSTING SENSITIVE EQUIPMENT
- Fax Machines
 - Photo Equipment
 - Copiers
 - Printers
 - and more.



CAUTION: CONTENTS MAY EXPLODE UNDER PRESSURE. CONTENTS MAY BE EXPLODIVE UNDER PRESSURE. EXPLOSION HAZARD. CONTENTS MAY BE EXPLODIVE UNDER PRESSURE. EXPLOSION HAZARD. CONTENTS MAY BE EXPLODIVE UNDER PRESSURE. EXPLOSION HAZARD.

Net. Wt. 10 oz.

DOT E-9393 NRC 240 300 M1119

1-800-991-304

THE FINEST STANDARD DATA LES VEHICLES.
 PerfectDuster II is a high quality, professional grade dusting product designed for use on sensitive electronic equipment. It is formulated with a special blend of fine, dry, non-toxic particles that do not leave any residue or streaking on the surface of the equipment. PerfectDuster II is also formulated with a special blend of fine, dry, non-toxic particles that do not leave any residue or streaking on the surface of the equipment. PerfectDuster II is also formulated with a special blend of fine, dry, non-toxic particles that do not leave any residue or streaking on the surface of the equipment.

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 San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent 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 said agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by an interested person 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 PerfectData Corporation 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 1825 Surveyor Avenue, Simi Valley, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

“Class I ozone-depleting substance” means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in Title 6 of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, and any other substance which may in the future be added to the list pursuant to Title 6 of the Act. Class I substances currently include chlorofluorocarbons, halons, carbon tetrachloride and 1,1,1-trichloroethane.

“Class II ozone-depleting substance” means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in Title 6 of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, and any other substance which may in the future be added to the list pursuant to Title 6 of the Act. Class II substances currently include hydrochlorofluorocarbons.

I.

It is ordered, That respondent, PerfectData 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 the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that any such product containing any Class I or Class II ozone-depleting substance is “ozone friendly,” “contains no ozone depleting CFCs,” “ozone guard,” or, by words, depictions, or symbols representing directly or by implication, that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

II.

It is further ordered, That respondent PerfectData 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 the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any product offers any environmental benefit, unless at the time of making such representation, the respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, “competent and reliable scientific evidence” shall mean tests, analyses, research, studies, or any other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

It is further ordered, That for three (3) years from the date that the respondent makes any representation covered by this order, the respondent shall maintain and upon written request make available to the Federal Trade Commission for inspection and copying:

A. All materials that the respondent relied upon in disseminating any representation covered by this order.

B. All tests, reports, studies or surveys, analyses, or other materials in the possession or control of the respondent that contradict, qualify, or call into question any representation covered by this order or the basis on which the respondent relied for such representation.

IV.

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

V.

It is further ordered, That the respondent shall 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 or placement of advertisements, promotional materials, product labels, or other sales materials covered by this order.

VI.

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

IN THE MATTER OF

MARSHALL FIELD & COMPANY

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

Docket C-3453. Complaint, Aug. 3, 1993--Decision, Aug. 3, 1993

This consent order requires, among other things, a Chicago-based retail chain to comply with the disclosure provisions of the Fair Credit Reporting Act (FCRA) for future applicants denied employment based on information obtained from a consumer reporting agency, regardless of whether alternative employment is offered. It also requires the company to send a letter to past job applicants denied employment, since August 1990, but not previously given the requisite disclosure, so that recipients can check the information for accuracy and seek to correct any errors.

Appearances

For the Commission: *Cynthia S. Lamb* and *Donald E. d'Entremont*.

For the respondent: *John D. French, Faegre & Benson*, Minneapolis, MN.

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Marshall Field & Company, 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:

DEFINITIONS

For the purposes of this complaint, the following definitions are applicable. The terms “*consumer*,” “*consumer report*,” and “*consumer reporting agency*” shall be defined as provided in Sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, Section 15 U.S.C. 1681, 1681a(c), 1681a(d) and 1681a(f).

PARAGRAPH 1. Respondent Marshall Field & Company is a corporation organized existing and doing business under and by virtue of the laws of the State of Delaware, with offices located at 777 Nicollet Mall, Minneapolis, Minnesota and principal place of business in Chicago, Illinois.

PAR. 2. Respondent, in the ordinary course and conduct of its business, uses information in consumer reports obtained from consumer reporting agencies in the consideration, acceptance, and denial of applicants for employment with respondent.

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

PAR. 4. Respondent, in the ordinary course and conduct of its business, has denied applications or rescinded offers for employment which respondent based in whole or in part on information supplied by a consumer reporting agency, but has failed to advise consumers that the information so supplied contributed to the adverse action taken on their applications or offers for employment, and has failed to advise consumers of the name and address of the consumer reporting agency that supplied the information.

PAR. 5. By and through the use of the practices described in paragraph four, respondent has violated the provisions of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

PAR. 6. 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 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 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 Section 615(a) of the Fair Credit Reporting Act and Section 5(a) 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 the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The 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 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 Marshall Field & Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with offices at 777 Nicollet Mall, Minneapolis, Minnesota and principal place of business located in Chicago, Illinois.

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

For the purpose of this order, the terms “*consumer*,” “*consumer report*,” and “*consumer reporting agency*” shall be defined as provided in Sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(c), 1681a(d), and 1681a(f).

I.

It is ordered, That respondent Marshall Field & Company, 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 employment, do forthwith cease and desist from:

1. Failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency, regardless of whether alternative employment is offered, to disclose to the applicant for employment at the time such 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 street address of the consumer reporting agency making the report. Respondent shall not be held liable for a violation of Section 615(a) of the Fair Credit Reporting Act if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with Section 615(a) of the Fair Credit Reporting Act.

2. Failing, within ninety (90) days after the date of service of this order, to mail two (2) copies 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 employment by Marshall Field & Company, between August 1, 1990, and the date this order is issued, based in whole or in part on information contained in a consumer report from

a consumer reporting agency, such copies of the letter to be sent by first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as Appendix B, copies of which are to be provided by respondent. Copies of the letter attached as Appendix A need not be sent to any applicant who is denied employment with respondent during the time period specified above if the applicant's application file clearly shows that respondent Marshall Field & Company, has previously given the applicant notification that complies in all respects with the provisions of paragraph I.1 of this order.

II.

It is further ordered, That respondent, its successors, and assigns shall for at least five (5) years maintain for one (1) current year and upon request shall make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of part I of this order, such documents to include, but not be limited to, all employment evaluation criteria relating to consumer reports, written or electronic instructions given to employees regarding compliance with the provisions of this order, all notices or a written or electronically stored notation of the description of the form of notice and the date such notice was provided to applicants pursuant to any provisions of this order, and the complete application files for all applicants for whom consumer reports were obtained to whom offers of employment are not made or have been withheld, withdrawn, or rescinded based, in whole or in part, on information contained in a consumer report.

III.

It is further ordered, That respondent for at least five (5) years shall distribute a copy of this order to each present and future officer and to every present and future employee, agent and representative responsible for the respondent's compliance with Section 615(a) of

the Fair Credit Reporting Act and shall secure from each such person a signed statement acknowledging receipt of the copy of the order.

IV.

It is further ordered, That respondent shall for at least five (5) years hereafter notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, the emergence of a successor corporation, the creation or dissolution of a subsidiary, transfer of the business by assignment to another entity, or any other change in the corporation that may affect compliance obligations under the order.

V.

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

APPENDIX A

Dear Employment Applicant:

Our records show that you applied for employment at Marshall Field & Company at some time after August 1, 1990. In assessing your job application our decision was based, at least in part, on information obtained from the credit bureau identified below:

[Name of Consumer Reporting Agency]

[Street Address]

It is important for you to know that a federal law, the Fair Credit Reporting Act, gives persons who are denied employment the right to know if the denial was based, in whole or in part, on information supplied by a consumer reporting

agency, commonly known as a "credit bureau." If so, the name and street address of the credit bureau must be disclosed to the applicant.

Information in your credit report led us, at least in part, to deny your application. Based on our actions you are entitled to a free disclosure of your credit report if you contact the credit bureau within (30) days. An extra copy of this notice is enclosed so that you may give it to the agency when you request to review your file.

A brochure explaining your rights under the federal credit laws is enclosed. If you want more information about your rights, write to the Federal Trade Commission, Correspondence Branch, Washington, D.C.

Thank you.

APPENDIX B

APPENDIX B

FACTS for consumers

from the Federal Trade Commission

February 1992

Fair Credit Reporting

If you have ever applied for a charge account, a personal loan, insurance, or a job, someone is probably keeping a file on you. This file might contain information on how you pay your bills, or whether you've been sued, arrested, or have filed for bankruptcy.

The companies that gather and sell this information are called "Consumer Reporting Agencies," or "CRA's." The most common type of CRA is the credit bureau. The information sold by CRA's to creditors, employers, insurers, and other businesses is called a "consumer report." This generally contains information about where you work and live and about your bill-paying habits.

In 1970, Congress passed the Fair Credit Reporting Act to give consumers specific rights in dealing with CRA's. The Act protects you by requiring credit bureaus to furnish correct and complete information to businesses to use in evaluating your applications for credit, insurance, or a job.

The Federal Trade Commission enforces the Fair Credit Reporting Act. Here are answers to some questions about consumer reports and CRA's.

How do I locate the CRA that has my file?

If your application was denied because of information supplied by a CRA, that agency's name and address must be supplied to you by the company you applied to. Otherwise, you can find the CRA that has your file by calling those listed in the Yellow Pages under "credit" or "credit rating and reporting." Since more than one CRA may have a file about you, call each one listed until you locate all agencies maintaining your file.

Do I have the right to know what the report says?

Yes, if you request it. The CRA is required to tell you about every piece of information in the report and, in most cases, the sources of that information. Medical information is exempt from this rule.

Fast Facts

- The Fair Credit Reporting Act protects you by requiring credit bureaus to furnish correct and complete information to businesses to use in evaluating your applications for credit, insurance, or a job.
- You have the right to know what information is in your credit report.
- Credit bureaus are required to conduct an investigation if you claim their information on you is inaccurate or incomplete.
- Legitimate adverse credit information generally stays on your credit report for seven years; information on bankruptcies can be reported for 10 years.
- Credit reports can only be given to those persons, other than yourself, who have a legitimate business need for the information.

but you can have your physician try to obtain it for you. The CRA is not required to give you a copy of the report, although more and more are doing so. You also have the right to be told the name of anyone who received a report on you in the past six months. (If your inquiry concerns a job application, you can get the names of those who received a report during the past two years.)

Is this information free?

Yes, if your application was denied because of information furnished by the CRA, and if you request it within 30 days of receiving the denial notice. If you don't meet these requirements, the CRA may charge a reasonable fee.

What can I do if the information is inaccurate or incomplete?

Notify the CRA. They're required to reinvestigate the items in question. If the new investigation reveals an error, a corrected version will be sent, on your request, to anyone who received your report in the past six months. (Job applicants can have corrected reports sent to anyone who received a copy during the past two years.)

What can I do if the CRA won't modify my report?

The new investigation may not resolve your dispute with the CRA. If this happens, have the CRA include your version or a summary of your version of the disputed information in your file and in future reports. At your request, the CRA will show your version to anyone who recently received a copy of the old report. There is no charge for this service if it's requested within 30 days after you receive notice of your application denial. After that, there may be a reasonable charge.

Do I have to go in person to get the information?

No, you may also request information over the phone. But before the CRA will provide any information, you must establish your identity by completing forms they will send you. If you do wish to visit in person, you will need to make an appointment.

Are reports prepared on insurance and job applicants different?

If a report is prepared on you in response to an insurance or job application, it may be an investigative consumer report. These are much more detailed than regular consumer reports. They often involve interviews with acquaintances about your lifestyle, character, and reputation. Unlike regular consumer reports, you'll be notified in writing when a company orders an investigative report about you. This notice also will explain your right to ask for additional information about the report from the company you applied to. If your application is rejected, however, you may prefer to obtain a complete disclosure by contacting the CRA, as outlined in this fact sheet. Note that the CRA does not have to reveal the sources of the investigative information.

How long can CRA's report unfavorable information?

Generally, seven years. Adverse information can't be reported after that, with certain exceptions:

- bankruptcy information can be reported for 10 years;
- information reported because of an application for a job with a salary of more than \$20,000 has no time limitation;
- information reported because of an application for more than \$50,000 worth of credit or life insurance has no time limitation;
- information concerning a lawsuit or judgement against you can be reported for seven years or until the statute of limitations runs out, whichever is longer.

Can anyone get a copy of the report?

No, it's only given to those with a legitimate business need.

Are there other laws I should know about?

Yes, if you applied for and were denied credit, the Equal Credit Opportunity Act requires creditors to tell you the specific reasons for your denial. For example, the creditor must tell you whether the denial was because you have "no credit file" with a CRA or because the CRA says you have "delinquent obligations." This law

also requires creditors to consider, upon request, additional information you might supply about your credit history.

You may wish to obtain the reason for denial from the creditor before you go to the credit bureau.

Do women have special problems with credit applications?

Married and formerly married women may encounter some common credit-related problems. For more information, write for the free fact sheet, *Women and Credit Histories*. Public Reference, Federal Trade Commission, Washington, D.C. 20580.

Where should I report violations of the law?

Although the FTC can't act as your lawyer in private disputes, information about your experiences and concerns is vital to the enforcement of the Fair Credit Reporting Act. Please send questions or complaints to: Correspondence Branch, Federal Trade Commission, Washington, D.C. 20580.

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FTC Headquarters
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-2222
TDD (202) 326-2502

FTC Regional Offices
1718 Peachtree Street, N.W., Suite 1000
Atlanta, Georgia 30367
(404) 347-4836

10 Causeway Street, Suite 1184
Boston, Massachusetts 02222-1073
(617) 565-7240

55 East Monroe Street, Suite 1437
Chicago, Illinois 60603
(312) 353-4423

668 Euclid Avenue, Suite 520-A
Cleveland, Ohio 44114
(216) 522-4207

100 N. Central Expressway, Suite 500
Dallas, Texas 75201
(214) 767-5501

1405 Curtis Street, Suite 2900
Denver, Colorado 80202-2393
(303) 844-2271

11000 Wilshire Boulevard, Suite 13209
Los Angeles, California 90024
(310) 575-7575

150 William Street, Suite 1300
New York, New York 10038
(212) 264-1207

901 Market Street, Suite 570
San Francisco, California 94103
(415) 744-7920

2806 Federal Building, 915 Second Avenue
Seattle, Washington 98174
(206) 553-4656

IN THE MATTER OF

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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

Docket C-3454. Complaint, Aug. 6, 1993--Decision, Aug. 6, 1993

This consent order prohibits, among other things, a Virginia-based organization from restricting or limiting truthful and nondeceptive advertising claims by its members that refer to the quality of professional services or from encouraging or inducing any non-governmental person to engage in any practice that would violate the Commission's order. In addition, the respondent is required to remove from its Code of Ethics any provision that is inconsistent with the Commission's order.

Appearances

For the Commission: *Jonathan Banks* and *Randall Marks*.

For the respondent: *Arthur Schwartz* and *Donald Weinert*,
in-house counsel, Alexandria, VA.

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 respondent National Society of Professional Engineers, a corporation, 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 as follows:

PARAGRAPH 1. Respondent National Society of Professional Engineers ("NSPE") is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at

1420 King Street, Alexandria, Virginia. NSPE is a voluntary professional association of approximately 77,000 professional engineers, land surveyors, and other engineering professionals (“engineers”).

PAR. 2. NSPE’s members are state-licensed engineers. Except to the extent that NSPE has restrained competition as described herein, NSPE members have been and are in competition among themselves and with other engineers.

PAR. 3. NSPE engages in substantial activities that further its members’ pecuniary interests. By virtue of its purposes and activities, NSPE is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. NSPE’s acts and practices, including the acts and practices alleged herein, are in or affect commerce, as “commerce” is defined in the Federal Trade Commission Act.

PAR. 5. NSPE has been and is acting as a combination of its members, or in conspiracy with some of its members, to restrain trade in the provision of engineering services in the United States by restricting advertising.

PAR. 6. In furtherance of this combination or conspiracy, NSPE has:

A. Adopted and maintained Section III.3.a of its Code of Ethics, which, in addition to stating that engineers should avoid misleading advertising, states that engineers should avoid “statements containing an opinion as to the quality of the Engineers’ services; or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format”; and

B. Published interpretations that declared that certain truthful, nondeceptive advertising violated Section III.3.a of its Code of Ethics.

PAR. 7. The purposes and effects of the combination or conspiracy and NSPE’s acts or practices have been and are to restrain competition unreasonably and to injure consumers by:

A. Depriving consumers of truthful information pertinent to the selection of an engineer; and

B. Depriving consumers of the benefits of competition among engineers in the provision of engineering services.

PAR. 8. The acts and practices herein alleged were and are to the prejudice and injury of the public, and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief requested.

Commissioner Starek dissenting.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further

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

1. Respondent National Society of Professional Engineers is a corporation organized, existing, and doing business under and by virtue of the laws of the State of South Carolina, with its office and principal place of business located at 1420 King Street, Alexandria, Virginia.

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

ORDER

I.

It is ordered, That for purposes of this order, the terms "respondent" or "NSPE" mean the National Society of Professional Engineers, its directors, trustees, councils, committees, boards, divisions, officers, representatives, delegates, agents, employees, successors, and assigns.

II.

It is further ordered, That respondent, directly or indirectly, or through any person or any corporate or other device, in or in connection with its activities as a professional association in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against truthful, non-deceptive advertising, including, but not limited to, advertising using quality claims, showmanship, puffery, self-laudation, slogans, jingles, or sensational language or format; or

B. Inducing, suggesting, urging, encouraging, or assisting any non-governmental person or organization to take any action that if taken by respondent would violate this order;

Provided that nothing contained herein shall prohibit respondent from formulating, adopting, disseminating to its component societies and to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to advertising, including unsubstantiated representations, that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III.

It is further ordered, That respondent shall:

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

1. Remove from its Code of Ethics any part of Section III.3.a and any other provision thereof that is inconsistent with the provisions of part II of this order.

2. Revoke its Board of Ethical Review Cases 81-5 and 84-2 and any other interpretation or policy statement that is inconsistent with the provisions of part II of this order.

B. Within thirty (30) days after the date this order becomes final, distribute by first class mail an announcement in the form shown in Appendix A to this order (hereinafter "Appendix A") to each state society and local chapter and use its best efforts to encourage each state society and local chapter to publish Appendix A in its newsletter.

C. Within ninety (90) days after the date this order becomes final, publish in the NSPE News and the Private Practice News, or any successor publications, (1) this order, (2) the accompanying complaint, (3) Appendix A, (4) any Code of Ethics provision or

other document that NSPE revises pursuant to part III.A above, and (5) notice of the revocation of any interpretation or policy statement pursuant to part III.A above.

D. Within one hundred and twenty (120) days after the date this order becomes final, and annually for five (5) years thereafter on the anniversary date of this order, file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order.

E. For a period of five (5) years after the date this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by this order.

F. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed changes in respondent, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

Commissioner Starek dissenting.

APPENDIX A

ANNOUNCEMENT

The National Society of Professional Engineers ("NSPE") has entered into a consent agreement with the Federal Trade Commission. Pursuant to this consent agreement, the Commission issued an order on [Date] that provides that NSPE may not prohibit or restrict its members from engaging in truthful, nondeceptive advertising.

As a result of the order, NSPE may not interfere if its members advertise truthfully and nondeceptively:

1. By making claims with respect to the quality of their services; and
2. Using showmanship, puffery, self-laudation, slogans, jingles, or sensational language or format.

The order does not prevent NSPE from adopting and enforcing reasonable ethical guidelines prohibiting advertising, including unsubstantiated representations, that NSPE reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

For more specific information, members should refer to the FTC order itself. NSPE will provide any member with a copy of the order and accompanying complaint upon request.

DISSENTING STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

I respectfully dissent from the decision of the Commission today to accord final approval to the consent order with the National Society of Professional Engineers (“NSPE” or “the Society”). Because of the absence of evidence indicating that NSPE’s promulgation of the restrictions at issue is likely, absent an efficiency justification, to restrict competition and decrease output,¹ I am unable to conclude that they are “inherently suspect” under the approach first enunciated in Massachusetts Board of Registration in Optometry (“Mass. Board”).¹ Consequently, without a full rule-of-reason inquiry, I cannot conclude that NSPE’s restrictions violate Section 5 of the Federal Trade Commission Act.

The Commission has been presented with almost no evidence suggesting that NSPE’s restrictions are inherently suspect other than the written restrictions themselves.² Some restraints can be deemed inherently suspect based solely on evidence of agreement among competitors.³ When restraints are not just facially suspicious, but unambiguously anticompetitive, additional evidence of actual effects may not be required. Nor would extensive evidence of actual effects be required if the Commission could rely on the evidentiary record of previous cases involving substantially similar restrictions in substantially similar industries.⁴ But the restrictions here are not

¹ 110 FTC 549, 604 (1988).

² Moreover, the record contains substantial indications that the restrictions are unlikely to be anti-competitive.

³ For example, the output-restrictive effects of price fixing and market allocation among competitors are well-established theoretically and empirically. Thus, an ethics code restriction that establishes minimum prices for association members could be deemed inherently suspect on its face.

⁴ See, e.g., Mass. Board at 604-06.

unambiguously anticompetitive on their face, and previous cases provide little support for the proposition that these restrictions are likely to restrict competition and decrease output in this industry.

The challenged restrictions, in Section III.3.a of the Society's ethics code, state that members:

shall avoid use of . . . statements containing an opinion as to the quality of the Engineers' services [hereinafter, "opinion restriction"]; or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format [hereinafter, "showmanship restriction"].

Advertising restrictions can be anticompetitive.⁵ By limiting customers' access to information about alternative suppliers, such restrictions can constrain customers' abilities to make informed choices. Accordingly, advertising restrictions can have the result of "insulating" competitors from each other thereby enabling them to act anticompetitively.

Although the advertising restrictions challenged here conceivably could be anticompetitive, there is no evidence to suggest that this effect is likely. These restrictions arguably are facially similar to restrictions the Commission has found to be inherently suspect in other industries.⁶ But the effect of advertising restrictions may well be quite different in the professional engineering industry than in other industries that we have examined previously.

We have been presented with no evidence that these restrictions have been enforced in any manner. Absent some evidence of enforcement, it is nevertheless possible that the restrictions might be interpreted by the Society's membership in a manner that leads some of them to refrain from certain advertising practices. But we have no evidence that any members have refrained from any advertising practice because of these restrictions. There is no evidence suggest-

⁵ Mass. Board at 604-05; *American Medical Association*, 94 FTC 701 (1979) (finding broad advertising prohibition unlawful under a rule of reason analysis), *aff'd as modified*, 638 F.2d 443 (2d Cir. 1980), *aff'd by an equally divided Court*, 455 U.S. 676 (1982).

⁶ *Id.*

ing that the restrictions have influenced, or are likely to influence, any member's advertising.

The Society's opinion restriction troubles me most. This is a broad restriction that conceivably could restrain the dissemination of significant competitive information.⁷ This restriction is facially suspicious, and I would not require much evidence on its effect in order to conclude that such a restriction is inherently suspect. But we have no evidence suggesting that it has affected, or is likely to affect, any members' advertising practices.

The Society has published two "interpretations" of the showmanship restriction (along with many other interpretations of other ethics code provisions). These two interpretations give examples of advertising that would be considered to violate this restriction. While these interpretations serve to clarify the potential effect of the showmanship restriction, they do not suggest that the restriction is likely to have any effect.⁸ We are unaware of the extent to which these interpretations were distributed or whether these interpretations, or the showmanship restriction itself, have influenced the conduct of any of NSPE's members.

More generally, it is not clear that the advertising restrictions here affect a significant aspect of rivalry among engineers. Professional engineers apparently do very little advertising. They obtain customers primarily by responding to solicitations for bids. Prior to the Commission's condemnation of broad restrictions on advertising in American Medical Association, physicians did very little advertising. Now that they are free to advertise, medical advertising has flourished, arguably to the benefit of competition and consumers. But the evidence here does not suggest that we should expect a similar response, or even any response, to a Commission order.

⁷ The opinion restriction could be interpreted broadly to proscribe testimonial and comparative advertising.

⁸ It is possible that the advertisements noted in the interpretations reflect actual advertisements that resulted in disciplinary action by the Society or one of its constituent state societies. However, we have no evidence that this is the case. If the interpretations relate mere hypotheticals, then they are not evidence of enforcement and are, as an evidentiary matter, indistinguishable from the code provisions themselves.

It is the customer of the engineer, not the engineer, who does the bulk of the advertising in this industry. The customers of professional engineering firms solicit engineers' services primarily by advertising for their bids in publicly available publications.⁹ In response to bid solicitations, engineers submit proposals. The challenged ethics restrictions do not appear to affect the information that is communicated to customers in response to bid solicitations. This characteristic of the industry suggests that advertising restrictions are unlikely to affect the ability of engineers to communicate information to potential customers (or to affect the cost of communicating such information). Indeed, it suggests that advertising may not be a significant dimension of competition in this market.¹⁰

My conclusion that these restrictions are not inherently suspect does not imply that I condone such restrictions. But I am troubled by an evidentiary standard that condemns the restrictions of professional associations based almost solely on our reading of the written restrictions themselves without evidence of actual effect and without regard to specific market context. I cannot conclude that a restriction is likely to restrict competition when the record does not suggest a likelihood of any effects, be they anticompetitive, procompetitive, or competitively neutral. The Mass. Board standard requires that the anticompetitive effects of a restraint are "likely," not just "conceivable."¹¹

Because I do not consider these restrictions to be inherently suspect, a traditional rule-of-reason analysis must be performed in order to condemn these restrictions under Section 5.¹² It appears unlikely that these restrictions would be condemned at the completion of a rule-of-reason analysis in large part because of the limited

⁹ For example, construction companies and government agencies frequently place requests for engineering bids in the Dodge Report, which is widely disseminated.

¹⁰ It is possible that advertising may be a more effective, or less costly, means of communicating some types of information to customers in this industry than the submission of proposals to customers. We have not been presented with any evidence that this is the case.

¹¹ Mass. Board at 604.

¹² *Id.*

competitive significance of engineers' advertising and the obvious absence of market power on the part of NSPE.

My conclusion that the challenged restraints are not inherently suspect does not require that I reach the issue of market power. But it is worth noting that the membership of NSPE constitutes a small percentage of professional engineers.¹³ In the face of competition at least from the vast majority of professional engineers who are not members of NSPE, it appears unlikely that NSPE would be able to enforce anticompetitive restrictions against its members. Engineers wishing to utilize practices restricted by NSPE could simply disassociate themselves from NSPE. We have no evidence that the benefits of NSPE membership are unique among professional associations in the industry.¹⁴

Where it is obvious, without detailed inquiry, that the parties to a restraint lack the ability to restrict output, it may be appropriate to factor this lack of market power into the determination of whether the restraint is inherently suspect. It is well recognized that the parties to a restraint must have market power in order for the restraint to restrict competition and decrease output. Market power analysis is not explicitly incorporated into the truncated rule of reason because of judicial economy, not because it is deemed to be irrelevant. Therefore, it is perfectly consistent with the motivations of the truncated standard to factor clear evidence of a lack of market power into that analysis.¹⁵

To the extent that the restrictions here may have any effect on members' advertising, it is conceivable that some of that effect may be competitively beneficial. Since I do not deem the challenged

¹³ Further, it may be the case that "nonprofessional" engineers, *i.e.*, those who have not obtained state licenses, also are substantial competitors of professional engineers. It also may be the case that other types of "design professionals" (such as architects, interior designers, and surveyors) compete to some extent with engineers.

¹⁴ Among the many other professional associations in the engineering industry are the American Society of Civil Engineers, the Institute of Industrial Engineers, the American Consulting Engineers Council, and the American Society of Mechanical Engineers. Some of these associations have memberships as large or larger than NSPE's.

¹⁵ There may be few cases outside the context of professional associations in which it is obvious, without significant inquiry, that market power does not exist.

restrictions to be inherently suspect, I need not evaluate the plausibility and validity of any efficiencies before concluding that a full rule of reason analysis is required.¹⁶ Nevertheless, it is worth noting that, under certain circumstances, it may be an appropriate function of professional associations that lack market power (such as NSPE) to protect the “esteem” of members in order to enhance their ability to compete with nonmembers. While jingles and slogans may be effective (or at worst innocuous) in advertisements for products such as toothpaste and soft drinks, they may be considered to be unprofessional by customers of certain professional services. If so, then it may be defensible on efficiency grounds for an association that lacks market power to restrict advertising by its individual members that is demeaning to the membership as a whole.

The evidence presented does not establish that this is a valid justification for the challenged restrictions just as it does not suggest that the restrictions are likely to restrict competition and decrease output. I raise it as a possibility that suggests the need for a more thorough inquiry before challenging the restrictions of a private professional association with voluntary membership and no apparent market power.

Finally, as I have argued in the past,¹⁷ an overly broad definition of “inherently suspect” establishes precedent that siphons enforcement resources toward cases of dubious merit. I am concerned that the evidentiary standard implicit in a challenge of NSPE’s restrictions would justify summary condemnation of restraints in cases of increasingly questionable merit.

In conclusion, I do not find reason to believe that NSPE has violated Section 5 of the Federal Trade Commission Act. Therefore, I dissent from the Commission’s action today.

¹⁶ Mass. Board at 604.

¹⁷ Dissenting Statement of Commissioner Roscoe B. Starek, III, In the Matter of the National Association of Social Workers, Docket No. C-3416 (March 3, 1993).

IN THE MATTER OF

HEALTH MANAGEMENT RESOURCES CORPORATION

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

Docket C-3455. Complaint, Aug. 17, 1993--Decision, Aug. 17, 1993

This consent order prohibits, among other things, a Massachusetts-based marketer of very-low-calorie diet programs (rapid weight loss, modified fasting diets of 800 or fewer calories per day) from making false or unsubstantiated claims about health risks, weight loss, weight loss maintenance, acceptance of its program by the medical profession, or low success rates of other diet programs; and requires certain disclosures in conjunction with safety and weight loss maintenance claims in the future, and scientific evidence to back up comparison studies or claims of acceptance by the medical profession.

Appearances

For the Commission: *Renate Kinscheck* and *Richard F. Kelly*.

For the respondent: *James Sneed, McDermitt, Will & Emery*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Health Management Resources Corporation, a corporation (hereinafter "respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Health Management Resources Corporation is a Nevada corporation, with its offices and principal place of business at 59 Temple Place, Boston, MA.

PAR. 2. Respondent is engaged, and has been engaged, in the sale and offering for sale of physician-supervised very-low-calorie

diet (“VLCD”) programs and related nutritional products to the public through cooperating hospitals and clinics. VLCDs are rapid weight-loss, modified fasting diets of 800 calories or less per day requiring medical supervision. The HMR VLCD diet programs provide between 520 and 800 calories per day. Relying on training provided by respondent, staff of hospitals and clinics participating in the HMR program frequently advise patients to remain on the HMR VLCD program until they reach their goal weight, even when such advice results in patients remaining on the VLCD for extensive periods of time. The HMR diet programs include “foods” or “drugs” within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52.

PAR. 3. Respondent has created and placed advertisements, and provided camera-ready advertising copy to its participating hospitals and clinics for placement in various periodicals that are in general circulation to the public, to promote its diet programs to prospective patients. Typical of respondent’s advertising, but not necessarily inclusive thereof, are the materials entitled “Are You Considering a Fasting Program?,” and ““The treatment of choice for serious weight problems,”” attached hereto as Exhibits A-1 and A-2. Respondent further advertises its diet programs to the public by means of brochures, leaflets, and newsletters which it provides to participating hospitals and clinics to give to patients and prospective patients, and sample promotional articles for insertion in newsletters for dissemination to patients and prospective patients. Typical of respondent’s brochures, leaflets, newsletters and promotional articles, but not necessarily inclusive thereof, is the brochure entitled “When Your Next Diet Fails,” Exhibit B-1; the leaflet entitled “The Weight & Risk Factor Management Center,” Exhibit B-2; the newsletter entitled “For Your Better Health,” Exhibit B-3, and the promotional article, untitled, Exhibit B-4. Respondent also promotes its diet programs to the public by means of orientation sessions for prospective patients. Respondent provides training, including written scripts and audio tapes, to staff of participating hospitals and clinics for use in conducting these orientation sessions. Typical of respondent’s orientation session scripts is Exhibit C-1. Respon-

dent further provides training to staff of participating hospitals and clinics upon which staff relies in making representations and recommendations to patients and prospective patients regarding the use of respondent's VLCD programs.

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

PAR. 5. Respondent's advertising and promotional material contains the following statements:

- a. "Safe, rapid weight loss." (Exhibits B-1 pp. 2 & 3; A-1; A-2; B-2; B-3 p. 2)
- b. "Completely safe" (orientation tape)
- c. "Why is it [the diet] safe? The quality of the VLCD ... high quality supplements associated with medical supervision and effective education ... The medical supervision makes it safe." (Exhibit C-1, pp. 11-12)

PAR. 6. By and through the use of the statements referred to in paragraph five, and others not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly, or by implication, that the HMR diet programs are unqualifiedly free of health risks. Respondent has failed to disclose that physician supervision is required to minimize the potential risk to patients of the development of health complications on very-low-calorie diets. In view of the representation that the HMR program is free of health risks, the disclosure as to the requirement for medical supervision is necessary. Therefore, in light of respondent's failure to disclose, said representation was and is misleading.

PAR. 7. Respondent's advertising and promotional material contains the following statements:

- a. "Its been clear now for a number of years, around 15 years, that the use of very low calorie diets with high biologic value protein supplementation and appropriate amounts of carbohydrates with a little bit of fat . . . is very, very widely accepted by the medical profession as a whole." (orientation tape)
- b. "The VLCD is the treatment of choice" (Exhibit C-1, p. 14)

PAR. 8. By and through the use of the statements referred to in paragraph seven, and others of similar import and meaning, respondent represents, and has represented, directly or by implication, that the HMR VLCD diet program, including the practice of advising patients to remain on the program for extensive periods of time, is widely accepted by the medical profession as a whole, and is considered to be the preferred treatment by most medical experts.

PAR. 9. By and through the statements and representations referred to in paragraphs seven and eight, respondent represents, and has represented, directly or by implication, that at the time respondent made those representations, respondent possessed and relied upon a reasonable basis for those representations.

PAR. 10. In truth and in fact, at the time respondent made the statements and representations referred to in paragraphs seven and eight, respondent did not possess and rely upon a reasonable basis for those representations. Therefore, the representation set forth in paragraph nine was and is false and misleading.

PAR. 11. Respondent's advertising contains the following statements:

- a. "Over 60% of weight lost is kept off long term." (Exhibits B-1 p. 4; B-2)
- b. "Our national data system assures that our patients receive the highest quality program with lasting results . . . our patients who are three years out of maintenance have regained less than 40% of their weight" (B-3 p.2)

PAR. 12. By and through the use of the statements referred to in paragraph eleven, and others not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly, or by implication, that:

- a. Over the long term, HMR patients on average keep off over 60% of the weight they lose;
- b. Three years after ending maintenance, HMR patients on average keep off more than 60% of the weight they lose; and
- c. The HMR diet programs are successful long-term treatments for obesity.

PAR. 13. By and through the statements and representations referred to in paragraph eleven and twelve, respondent represents, and has represented, directly, or by implication, that at the time respondent made those representations, respondent possessed and relied upon a reasonable basis for those representations.

PAR. 14. In truth and in fact, at the time respondent made the statements and representations referred to in paragraphs eleven and twelve, respondent did not possess and rely upon a reasonable basis for those representations. Therefore, the representation set forth in paragraph thirteen was and is false and misleading.

PAR. 15. Respondent's advertising contains representations about the success of commercial weight loss programs in achieving and maintaining weight loss. Typical of respondent's representations of commercial programs' success, but not necessarily inclusive thereof, are the statements contained in Exhibit B-1 p. 4. The aforesaid advertising contains the following statements:

- a. "Average weight loss [in commercial programs] --11.5lbs." (Exhibit B-1 p. 4).
- b. "Less than 8% lose 40 or more pounds [in commercial programs]." (Exhibit B-1 p. 4)
- c. "One year after reaching goal weight over 90% regain all of weight lost." (Exhibit B-1 p. 4)

PAR. 16. By and through the statements and representations referred to in paragraph fifteen, and others not specifically set forth herein of similar import and meaning, respondent represents and has represented, directly, or by implication, that patients in commercial weight loss programs typically lose 11.5 lbs, that less than 8% of such patients lose 40 or more pounds, and that 90% of such patients regain all of their lost weight one year after reaching goal weight.

PAR. 17. By and through the statements and representations referred to in paragraphs fifteen and sixteen, respondent represents, and has represented, directly, or by implication, that at the time respondent made those representations, respondent possessed and relied upon a reasonable basis for those representations.

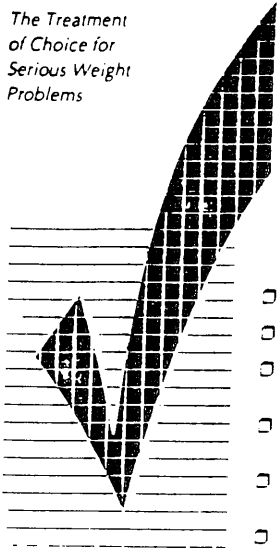
PAR. 18. In truth and in fact, at the time respondent made the statements and representations referred to in paragraphs fifteen and sixteen, respondent did not possess and rely upon a reasonable basis for those representations. Therefore, the representation set forth in paragraph seventeen was and is false and misleading.

PAR. 19. The acts and practices of respondent alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce and "false advertisements" in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. 45(a) and 52.

EXHIBIT A-1

HMR *Fasting* PROGRAM

The Treatment of Choice for Serious Weight Problems



Are You Considering a Fasting Program?

Choose . . .

- Medical supervision
- Safe, rapid weight loss
- Superior-tasting nutritional supplement
- Realistic approach to weight management
- Weekly educational sessions
- 18-month maintenance program


HMR *Fasting* PROGRAM

<p>Mon Plam, Faulkner Hospital Jamaica Plain, MA (617) 522-3941</p> <p>Neponset Health Center Dorchester, MA (617) 282-3200</p> <p>Lawrence Memorial Hospital Medford, MA (617) 395-2260</p> <p>Norwood Hospital Norwood, MA (617) 769-4000, x2136</p> <p>Skip Sviokla, MD Cambridge, MA (617) 864-6900 Hanover, MA (617) 871-5585</p> <p>Dennis H. Rapa, MD Natick, MA (508) 665-0073</p>	<p>New England Center for Health Promotion Cranston, RI (401) 944-5703</p> <p>HMR Fasting Program Chestnut Hill, MA (617) 232-4886</p> <p>Emerson Hospital Concord, MA (508) 369-4211</p> <p>Newton-Wellesley Hospital Concord, MA (617) 965-1273</p> <p>The Better Health Corporation Saugus, MA 1-800-STA-SLIM</p>
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Offered by hundreds of medical centers nationwide

Health Management Resources, 59 Temple Place, Boston, MA (617) 357-9876


EXHIBIT A-2

The  Fasting Program at

 Emerson Hospital

*“The treatment of choice
for serious weight problems”*

When your weight problems are approached realistically and you're given accurate information about weight management, being overweight does not have to be a way of life.

The  Fasting Program, offered by hundreds of hospitals and medical centers nationwide, includes:

- Medically supervised supplemented fast
- Safe, rapid weight loss
- Educational and behavioral sessions
- No list of restricted foods
- Intensive maintenance program

You are invited to attend a
FREE ORIENTATION

Date: Thursday, January 5

Time: 5:30 - 7:30 p.m.

Place: New Assembly Room
Emerson Hospital
Old Road to Nine Acre Corner
Concord, MA

Seating is limited.

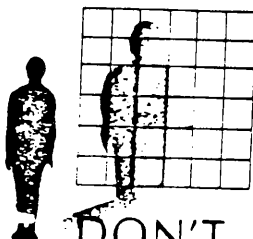
RSVP (508) 369-4211 or (617) 357-9876.

799

Complaint

EXHIBIT B-1

WHEN
YOUR
NEXT
DIET
FAILS...



DON'T
BLAME
YOURSELF.

FIND
OUT
WHY.

"Our goal is to
teach you the skills
you need to self
manage your weight
for a lifetime."

HMR *Fasting*
PROGRAM

Complaint

116 F.T.C.

EXHIBIT B-1

WHY
DIETS
FAIL

- Diets do not consider your individual eating style.
- Diets do not teach you the facts about calories.
- Diets do not teach you how physical activity relates to your weight.
- Diets do not teach you how to keep off the weight you lose.

HEALTH
MANAGEMENT
RESOURCES
IS
DIFFERENT

We understand why diets have failed for you in the past and we have developed a program that can be tailored to your individual lifestyle. Our goal is to facilitate safe, rapid weight loss while teaching you the skills you need to self-manage your weight over a lifetime:

- Our approach is educational and behavioral.
- There is no list of "forbidden" or "restricted" foods.
- We emphasize a calorie balancing system where you make your own food choices based on your own eating style.
- We teach you realistic ways to incorporate physical activity into your lifestyle.

A
PROFESSIONAL
STAFF

The staff of HMR is comprised of health care professionals: physicians, nurses, behaviorists and dieticians, who have expertise in developing and implementing high quality programs in behavioral medicine. We believe that it is the combination of medically supervised weight loss and intensive behavioral learning that accounts for our patients' success.

002354

EXHIBIT B-1

A | HMR combines the most effective
MEDICALLY | medical and behavioral methods
SUPERVISED | to offer a comprehensive, medical-
PROGRAM | ly supervised High Risk Program
 for individuals who are 20% or
 more over their ideal body weight where weight loss would
 reduce their medical risk. The program includes a 520calorie
 supplemented diet, weekly physician visits, periodic lab tests
 and weekly 1½ hour educational/behavioral group sessions.

WEIGHT LOSS CHART				
AVERAGE WEIGHT LOSS FIRST MONTH	AVERAGE WEIGHT LOSS EACH MONTH FOLLOWING	FIND YOUR CURRENT WEIGHT	AVERAGE WEIGHT LOSS FIRST MONTH	AVERAGE WEIGHT LOSS EACH MONTH FOLLOWING
31	20	300-350	34	31
25	22	275-300	28	23
23	18	250-275	25	19
20	15	225-250	22	17
17	14	200-225	20	15
15	12	175-200	17	13
13	10	150-175	14	11
11	9	135-150	—	—
10	8	120-135	—	—

Those enrolled in the HMR program experience significant improvement in their health. Most patients with hypertension or Type II diabetes are able to reduce or totally eliminate all medications and all patients dramatically reduce their risk of heart disease and other medical risk factors.

SAFE, | The program utilizes a superior
RAPID | tasting, high quality dietary sup-
WEIGHT | plement, HMR 500, to accelerate
LOSS | safe, rapid weight loss. HMR 500
 has been developed from many
 years' experience working with thousands of patients in
 medically supervised, supplemented low calorie diet pro-
 grams. HMR 500 exceeds all RDA recommendations and
 contains a high enough potassium content to render addi-
 tional supplementation unnecessary. In taste tests, people
 prefer HMR 500 to other leading supplements over 95%
 of the time.

002355

EXHIBIT B-1

KEEPING
WEIGHT
OFF

We have an intensive Maintenance Program which teaches you skills and individual procedures to balance your calories and maintain your weight loss.

CONSIDER
THESE
DIFFERENCES

Commercial Programs	Health Management Resources
Average weight loss—11.5 lbs.	Average weight loss—49.8 lbs.
Less than 8% lose 40 or more pounds	Over 50% lose 40 or more pounds
1 year after reaching goal weight over 90% regain all of weight lost	1 year after reaching goal weight approx. 15% regain all of weight lost
Less than 10% of weight lost is kept off long term	Over 60% of weight lost is kept off long term

THE
FIRST
STEP

If you are interested in learning more about our program, contact us for the date of the next free educational orientation. There is no obligation and we assure you that the information you will receive will be useful to you in your future efforts to lose or maintain your weight.

 **Health Management Resources**

RISK FACTOR REDUCTION PROGRAMS
59 Temple Place, Boston, MA 02111

(617) 357-9876

002356

EXHIBIT B-2



AT PASCACK VALLEY HOSPITAL
Old Hook Road • Westwood, NJ 07675 • (201) 358-4600

C-1447
B1447L

Diets do not...

- consider your individual eating style.
- teach you the facts about calories.
- teach you how physical activity relates to your weight.
- teach you how to keep off the weight you lose.

We understand why diets have failed for you in the past and we have developed a program that is tailored to your individual lifestyle. Our goal is to facilitate safe, rapid weight loss by offering a comprehensive medically supervised program while teaching you the skills you need to self-manage your weight over a lifetime.

Consider these facts at PVH's Center...

... about weight loss.

- Average weight loss - 49.8 lbs.
- Over 50% lose 40 or more pounds.
- Over 60% of weight lost is kept off long term.

... about keeping it off.

- Our approach is educational and behavioral.
- There is no list of "forbidden" or "restricted" foods.
- We emphasize a calorie balancing system where you make your own food choices based on your own eating style.
- We teach you realistic ways to incorporate physical activity into your lifestyle.

IN ASSOCIATION WITH
HMR Health Management Resources
WEIGHT AND RISK FACTOR MANAGEMENT PROGRAM

Tear on this line

YES, I would like to learn more about the Weight and Risk Factor Management Center at Pascack Valley Hospital. If you prefer to call us directly, our number is (201) 358-4600.

- Call me with the date of the next free educational orientation.
- Send me a brochure describing the programs available at the Center.

NAME _____ TELEPHONE _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____

Exhibit B-2

EXHIBIT B-3

HEALTH MANAGEMENT RESOURCES NEWSLETTER

VOLUME 5 - NUMBER 1

For Your Better HEALTH

 0-144
 B-43

Surviving the Holidays: Weight Control Strategies

The holidays are a special time of family gatherings, religious ceremonies, shared friendship, beautiful traditions, and oh, yes, food. Lots and lots of high-calorie food.

Aunt Emily's pecan pie and Cousin Fred's famous gibley gravy at Thanksgiving dinner kick off a six-week parade of party feasting and seasonal snacking. This doesn't stop until January, finds us at the beginning of a new year with an average holiday weight gain of 4 to 6 pounds.

The festivities are now over. The time has come to take off the extra weight. In fact, 50% of us begin a diet this year. But only about 2% to 3% will actually reach our goal weight and stay there for a year.

Why? Misinformation. Most people think starch (pasta, potatoes, rice) is their enemy, so they cut out carbohydrates. This seems to work at first, because the major result of a low-carbohydrate diet is a short-term water loss. When the body begins to reabsorb water, the lost pounds reappear, and the dieter, discouraged and feeling like a failure, gives up.

Know where the calories are

The good news is you can lose weight, keep it off, and still enjoy hearty meals. All you need is the right information.

Your weight is controlled by the number of calories you consume and the number you expend in physical activity.

When you learn to balance food calories with calories burned, you'll take the pounds off. And keep them off.

You can substantially reduce your caloric intake by cutting down on fats. With nine calories per gram, fat has more than twice the calories of carbohydrates and protein which weigh in at only four per gram. So if you learn where the fats are lurking in your diet you can avoid them. It takes only an extra 3,500 calories to put on one pound of body fat.

Eat more and weigh less

Quantity is not a reliable measure of how fattening a meal is. You don't have to eat less food. Just less fat. For example, a simple dinner of a 12-oz. T-bone steak and a cup of black coffee has a total of 1200 calories. (A 125-lb. woman needs only 1400 calories daily to maintain her weight.) However, a dinner of a 12-oz. broiled haddock fillet, a baked potato with a tablespoon of sour cream, 1/2 cup of broccoli, a salad with diet dressing, a dinner roll with a pat of butter, a scoop of ice cream, and two cups of coffee with cream and sugar serves up only 910 calories — and a lot more food.

see FEASTING, last page

The Problem?

Fat: Americans are eating diets containing 31 percent more fat. For equal volumes of food, fat has more than twice the calories of protein and carbohydrate.

The Solution

Look for ways to "de-fat" your food choices.

- Reducing the amount of fat we eat is the single most effective way to cut calories without eating less food.
- Grill, bake, broil, and stir-fry in a dry wok instead of frying and sauteing.
- "De-fat" your recipes by substituting lower fat ingredients like skim milk, reduced-calorie margarine, egg whites, sour cream, and non-fat yogurt.
- Use more fish, chicken, or turkey instead of red meat. You'll save 25 to 100 calories per oz.
- Try reducing the amount of oil and sugar in your recipes. These changes often do not affect flavor and texture. Experiment!
- Eat more fruits and vegetables. These contain little or no fat, so large volumes don't add up to high calories. Try mealless meals or use meat as a condiment.

1103992

Exhibit B

EXHIBIT B-3

Take Charge Of Your Health With The

HMR *Fasting*
PROGRAM

Losing weight and maintaining your correct body weight are the major steps you can take toward a longer and healthier life.

People who are more than 20% over their ideal body weight triple their chances of developing diabetes while their risk of hypertension could be as much as 5.6 times greater. Taking off extra pounds is more than just improving your appearance — it's a matter of improving your life.

Find the right weight-loss program for you!

So now the question is, how do you do it? A comprehensive, medically supervised program offering a Very Low-Calorie Diet is an excellent way. The HMR Fasting Program combines medical and behavioral methods so effectively that our patients lose more weight than those in commercial weight loss programs, and maintain their weight loss for a longer time.

As you investigate very low-calorie diet programs, ask yourself these questions:

- **Is the program medically supervised?** The HMR Fasting Program includes weekly physician visits and bi-weekly lab tests. All patients are screened to be sure they are medically eligible.
- **Is the supplement good tasting and of high nutritional quality?** Our supplement, HMR 500, has proven itself over the years with thousands of patients. Nutritionally complete, it contains 150% of the Required Daily Allowance and necessary potassium. In taste tests, people prefer HMR 500 to other leading supplements more than 95% of the time.
- **Does the program include education?** Your weight loss is only the beginning. A comprehensive educational program which includes weekly 1-1/2 hour educational/behavioral sessions is an important, required part of the HMR Fasting Program. We teach you the skills you need to manage your weight over the long term.
- **Is there a long term maintenance program?** We want you to keep your weight off permanently. That's why we will continue teaching and refining your skills for as long as you need to reach your goal weight.
- **What kind of follow-up and staff support is there?** HMR's staff of health care professionals knows that weight management is a learned skill. They will work closely with you to tailor the program to fit your lifestyle.
- **Do you learn about balancing calories and exercise?** HMR teaches the relationship between calorie-intake, basic nutrition, and physical activity. With our calorie balancing system you can learn to make your own food choices to suit your personal eating style.
- **How do you judge the success of a program?** Our success depends on our patients' success, so we monitor how they're doing all across the country. Our national data system assures that our patients receive the highest quality program with lasting results.

The bottom line: success

The HMR Fasting Program has an impressive track record. Its low-calorie supplement, education, behavioral training, long-term support, and calorie/physical activity balancing has helped patients lose an average of 49.8 lbs. (compared with an average 11.5 pound loss in commercial programs). And while 95% of those who lose weight with commercial programs gain it all back within a year, our patients who are three years out of maintenance have regained less than 40% of their weight, and many have kept it all off.

We invite you to come to our free, no obligation educational orientation. The information you receive will help you start to take control of your own health.

"The HMR Fasting Program combines medical and behavioral methods so effectively that our patients lose more weight than those in commercial weight loss programs, and maintain their weight loss for a longer time."

003933

Complaint

116 F.T.C.

EXHIBIT B-3

Patient Profile: One Step At A Time

Jeanene Olson, age 65, was told a year and a half ago by a heart specialist that she would die if she didn't lose weight. Now seven months into maintenance, she is sustaining a 100 pound weight loss.

When Jeanene entered the HMR Fasting Program at Austin Diagnostics, TX in May of 1988 she was in a wheelchair with neuropathy of her legs, on high levels of insulin daily, and suffering from severe heart problems—all associated with obesity.

Jeanette tried a number of diet programs over the years but was never able to keep off weight she lost. "I'd be given a slip of paper and told to go on this 1500 calorie per day diet and lose weight. It just never worked. Maybe for 10-20 pounds it would but with the amount of weight I had to lose, it just was too difficult."

Jeanette Olson (pictured on left) — "I have never been able to travel. I would say I don't have the money but it was really because I couldn't get around with my weight. I hadn't seen my sister in 35 years because I was too ashamed. This Thanksgiving I went to visit my sister in Florida. It was wonderful!"



"If I had done this earlier I probably wouldn't have so many health problems today. I never thought I could come so far. But I'm proof that it's never too late."

According to Jeanette, being on the supplemented Very Low Calorie Diet was easier for her than other diets because it eliminated food choices, the only choice she had was whether to eat vanilla, chocolate or chicken soup. She says the staff of Austin Diagnostics also was very supportive and the medical supervision was thorough. "When you have over 100 pounds to lose you need a physician to monitor you," she advises.

While losing weight with the HMR Fasting Program Jeanette learned how to incorporate realistic changes into her lifestyle to help her keep off the weight she lost.

Jeanette now feels confident that by incorporating physical activity into her lifestyle and eating a lower fat diet she will be able to balance calories over time. For example, she eats mostly white turkey and chicken (at 45 calories per ounce) rather than red meat (at 100 calories per ounce). "I still eat high fat foods and I certainly enjoy them," she says. "But now I know what it takes to balance them."

Physical activity is an important component of the HMR Fasting Program. After six months in the program, Jeanette left her wheelchair to begin walking with a walker and now uses a cane to get around. Between walking, stationary biking and swimming, Jeanette currently burns approximately 3,000 calories per week in physical activity.

"The most important thing for me is to keep up my activity," she says. "That's something I never realized. I was in the military years ago and had activity built into my life, but I never realized the relationship between activity and my weight."

"If I had done this earlier I probably wouldn't have so many health problems today. I never thought I could come so far," says Jeanette. "But I'm proof that it's never too late. I don't feel sixty-five. That's for sure. Sometimes I even feel good enough to go back to work! Losing this weight has given me a sense that I can really do something. And I did it for me, not for anybody else. I would recommend this to anyone who has a lot of weight to lose."

1103994

EXHIBIT B-3

from *FEASTING*, first page

If you're tired of "diet plates" with a hamburger patty, cottage cheese, and a peach half, try ordering a large turkey sandwich with lettuce, tomato, mustard, and a side order of coleslaw. You'll get more food and less than half the calories.

If you're an incurable nibbler or really enjoy nighttime snacking, there's no need to change your eating habits, just your food. In choosing what to snack on, remember that fried foods are higher in fat than their baked or broiled counterparts; that air-popped popcorn is a lower-calorie snack than peanuts, which have 30 times the calories; and that a turkey sandwich has half the calories of pastrami and cheese. It's not when you eat, it's how much fat and calories you eat that counts.

A little walking goes a long way

In addition to limiting calories, you can burn them up as well. Exercise can even "buy" you some extra calories. If you want to eat some higher-calorie foods, then work those calories off. We're not suggesting that you turn yourself into a world-class athlete, just that you become more active. You might get off the bus a few stops early and walk or try parking in the back of the lot. Another quick trick is to use the stairs instead of taking the elevator.

Got a few spare minutes at lunch? You can sneak in some exercise and give yourself a change of pace by walking 10 minutes away from the place and 10 minutes back each day. If you weigh 150 lbs., you'll burn off about 100 calories, a ten-pound weight loss in one year.

Physically active people have fewer struggles with extra pounds than sedentary people, so it's a good idea to make your activities a regular part of every day. If you keep it up even after you've hit your goal weight, you'll increase your

chances of staying there.

The key to regular exercise is to build it right into your daily routine. It's easier to stick to an activity when it fits into your lifestyle and you enjoy doing it.

The trick to holiday treats

You can change some of your food choices to keep those excess calories down. For example, take a look at the traditional turkey dinner. Nuts are much higher in fat than raw vegetables, so you could munch more carrots and celery, without piling up the calories you would with the nuts. Dark meat has more fat than white meat. If you want to cut the meal's fat content, remove the skin. Putting gravy through a skimmer, reduces the calories by 80%. Stuffing baked outside of the bird saves even more. Candied sweet potatoes have five times as many calories as baked squash. And you can have two pieces of pumpkin or apple pie for the same number of calories as one piece of pecan pie — it's your choice.

As you decide what to put on your plate, you can make some tradeoffs. If the holiday just wouldn't be a holiday without your favorite food that is high in fat, simply balance it by cutting calories elsewhere. Then round up the family, and enjoy a walk around the neighborhood.

Recipe for success

So if your holiday celebrations leave you with unwanted extra pounds, you can lose weight sensibly. And permanently.

When you know where the calories and fats really are, you can make educational diet choices. You'll know how to lower the fats you eat while increasing your carbohydrates. Add regular physical activity, and you'll be able to enjoy the festivities as well as control your weight. Enjoy!

HMR Health Foundation: The American Indians

Obesity and its complications are well-known to American Indian communities and reservations where lifestyles have changed dramatically over the past 100 years. A decrease in activity and a diet higher in fat content has led to an incidence of obesity between two and five times U.S. averages.



The Supai reservation at the bottom of the Grand Canyon has a special supplement carrier.

Through the Indian Health Service, HMR has established 10 programs on Indian reservations in Nevada, Arizona and California. HMR supports program services through its non-profit branch, the HMR Health Foundation, for a population which might not have had the opportunity to participate in a high-risk program because of costs and availability.

Through the strong commitment of the staff of the HMR Feasting Programs on the Indian reservations, patients are receiving the highest quality care.

Health Management Resources

Outpatient Health Program

59 Temple Place
Suite 704
Boston, MA 02111

(617) 357-9876

1103995

EXHIBIT B-4

Old Road to Nine Acre Corner
Concord MA 01742-4166
(508) 369-1400

FOR IMMEDIATE RELEASE

CONTACT: MICHELE CORKERY
357-9876

Emerson Hospital in Concord will hold a FREE EDUCATIONAL ORIENTATION on "Lifetime Weight Management" on January 5th from 5:30 to 7:30 p.m. The orientation will introduce participants to a medically-supervised fasting and weight management program to begin in late January at the hospital.

Emerson Hospital internist and endocrinologist, Dr. Melvyn Kramer, M.D., Medical Director for the new program, will discuss the risk factors associated with being overweight and the medical implications of weight loss. Anita Cohen, Behavioral Health Educator, will explain why traditional diets fail over the long term and why once weight loss is achieved many people fail to maintain it. Studies show that of the three percent of dieters who reach their goal weight, more than 90 percent regain that weight in six to twelve months. "To be successful, people need to learn new behavioral skills and procedures to both lose weight and maintain it over the longterm," said Dr. Kramer.

The HMR Fasting Program combines effective medical, behavioral and educational methods for achieving and maintaining significant weight loss. HMR patients lose an average of 2.5-5 pounds per week. Every patient must be screened to determine medical eligibility. Then the patient is placed on a 520 calories a day nutritionally complete dieting supplement . . . reaches goal weight. To ensure the patient's health and well-being during the "fasting" stage of the program, medical monitoring is done weekly and lab tests are performed by-weekly.

Throughout the program, patients are required to attend weekly educational/behavioral group meetings where they learn to make simple lifestyle changes that reduce the amount of fat in their diets and increase their levels of physical activity. When patients reach goal weight, they join an 18 month maintenance program, where the lifestyle changes are reinforced.

"Unlike traditional weight loss programs, HMR realizes that patients all have individual eating styles," added Cohen. "You can be a snacker, weekend eater, night eater or binger and still maintain your weight. In addition, during the maintenance phase we do not have lists of forbidden or restricted foods. Instead we teach a calorie-balancing system where people learn to make their food choices in conjunction with their individual eating styles."

Since 1979, more than 150,000 patients have used the HMR supplement in over 400 medically-supervised programs in hospitals, medical schools, and medical practices across the U.S. Staff is comprised of physicians, nurses, dietitians and behavioral educators, who have expertise in developing and implementing high quality programs in behavioral medicine.

For more information or to make reservations for the free orientation at Emerson Hospital, call (508) 369-4211 or (617) 357-9876.

EXHIBIT C-1

HMR

ORIENTATION FOR PROSPECTIVE NEW PATIENTS

In a very real sense, the orientation is the most important part of your program. The goals are to present accurate information about the treatment you are offering and to convince attendees that this is the right program for them to lose weight and learn how to keep it off. Therefore, a major function of the orientation presentation is to "sell" the program. Remember: If the people attending the orientation do not join your program, you will not be able to help them.

Free orientations, held frequently, are the most efficient and effective way of enrolling patients who are interested in learning more about your program. If orientations are scheduled frequently, prospective patients will not have to wait to start the program. We have found that when patients are "ready" to join a weight loss program, they often become discouraged if they are required to wait. Thus, we recommend that you schedule a formal orientation each week. At least once each month arrange to have the medical director (or other program physician) take part in the orientation. At other times the R.N. can present the medical section. The weekly orientations are flexible and can be held for large groups, small groups, or individuals, as circumstances dictate. We recommend that the responsibility of presenting a comprehensive orientation be shared by the physician/nurse and an experienced health educator. A typical orientation for a large group will last approximately one and one-half hours. A small group or individual orientation will last approximately one hour.

The orientation should be seen as the first integral step in the treatment plan and not as an option that can be missed. It is a time when you are beginning to lay foundations that will increase patient compliance and success after they have joined. Although we always try to consider flexibility in accommodating patient needs, attendance is not a commitment to negotiate freely. To have a patient start the program with the sense that attendance is somewhat optional will undermine their commitment to this critical procedure. Therefore, we recommend serious discussion about how to rearrange their schedules to meet this commitment. Strongly address the issue of weekly attendance in the orientation. Problem-solve with prospective patients to avoid problems later on (e.g., patients can reschedule their vacations so that they do not miss the core groups, or patients who planned to be out of town before they knew the class schedule can sign up, join the program, get scheduled for their clinical and physical exams (if that is appropriate) and begin the program in the next clinic group that will start after they return.). As we mentioned, since the orientation is the first integral step in the treatment plan,

a clinic staff member talking to a prospective patient on the phone should explain to the individual who says, "I'm already sold - just start me in the next group," why the orientation is necessary and the benefit of hearing the entire program overview. All patients should attend an orientation, or they will miss program foundations and information.

The orientation should be informative and upbeat. The Presenters should be enthusiastic, convincing, and professional. The emphasis should be on what makes this program different from others and why this program is more likely to succeed for them than their past efforts. The style of all staff who are presenting should be relaxed and friendly, and those attending should be encouraged to ask questions at the end after they have heard the basic information. Even if a patient decides not to join the program, it is still our goal that they will leave the orientation better equipped to manage their weight by having learned at least some relevant information. Also remember that the more concrete, exciting, and hopeful you make the examples and facts in your orientation, the more likely it is that patients will join the program. Even those who do not join immediately will be more likely to join the program at a later date and talk positively about the program to others.

An outline of a typical patient orientation follows:

BEHAVIORAL OUTLINE/SCRIPT FOR PATIENT ORIENTATION

I. INTRODUCTION

Welcome everyone. Introduce yourself and other staff. (include why you do this work)

My job tonight is to convince you that this is the only program you should join: Why?

How many of you have lost weight before?

How many of you have gained your weight back?

One Time?

Two times or more?

This is not unusual. People have regained their weight sometimes 3 or 4 times before they come to us.

What we'll tell you tonight is that long term weight maintenance is "doable," We have the only successful program which teaches people the skills to lose weight and to keep it off.

Tonight we'll talk about:

Who we are, who is HMR

Why diets fail

We'll give you an overview of the program and answer questions

We'll explain the cost

We'll discuss the medical safety issues

We'll tell you what you need to do to start the program

II. HMR

*HMR is a National Health Care Company with over 300 programs in hospitals, medical schools and large medical practices.

*Unlike commercial programs, we offer close, competent medical supervision for those patients who require it.

*Our staff is full time. We're doctors, nurses, behavioral health educators, administrators.

*All staff receive intensive on-going training. For example, a BHE has over 200 hours of training per year.

*All staff work together on a team to support you during your visit each week as well as between your visits.

*In all article written for the Journal of the American Medical Association, (one of the most prestigious medical journals in the world), by three well-known and respected authorities on the treatment of obesity, it was stated the medically supervised very-low-calorie diets--combined with behavioral education and supervised by trained professionals--are recognized as one of the most effective forms of treatment for high-risk obesity. Of all such programs, HMR has data that are clearly superior to those published by others in the field. And HMR is the only provider of VLCD programs that gives ongoing training to all professional staff involved in the treatment of patients.

*Describe your own clinic site: How long have you been doing this program at your site.

*We are data based: we monitor our effectiveness and improve the program using national data.

III. HOW WE'RE DIFFERENT AND WHY DIETS FAIL

I'm going to talk about why your other diets have failed, and how we're different from other diet programs.

A. DATA

In commercial programs over 90% of people gain back all the weight they lose. Often they lose fewer than 15 lbs. In our programs, less than 15% of our patients gain back all the weight they lose. Our average weight loss is 52.6 lbs, counting every patient who starts in the program.

B. WHY DIETS FAIL

They don't teach you how to keep weight off.
They ask you to make changes which are unnecessary and irrelevant to your weight maintenance.

For example they recommend:

- Eat small portions
- Eat 3 meals a day
- Don't snack

"What other recommendations have been made to you by other programs? that may not be doable or are not necessary?" (Get participation from the group.)

Patients often tell us that they are told to:

- Reduce stress in your life
- Stop eating compulsively
- Use small plates
- Just "push away" from the table
- Never eat chocolate
- Just eat when you're hungry

These are not the kind of changes you need to learn to make. In fact, "How many of you know THIN people who snack or eat chocolate?"

So, to lose weight and keep it off you need to learn something else. Not only are the above recommendations not relevant, but they also can set you up to fail because they are not realistic for most people.

IV. WHAT WE WILL TEACH YOU

A. WE WILL TEACH YOU ABOUT FOOD CALORIES

Why? So you can learn how to keep off the weight you lose.
Weight maintenance is a calorie issue (calorie-balancing and -X).

Can I have a volunteer? How much weight do you hope to lose.

Possible answer: 50 lbs.

Women get 11 cal/lb/day $50 \times 11 = 550$ cal = calorie change needed to
maintain lower weight.

Men get 12 cal/lb/day $50 \times 12 = 600$ cal = calorie change needed to
maintain lower weight.

"How will you make these changes?"

We have a simple calorie system to help you make the changes that are easiest for you -- changes that will reduce fat and reduce calories but NOT reduce the amount of food you can eat.

Examples: (possible changes)

*Snacks: 35 cups of air popped popcorn vs. 1 cup peanuts

*Lunch: 2 turkey sandwiches vs. 1 pastrami sandwich
3 x week = 22 lbs. kept off a year

*Dinner Valle's Steak House example

Goal: Not eat less
 Not change eating style
 Eat more food for fewer calories
 Doable for a lifetime

B. WE'LL TEACH YOU ABOUT PHYSICAL ACTIVITY CALORIES

Fit into lifestyle, not become "athletes"

Example: *10 min. walk out of your house, 10 min. walk back
 3 x per day = 31 lbs. in a year kept off.

*2000 cal. per week (approximately 45 min.-hour per day) and records keep 76.6% of weight off after 18 months.

SUMMARY:

Overeating is normal.

People often may feel discouraged. We understand this.

We'll work with you throughout the hard times to keep you attending, to lower your fats and increase your physical activity through learning calories, record keeping.

We'll teach you weight maintenance long-term!

V. PHASES OF THE PROGRAM

Induction Phase

Weight loss phase

Transition

Weight Maintenance

A. Induction Phase: There are two parts to this phase

*HMR has always offered medical screening and quality medical supervision.

*Commercial programs do not provide this.

*The importance of having a program with a medical screening is that it enables you to find out what the appropriate program is for you to participate in.

First step: Patient orientation - "you are here."

Second step: Medical screening to determine status.

Unsupervised

Body Mass Index (BMI) less than 30 (ratio of height & weight). This is the technical measure we use. It generally means someone with less than 40-50 pounds to lose, depending on height.

No current risk factors.

Minimum of 800 calories/day.

*All three of the above must be satisfied to qualify the patient for the unsupervised program.

Supervised

BMI greater than or equal to 30.

Current risk factors.

520 calories/day.

*If any one of the above are present, the appropriate program is the medically supervised program.

B. Weight Loss Phase:

1. Our diet provides complete nutrition in a structure which helps people lose weight successfully.

There are two options for you.

The Very Low Calorie Diet (VLCD) and the Low Calorie Diet (LCD).

The Very Low Calorie Diet (VLCD):

*Minimum of 520 calories per day including supplement only (chocolate, vanilla, chicken soup)

*Medically supervised

*HMR has more than 10 years of experience with this diet

*Supplement only=No decisions (this is easier for many patients)

*This option has the least number of calories with complete nutrition

The Low Calorie Diet (LCD):

*Minimum of 800 calories per day in supplement only or supplement with HMR entrees

*Medical supervision to be determined

*Offers dinner entrees

*Limits decisions-no grocery food (keeps it simple and easier than other food diets)

Both Diets are:

TIME-LIMITED-NOT FOREVER

SAFE/NUTRITIONALLY SOUND: 100 -150% OF RDAs

SIMPLE: Few decisions to be made

Hot or cold

Large volume or small volume

CONVENIENT: Glass, blender, microwave, boiling water

EFFECTIVE: 52.6 lbs average weight loss

Taste is excellent

Guaranteed weight loss on the diet

Sometimes patients are not sure which option they should choose. They should be advised to be less concerned with the option and more concerned with the use of basic program procedures (*e.g.*, are you coming in, keeping records, working with your health educator, etc.). It is the use of procedures which correlates with success.

2. HOW THE WEIGHT LOSS PHASE LOOKS

Attendance weekly and why this is important 90 minute behavioral group (starts you on the diet and keeps you on the diet)
Continuous support and phone follow-up
We're available evenings, weekends, hard times

3. WHAT IF YOU BREAK THE DIET?

It's not a "failure." We won't judge you.
We'll help you get back on the diet. You don't need to drop out.

C. TRANSITION PHASE:

The time between the VLCD or LCD and the Maintenance Phase. A gradual increase in calories and food choices

D. MAINTENANCE PHASE:

The most important phase
The time for skill development, practice for long term success.
Sixty minute groups
Flexible times
18 months to practice: successful weight management is a skill acquisition (like learning a sport)

Examples: Tennis example
Golf-swing example

Next: Medical Orientation: (Usually presented by the physician or nurse, see accompanying outline)

Next: Maintenance Patient Speaks:

Select a successful and articulate maintenance patient.
Coach him/her to speak about: what skills (s)he has learned in the program: how this program has been different from other weight loss programs in his/her experience; how (s)he experienced the fast; how critical maintenance is for success; and how supportive the staff has been.

Maintenance patients often present their sincere, heartfelt experiences which can be credible and convincing to prospective patients. In some cases, an experienced ongoing faster can take the place of a maintenance patient.

Next: Fees, Class Times: (Presented by the health educator, see accompanying script)

Next: Summary: Why Join

VI. SUMMARY:

WHY JOIN OUR PROGRAM

ASK "WHY JOIN?"

*We have a dedicated, full time continually trained staff whose only job is to support you to lose your weight and keep it off.

*We're data based so that we continue to improve our program.

*If you need medical supervision:

Our medical staff monitors your health and as you heard from Dr._____, many patients have reduced their coronary risk factors, lowered their blood pressure and decreased their need for blood pressure and diabetes medications.

*We have a program available for everyone, no matter how little or how much weight you wish to lose.

*What you can expect from us: our commitment to you: We care about the longevity and quality of your life. By losing weight now, you can increase both of these.

*What we will ask of you: THE THREE COMMITMENTS

(Note to educators: Refer to the What, Why, and How expansion on Attendance, Record Keeping, and Maintenance in "The General Program foundations, Fasting Foundations of Week 1")

1. Attend Weekly (and why this is important)

- A. To obtain the information you need
- B. For support
- C. For medical supervision, if necessary
- D. To obtain your supplement/entrees
- E. The data shows that people must attend in order to be successful

(Note: It is important that you spend enough time on this commitment so that patients understand how critical attendance is for their success). Please be sure to repeat the following sentence verbatim:

"WEEKLY ATTENDANCE IS IMPORTANT ENOUGH THAT WE HAVE A POLICY REGARDING THIS AND MAY NEED TO DISCONTINUE THE PROGRAM FOR PATIENTS WHO DON'T ATTEND."

2. Record Keeping (and why this is important)

"This is a tool to use that will help you learn self-management and also help us to coach you."

(Note: No further expansion on this commitment is really necessary.)

3. Attend Maintenance (and why this is important; very little expansion is necessary, because attendance has already been discussed.)

*CLOSING THE ORIENTATION:

1. Those who are ready to make your appointment, we have clinical times available; please see RN to make your first appointment.
2. If you have any questions or concerns before making your appointment, we will be happy to meet with you individually and address them.
3. Thank you for coming.

MEDICAL OUTLINE/SCRIPT FOR PATIENT ORIENTATION

- I. Introduction - introduce yourself and include information about your practice area and experience. Include your personal reasons for doing this type of work, e.g. frustration with trying to help patients in private practice lose weight and not having an effective method.
- II. The health risks of obesity. Why lose weight?

NOTE: Remember that the people attending the orientation may present a range of weight loss needs from 10-100+ lb. The HMR program options offer an effective prevention and treatment for the health consequences of being overweight.

- A. The associated health risks include hypertension, diabetes, orthopedic problems, increased risk of developing cardiovascular disease, increased risk of stroke, complications with surgery and childbirth, cancers, and gout.
- B. Being 40 or more pounds overweight increases the risk of sudden death in the under age 65 population by 1200%.
- C. Two thirds of all diabetics are overweight. With weight loss, two thirds of diabetes would be eliminated.
- D. Hypertension develops up to 5-10 times more often in individuals who are 20% or more over ideal body weight.
- E. (Flipside) For those of you who have a smaller amount to lose, you may not have these health risks now. However, people tend to gain weight as they get older, and we recommend taking the weight off now to prevent these problems from developing.

III. Medical safety and effectiveness of the Very Low Calorie Diet

A. Why is it safe?

1. The quality of the VLCD

- a. Evolution: *early - total fasting or starvation which was unsafe; patients did not feel well and had no energy

*early 1970's - progressed to fasting with supplement but the quality of the products was inferior

*today - high quality supplements associated with medical supervision and effective education for people with 40-50 or more pounds to lose; high quality supplements at a higher calories level or combined with food entrees for people with smaller amounts of weight to lose.

- b. The VLCD is the treatment of choice if the following criteria are met:

- 1. The program is medically supervised.
- 2. The program includes an intensive and effective educational component.
- 3. The program uses a high quality dietary supplement which provides protein with a superior amino acid profile and meets all of the Recommended Daily Allowances for nutrients.

799

Complaint

c. Nutritional content

1. High quality protein derived from milk and egg white with a superior amino acid profile.
 2. 79 grams of carbohydrate, more than any of the leading, supplements, preserves muscle tissue and reduces nutrient loss; keeps energy level up.
 3. 150 % of the RDA for most nutrients.
 4. Taste is preferable to other products.
2. The medical supervision makes it safe.
 - a. Some people will not be able to be on the low calorie diet right now because of contraindications - pregnancy or lactation. Some medical conditions will need to be evaluated individually such as recent heart attacks or strokes, recent surgeries, kidney disease, etc. but individuals with these conditions probably can participate on the diet.
 - b. Every individual receives initial screening including blood tests and health history to determine if he/she needs medical supervision. Anyone who is more than 40-50 lb. overweight will need medical supervision, but people who have less weight to lose may not need medical supervision if they do not have health risks.
 - c. If you do not require medical supervision, you will be taking a minimum of 800 calories a day of the supplement or the supplement and HMR entrees. You will have an appointment with the nurse for baseline lab work and a health history review and the physician and nurse will review these and make the decision that you can diet without medical supervision.
 - d. If you need medical supervision because of your weight or medical conditions, you will receive a complete physical exam before starting and will see the physician and nurse weekly, have blood drawn every 2 weeks and periodic EKGs done.
 - e. Each individual must take the recommended amount of supplement or supplement and entrees in order to get adequate nutrition and be medically safe. So that we know that you always have enough supplement to take the recommended amount, we require that you purchase 2 boxes each week if you are on the VLCD.
 - f. Each individual must attend every week for the Behavioral class and medical supervision. As has been mentioned before in this orientation we cannot

stress enough how critical your attendance is whether you are medically supervised or not.

- g. The staff are on call for any medical problems that are related to the diet.
 - h. We will work cooperatively with your primary care physician and send periodic letters with lab test results.
- B. Why is it effective?
- 1. Safe, rapid weight loss (3-6 lbs. per week for people on VLCD)
(2-4 lbs. per week for people on LCD)
 - 2. Significant health benefits
 - a. Decrease blood pressure and reduce or eliminate medicines.
 - b. Decrease blood glucose and reduce or eliminate insulin.
 - c. Reduce risk of heart disease by reducing cholesterol and triglyceride levels.
 - d. Improve arthritis by reducing stress on joints.

IV. Possible Side Effects (The major side effect is becoming healthier!)

- A. Intro statement: Benefits of losing weight and keeping it off far outweigh the risk of developing any of the possible sides effects I'm about to present. You can always expect some physical changes whenever you diet, and you may have experienced some of these in the past.
- B. The most common are fairly simple to prevent or manage:
 - 1. Bowel changes - constipation or diarrhea
 - 2. Dizziness
 - 3. Headache
 - 4. Fatigue

These physical changes are fairly simple to prevent or manage by taking plenty of fluids (2-3 quarts/day) and taking additional fiber in the form of bran or metamucil.

C. Less common

- 1. Temporary hair thinning may occur after more than 40 lbs. of weight loss and will reverse after refeeding.
- 2. Gallbladder problems (Suggested Statement To Make):
There is a short term increased risk for developing gallbladder problems. People who are overweight are at increased risk for gallbladder disease and

when people are dieting (no matter what kind of diet) they experience an increased risk of developing gallstones. However, by losing the weight, the overall risk of developing gallbladder disease is much reduced. We manage this possible side effect by recommending careful, supervised refeeding, slow introduction to foods, and caution about eating foods with high fat.

V. Summary

- A. Obesity carries significant medical risks.
- B. The VLCD is the treatment of choice and it is safe and effective with medical screening and supervision. The VLCD and LCD programs are successful because they combine complete nutrition with lifestyle change and risk factor management education.
- C. What makes this program different is how effective it is in teaching you how to keep the weight off.

OPERATIONS SCRIPT FOR PATIENT ORIENTATION

Many people are not aware of their medical risk factors when they go on a diet. HMR performs an assessment of your medical condition as a part of the induction to the program. As you know, commercial programs do not generally do any screening or medical tests prior to enrollment nor do they provide ongoing medical monitoring of their clients. Many of those people do not even know they have a serious medical condition. This is one of the reasons many of the commercial programs are under investigation by the congressional subcommittee in Washington, D.C.

Insert a similar story: For example, one of our clients female, 30 years old, 60 pounds overweight, discovered diabetes on induction. She was cleared by our medical director to start the Very Low Calorie Diet with medical supervision. No medications were required, she lost the weight and is doing fine

HMR HAS TWO DISTINCTIONS: (USE THE CHARTS IF AVAILABLE)

MEDICALLY SUPERVISED	MEDICALLY UNSUPERVISED
Min. 520 cal/day	Min. 800 cal/day
Supplement or Suppl/Entrees	Supplement or Suppl/Entrees

INDUCTION

You will have a medical screening tailored to your specific medical needs. If you are over 30% BMI, you will have a complete blood chemistries, EKG, comprehensive physical examination. If you are below 30% BMI, you will have blood chemistries done. The fees will be based on the services rendered.

Above 30% BMI \$190.00 Induction, below 30% BMI \$235.00 induction with Services included. More of the fees are paid up front in the \$235.00 charge. I'll explain more fully:

WEIGHT LOSS PHASE

The weight loss phase includes weekly weigh-in, and weekly 90 minute educational group. Medically supervised patients are seen by the program RN and MD weekly and have blood chemistries every other week, EKG's approximately every 35 lbs. of weight loss/or/12 weeks.

Insurance coverage is also a factor for most people (medically monitored) reducing the cost of the program. According to a recent survey 63.5% of our people in the program are receiving insurance reimbursement (from 80-100%).

Some insurance companies provide reimbursement for patients with medical diagnoses such as diabetes or hypertension. Insurance carriers are inconsistent regarding claim payments for weight management. Due to the wide variety of insurance coverages, each patient is responsible for obtaining insurance reimbursement from his/her insurance company. HMR will help by providing necessary letters, reports and physician referral letters. Submission of the charges is really the only way to find out if you will receive insurance reimbursement. (STORY) I had two patients who both had the same insurance and same diagnosis. One was covered, one was not. We made several submissions of letters and information and finally they did cover the patient.

Often it can take time and patients should be viable for several weeks in waiting for insurance reimbursement to occur. We do not accept Medicaid patients at this time. We also have a national agreement with Travelers as a weight management provider. However, all the same requirements must be met. (i.e. Diagnosis, contract differs from individual to individual.)

The weekly visit (including blood work) is \$65.00 per week. This is paid monthly (or our 4 week cycle we call it). This system is set up to aid with attendance. As you may have guessed, attendance in any weight management program is critical for successful weight loss and weight management. It is for that reason, missed

visits are not credited and no medical receipts are given. This can effect your being reimbursed since you will have paid for the service. It is HMR's attendance practice and we are firm about it. Missed visits must be made up within the week. Serious medical absences will be accepted. HMR can get these successful statistics and one of the reasons is the commitment around attendance.

DIET

Average cost per meal is \$1.40-3.50 depending on if you are taking supplement or entrees, about \$7-14.00 per day. All supplement and entrees are purchased and dispensed weekly. That \$1.40-3.50 per meal is your complete diet. That makes it convenient, no additional shopping and they travel with you great for work or travel. You will be spending less on food on this program than you are now. According to the USDA, the average working adult spends about \$72.00 per week on food and food related items. This may be subject to regional difference, but when you start to add up the 3 dinners out, lunches, wine with dinner, etc. you can see where it is not surprising some of our groups tell us they actually saved money during the weight loss phase.

MAINTENANCE

Our maintenance phase of 18 months is designed for your long term success in weight management. The maintenance phase of the program is critical, especially for those with significant amounts of weight to lose and keep off. If you are transitioning from the medically monitored weight loss to maintenance (goal weight) you will be paying \$250.00 per month (every 4 weeks). You pay that fee for 4 months and then you are totally paid up for the remaining 14 months. In this way you can attend as often as you like.

According to recent patient surveys most patients have tried at least 3 other programs and may have been unsuccessful in keeping all the weight off.

We are sure that with our coaching and support and individual focus we can help you become successful in keeping your weight off. We will work with you on teaching you how to keep the weight off and practice some simple lifestyle changes. You learn about shopping in grocery stores, reading labels, calculating your physical activity, etc. Weight management is a skill acquisition.

The unsupervised maintenance phase is a minimum of six months. We offer an incentive for the unsupervised maintenance patient \$100 off the regular \$300.00 fee if the amount is paid in full at the induction phase. Again, the unsupervised maintenance term is 6 months. Having worked with hundreds (or whatever your local experience is) of patients we are confident that we have a maintenance

program that can be tailored to your needs. Some patients want to have a longer term commitment and we can accommodate that.

In Summary, the HMR program can cost less than commercial programs who offer less services. We have successful patient data unrivaled by any other program. In addition, as I mentioned, HMR can often be covered by insurance companies.

RECOMMENDATIONS:

1. Offer discounts to multiple family members
2. Offer discounts to hospital/center you work with
3. Note tax deduction discount can often apply
See the orientation packet materials.

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by an interested person 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 Health Management Resources Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business at 59 Temple Place, Boston, MA.

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

DEFINITION

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

I.

It is ordered, That respondent HMR, a Nevada corporation, its successors and assigns, officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss or weight control product, program or service, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the safety of any very-low-calorie diet (“VLCD”) program (providing 800 calories or less per day), unless respondent clearly and prominently discloses in close proximity to any such representation that physician monitoring is required to minimize the potential for health risks;

B. Misrepresenting any health risk of any VLCD diet program;

C. Making any representation that the HMR VLCD program is widely accepted by the medical profession as a whole or is considered to be the preferred treatment by most medical experts, or making any other representation regarding the extent to which a diet program, or any aspect thereof, is accepted, recognized or preferred by medical experts unless, at the time of making any such representation, respondent possesses and relies upon a reasonable

basis consisting of competent and reliable evidence substantiating any such representation;

D. Misrepresenting the likelihood that patients in any of respondent's diet programs will regain all or any portion of lost weight;

E. Making any representation, directly or by implication, about the success of patients on any diet program to achieve or maintain weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence substantiating the representation, *provided, however*, that for any such representation that:

1) Any weight loss achieved or maintained through any diet program is typical or representative of all or any subset of patients using the program, said evidence shall, at a minimum, be based on a representative sample of: (a) all patients who have entered the program, where the representation relates to such persons; or (b) all patients who have completed a particular phase of the program or the entire program, where the representation only relates to such persons, and

2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of patients who were followed for a period of at least two years after completion of respondent's program (including any periods of participation in active maintenance); and

3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of patients who were followed for a period of time after completing the program that is either: (a) generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction;

F. Representing, directly or by implication, that any patients of any diet program have successfully maintained weight loss, unless

respondent discloses, clearly and prominently, and in close proximity to such representation:

(1) The following information:

(a) The average percentage of weight loss maintained by those patients,

(b) The duration, over which the weight loss was maintained, measured from the date that patients ended the active weight loss phase of the program, *provided, however*, that if any portion of the time period covered includes participation in respondent's maintenance program(s) that follows active weight loss, such fact must also be disclosed, and

(c) If the patient population referred to is not representative of the general patient population for that program, the proportion of the total patient population in respondent's programs that those patients represent, expressed in terms of a percentage or actual numbers of patients, or the statement: "HMR makes no claim that this [these] result[s] is [are] representative of all patients in the HMR program;" and

(2) The statement:

"For many dieters, weight loss is temporary." *Provided, however*, that, respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's diet programs;

G. Making any representation about the efficacy of any other diet program or programs, unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for making such representation. Such reasonable basis shall consist of a competent and reliable scientific study or studies of such other diet program or programs substantiating the representation;

H. Making comparisons between the efficacy of respondent's diet program or programs and the efficacy of any other diet program or programs, unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for making

such representation. Such reasonable basis shall consist of a competent and reliable scientific study or studies substantiating the representation in terms of both the efficacy of respondent's diet program or programs and the efficacy of the diet program or programs with which the comparison is made.

II.

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

III.

It is further ordered, That respondent shall maintain for a period of three (3) years after the date the representation was last made, and make available to the Federal Trade Commission staff upon request for inspection and copying, all materials possessed and relied upon to substantiate any claim or representation covered by this order, and all test reports, studies, surveys or information in its possession or control or of which it has knowledge that contradict, qualify or call into question any such claim or representation.

IV.

It is further ordered, That respondent and its successors or assigns, shall forthwith distribute a copy of this order to each of its officers, agents, representatives, independent contractors and employees, including participating hospitals or clinics, that are engaged in the preparation and placement of advertisements or promotional materials, who communicate with patients or prospective patients, or who have any responsibilities with respect

to the subject matter of this order, and, for a period of ten (10) years from the date of entry of this order, distribute same to all of respondent's future officers, agents, representatives, independent contractors and employees having said responsibilities.

V.

It is further ordered, That respondent and its successors or assigns shall, within thirty (30) days after service of this order, advise physicians, hospitals and clinics using the HMR diet program that advertising previously furnished by respondent for their use, and brochures, pamphlets, booklets and other materials previously provided by respondent to physicians, hospitals and clinics for dissemination to patients and prospective patients, shall not be further used by those physicians, hospitals and clinics where that advertising or other materials would violate this order. If, after providing the notification required by the first sentence in this paragraph, respondent becomes aware that any physician, hospital or clinic using the HMR diet program, uses advertising or other materials previously furnished by respondent that would violate this order, respondent shall again communicate with that physician, hospital or clinic in an attempt to ensure that such advertising or other materials shall not be further used by said physician, hospital or clinic.

VI.

It is further ordered, That respondent and its successors or assigns 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.

Commissioner Owen dissenting with respect to the numerical disclosure requirements for short radio and television advertisements.

IN THE MATTER OF

DEMERT & DOUGHERTY, INC.

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

Docket C-3456. Complaint, Aug. 17, 1993--Decision Aug. 17, 1993

This consent order prohibits, among other things, an Illinois-based corporation, that manufactures and sells consumer hair-care products, from making unsubstantiated environmental representations about any product it markets, whether under its own name or a private label.

Appearances

For the Commission: *C. Steven Baker and John C. Hallerud.*

For the respondent: *Mitchell Goldsmith, Shefsky & Froelich, Ltd., Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that DeMert & Dougherty, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent DeMert & Dougherty, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business at Five Westbrook Corporate Center, Suite 900, Westchester, Illinois.

PAR. 2. Respondent is, and has been, engaged in the business of manufacturing, offering for sale, promoting, distributing and advertising certain consumer hair care products to the public,

including All Set Hair Spray, that contain the volatile organic compounds ("VOC's") propane, butane, isobutane and alcohol.

PAR. 3. Respondent's acts or practices, including those alleged in this complaint, are, and have been, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertising, including product labeling, and other promotional materials for respondent's products, including, but not necessarily limited to, the attached Exhibit A.

The product labeling on cans of All Set hair spray has included the following statement:

ENVIRONMENTALLY SAFE

PAR. 5. Through the statement referred to in paragraph four in product labeling, respondent has represented, directly or by implication, that respondent's hair spray products do not contain any ingredients that harm or damage the environment.

PAR. 6. Through the use of the statement contained in the advertising referred to in paragraph four, including but not necessarily limited to the product label attached as Exhibit A, respondent has represented, directly or by implication, that, at the time that it made the representation set forth in paragraph five, it possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 7. In truth and in fact, at the time respondent made the representation set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Respondent's acts and practices as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

EXHIBIT A

D-3456
B143765

DeMert

ALL
SET
EXTRA

All Set Professional Hair Spray. The professional stylist's choice for better hold. Greater body. Lasting style. Featuring an extra firm formula for extra style. All Set Extra. A filtered clear hair spray with an extra-firm hold. Water-soluble for easy touch-ups. Anti-static to prevent "fly-away" hair. Holds for hours even in damp, humid weather. Set your own style with All Set Extra. Specially formulated with dl-Panthenol, a hair-absorbed pro-vitamin. Organic Protein for stronger, healthier looking hair. And a UV Sunscreen for added protection from the sun's harmful rays.

PROFESSIONAL
HAIR SPRAY

EXTRA FIRM HOLD

With dl-Panthenol and
Ultra-Violet Sunscreen

ENVIRONMENTALLY SAFE



OFFICIAL HAIR SPRAY

Sold in Salons

0 FL. OZ. (NET WT. 14.79 OZ.)

FORMULATED FOR SALON USE.

DIRECTIONS: Hold can upright 8 to 12 inches from hair and spray to restyle without restraining use a damp comb.

WARNING: FLAMMABLE. DO NOT USE NEAR FIRE OR FLAME OR WHILE SMOKING. Avoid spraying in eyes. Contents under pressure. Do not puncture or incinerate. Do not store at temperatures above 120° F. Use only as directed. Intentional misuse by deliberately concentrating and inhaling the contents can be harmful or fatal. KEEP OUT OF REACH OF CHILDREN.

INGREDIENTS: SD Alcohol 40, Isobutane for Normal Butane, Propane, Vinyl Acrylate/Crotonic Acid/Vinyl Neodecanoate Copolymer, Aminomethyl Propane, Fragrance, PPG-12-PEG-20 Lanolin, PVP, Ethyl Ester of Hydrolyzed Animal Protein, PEG-2 Glycerate, Panthenol, Octyl Dimethyl PABA.



DeMert & Dougherty, Inc.
One Brook Lane, 60571

Made in U.S.A. SOA-8-2096

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 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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by an interested person 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 DeMert & Dougherty, Inc., is an Illinois corporation with its office and principal place of business at Five Westbrook Corporate Center, Suite 900, Westchester, Illinois.
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

DEFINITIONS

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

1. The term “*Volatile Organic Compound*” (“VOC”) means any compound of carbon which participates in atmospheric photochemical reactions as defined by the U.S. Environmental Protection Agency at 40 CFR 51.100(s), and as subsequently amended. When the final rule was promulgated, 57 Fed. Reg. 3941 (February 3, 1992), the EPA definition excluded carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate and certain listed compounds that the EPA has determined are of negligible photochemical reactivity.

2. The term “*product*” means any product that is offered for sale, sold or distributed to the public by respondent, its successors and assigns, under the “All Set” brand name or any other brand name of respondent, its successors and assigns; and also means any product sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

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

I.

It is ordered, That respondent DeMert & Dougherty, Inc., a corporation, its successors and assigns, and its officers, and respondent’s representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion,

offering for sale, sale, or distribution of any product containing any volatile organic compound, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, through the use of such terms as “environmentally safe,” or any other term or expression, that any such product will not harm the atmosphere or the environment, unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondent DeMert & Dougherty, Inc., a corporation, its successors and assigns, and its officers, and respondent’s representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any product offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That nothing in this order shall prohibit respondent from using any of the terms cited in part I, or similar terms or expressions, or from making representations cited in part II, if necessary to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

IV.

It is further ordered, That nothing in this order shall prohibit respondent from depleting its inventory of products bearing labeling otherwise prohibited by this order and existing on the date that this order is signed, in the normal course of business, including converting existing inventory to finished goods, provided that no such existing inventory is shipped later than 120 days after the date that this order becomes final; *provided, however,* that nothing in this paragraph shall prohibit respondent from shipping existing inventory of products bearing labeling claims otherwise prohibited by this order, so long as stickers are placed over such claims or the prohibited claims are obscured in some other way; *provided further* that nothing in this paragraph shall create any obligation on behalf of respondent to remove or to obscure labeling claims from products shipped in conformity with this paragraph that are no longer in the possession, custody, or control of respondent.

V.

It is further ordered, That for five years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon in disseminating such representation; and
2. All tests, reports, studies, surveys, or other materials in respondent's possession or control that contradict, qualify, or call into question any such representation or the basis relied upon for such representation, including complaints from consumers.

VI.

It is further ordered, That respondent shall 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, promotional materials, product labels or other such sales materials covered by this order.

VII.

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

VIII.

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

IN THE MATTER OF

INSTITUT MERIEUX S.A.

Docket C-3301. Interlocutory Order, August 17, 1993

ORDER VACATING ORDER TO SHOW CAUSE

On March 9, 1993, the Commission issued an order to show cause why the proceeding in Docket No. C-3301 should not be reopened to modify the August 6, 1990 consent order against respondent Pasteur Merieux Serums et Vaccins S.A., formerly known as Institut Merieux S.A. ("Merieux"), by setting aside the provisions pertaining to respondent's obligation to lease the Connaught Bio Sciences, Inc. rabies vaccine business ("March 9 Order to Show Cause"). By order dated April 23, 1993, the Commission authorized North American Vaccine, Inc. ("North American Vaccine") to file a brief *amicus curiae* presenting its views as to this show cause proceeding. The Commission has received North American Vaccine's brief as well as responsive submissions from Commission counsel and Merieux.

The Commission's March 9 Order to Show Cause was based on its assessment at that time that there did not "appear to be any potential lessee that is interested in the rabies vaccine business or that is likely to receive the necessary governmental approvals" and that "accomplishment of the required lease is, for all practical purposes, a virtual impossibility, despite respondent's good faith efforts to comply with the order." March 9 Order to Show Cause at 2. Subsequently, however, North American Vaccine has come forward to express its interest in leasing the Connaught rabies vaccine business, stating that it is "committed to moving forward with negotiations." North American Vaccine Amicus Brief at 22 (May 21, 1993). Respondent Merieux asserts that North American Vaccine has failed to demonstrate a likelihood that it can acquire and operate Connaught's rabies vaccine business and argues that the consent order should be modified in accordance with the March 9

Order to Show Cause. However, Commission counsel state that North American Vaccine's brief "adequately demonstrates that [North American Vaccine] is an interested, serious, and potentially acceptable candidate to lease the Connaught rabies vaccine business." Commission Counsel's Response to Brief of North American Vaccine at 3 (June 2, 1993). Commission counsel further argue that North American Vaccine's demonstration "is sufficient to raise issues of compliance under the final order in this matter, which, in accordance with the Commission's Rules of Practice, should be resolved in a nonadjudicative setting." *Id.* Commission counsel have moved that the March 9 Order to Show Cause be vacated and that this proceeding be terminated.

Based on the submissions by the parties and the brief *amicus curiae*, the Commission is not prepared to determine at this time that the August 6, 1990 consent order should be reopened and modified as contemplated in the March 9 Order to Show Cause. The Commission has considered Commission counsel's motion and has determined that it should be granted. This conclusion is not meant to preclude reopening and modification of the consent order at a later date if warranted by then-existing circumstances.

Accordingly, *it is ordered*, that the Order to Show Cause issued on March 9, 1993, be and it hereby is vacated and that this show cause proceeding be and it hereby is terminated.

Commissioner Owen dissenting.

DISSENTING STATEMENT OF COMMISSIONER DEBORAH K. OWEN

When I dissented from the Commission's vote to issue the consent order as final in August 1990, I expressed in detail my concerns with the government enforcement action in this matter. I noted that this matter raised serious questions as to the judicious exercise of our prosecutorial discretion, and potential, grave complications stemming from the remedies provided in the consent order. For separate reasons, I now dissent from the Commission's determination to vacate the Order to Show Cause that would have set aside the requirement that respondent lease on a long-term basis

Connaught Bio Sciences, Inc.'s rabies vaccine business.¹ In my view, North American Vaccine, Inc. ("NAV") has failed to provide sufficient evidence to meet its burden of showing cause why the consent order in this matter should not be modified.

The Commission's Order to Show Cause, issued five months ago, noted that the costs to respondent of further divestiture efforts are an "inequitable and unbargained-for element of the consent order." Order to Show Cause, March 9, 1993, at 2. Under the consent order, respondent was required to lease Connaught's rabies vaccine business by January 15, 1991.² The order provides for the appointment of a trustee to lease the business within an additional nine-month period, in the event respondent failed to accomplish the lease within three months. Thus, the divestiture period could have terminated as early as October 15, 1991.³ Respondent has described in its nine interim compliance reports submitted to the Commission its on-going efforts to accomplish the lease agreement required by the order, including all contacts and negotiations with interested parties concerning the vaccine business. Despite these efforts, respondent has been unable to accomplish the divestiture mandated by the consent order.⁴ I fear that the Commission's determination to vacate its Order to Show Cause will further delay, for an indefinite period, a final resolution to this matter, which has already languished for nearly three years.

In my judgment, NAV has failed to meet its burden of showing cause why the consent order should not be modified. It has failed adequately to explain its untimely expression of interest in the divestiture assets, made almost two and one-half years after the

¹ See subparagraphs I(3), (4), and (5); and paragraphs II; III; IV; V; VI; VII; VIII; IX; and XI(A) of the consent order in Docket No. C-3301.

² The order became final on October 15, 1990 and provided that respondent Merieux must lease the rabies vaccine business within three months.

³ Section VI(B) of the consent order permits a three-month extension of the divestiture period; however, the circumstances in this case did not trigger this extension.

⁴ Commission counsel's determination that the appointment of a trustee would not serve the interests of the Commission attests to respondent's good faith effort to comply with the relevant order provisions and the fact that its inability to locate a lessee results from circumstances beyond its control.

consent order became final and was widely reported in the trade journals and other media in Canada and the United States. Further, in my view, none of NAV's submissions in this proceeding satisfy its burden of overcoming the public interest considerations which underlie the Commission's Order to Show Cause. NAV's self-interested generalizations concerning its capability to operate the rabies vaccine business have not been sufficiently substantiated so as to outweigh the various factors which prompted the Commission to initiate this proceeding to relieve respondent of the divestiture obligation. These include respondent's good faith efforts to accomplish the lease requirements, and the futility of further costly efforts by respondent. Indeed, it is hard to imagine why any company would choose to enter into a similar settlement. This case serves as notice that the Commission will permit the final resolution of a seemingly endless matter to be derailed by any suitor, even of questionable qualification, which might interject itself into the process at the last minute, after years of silence.

For these reasons, I dissent from the Commission's determination to vacate its Order to Show Cause in this matter.

IN THE MATTER OF

NATIONWIDE INDUSTRIES, INC.

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

Docket C-3457. Complaint, Aug. 26, 1993--Decision, Aug. 26, 1993

This consent order prohibits, among other things, a North Carolina-based manufacturer of automotive maintenance and cleaning products from making false and misleading environmental claims by representing, through the use of certain terms, that any product containing a Class I or Class II ozone-depleting substance, will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere, and also prohibits the respondent from representing that any of its products offer any environmental benefit, unless the respondent possesses competent and reliable scientific evidence that substantiates such representation.

Appearances

For the Commission: *Michael Dershowitz and Kevin M. Bank.*

For the respondent: *Laura Luger, Moore & Van Allen, Durham, N.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nationwide Industries, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Nationwide Industries, Inc. is a Pennsylvania corporation, with its office and principal place of business located at 2200 West Main Street, Suite 3000, Durham, North Carolina.

PAR. 2. Respondent has advertised, offered for sale, sold and distributed certain automotive aerosol products to the public, including Snap Fix-a-Flat and Snap Super Fix-a-Flat, which contain the chemicals 1,1,1-trichloroethane and chlorodifluoromethane (HCFC-22) (hereinafter "respondent's products").

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

PAR. 4. Respondent has disseminated or has caused to be disseminated product labeling, advertisements and promotional materials for its products, including but not necessarily limited to, the attached Exhibits A through C.

The aforesaid product labeling (Exhibits A and B) includes the following statements on the front panel of the aerosol container:

- (1) No CFC's Environment Friendly
- (2) No CFC's Environmentally Formulated

The aforesaid product labeling includes the following statements on the back panel of the aerosol container:

- (3) Non-flammable and environment friendly. Contains no chlorofluorocarbons.
- (4) Non-flammable and environmentally formulated. Contains no CFC's or Volatile Organic Compounds (VOC's).

PAR. 5. Through the statements referred to in paragraph four (1) - (4) in product labeling and advertisements (Exhibits A and B), respondent has represented, directly or by implication, that:

1. There are no ingredients in respondent's products which are damaging to the environment.
2. Because respondent's products contain no CFCs (chlorofluorocarbons), respondent's products do not harm the environment.

PAR. 6. Through the statements referred to in paragraph four (4) on the back panel of the aerosol container (Exhibit B), respondent

has also represented, directly or by implication, that because respondent's products do not contain CFCs (chlorofluorocarbons) or VOCs (volatile organic compounds), respondent's products do not harm the environment.

PAR. 7. The aforesaid promotional materials (Exhibit C) include the following statement:

Formulated to help preserve our environment.

PAR. 8. Through the use of the statement referred to in paragraph seven in its promotional materials (Exhibit C), respondent has represented, directly or by implication, that use of respondent's products helps preserve the environment.

PAR. 9. In truth and in fact, respondent's products contain ozone-depleting ingredients, 1,1,1-trichloroethane and chlorodifluoromethane (HCFC-22), which harm or cause damage to the environment by contributing to the depletion of the earth's ozone layer. Therefore, the representations set forth in paragraphs five, six and eight were, and are, false and misleading.

PAR. 10. Through the statements and representations referred to in paragraphs five, six and eight, respondent has represented, directly or by implication, that at the time respondent made such representations, respondent possessed and relied upon a reasonable basis for such representations.

PAR. 11. In truth and in fact, at the time respondent made such representations, respondent did not possess and rely upon a reasonable basis for such representations. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

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

Complaint

116 F.T.C.

EXHIBIT A



C-1457
B144434

... BLACK



Fix-A-Flat is the most advanced emergency tire repair system available today. Developed to seal and inflate 13" and 14" tires on passenger cars, quickly and safely.

- Seals and inflates most tires in as little as 30 seconds. No jacks or tools required.
- Non-flammable and environment friendly. Contains no chlorofluorocarbons.
- Special advanced rubber compound provides permanent repair for most punctures. Contains inhibitors to help combat rim rust, and corrosion in old non-rim tires.

DIRECTIONS

Whenever possible, remove object from tire which caused flat.
 • Shake can well (warm car helps; vent if weather is sub-zero).
 • With tire valve near the 6 o'clock position, screw plastic nozzle clockwise onto tire valve making sure can and stem are vertically aligned. Sealant and inflation gas will automatically discharge into tire.
 • After all product has discharged into tire, unscrew nozzle.
 • Although tire may appear under-inflated, immediately drive vehicle a short distance, usually 2 to 4 miles, to allow tire pressure to increase and sealant to spread evenly.

• Tire pressure should be monitored and air added if necessary.
 This product has been formulated to provide a permanent seal for most punctures. It is recommended that tires be checked by qualified repair professional at earliest opportunity. Fix-A-Flat will not repair severe damage, lateral tears, cracks in wheels or most rim leaks. Tires that have become flat may have structural damage and should be inspected by a tire professional to insure safety.

For use on passenger cars only. Do not use on motorcycles or any two-wheeled vehicles.
 Do not use with any other tire sealer/inflator products.
 Do not store in areas over 120°F. Store only in trunk of vehicle, preferably in shade or well-ventilated area. Never store near heat, in direct sunlight or in interior of car.
 Never use on tire rims as recommended by tire and wheel manufacturers.

USE ONLY AS DIRECTED
KEEP OUT OF REACH OF CHILDREN

SNAP and Fix-A-Flat are registered trademarks of Nationwide Industries, Inc.

PATENT PENDING
 NATIONWIDE INDUSTRIES, INC.
 10000 W. 10TH AVE.
 WEST PLAIN, MISSOURI 64086



EXHIBIT B

C-3457
B144434

5-88-1714-0 SNAP FIX-A-FLAT 211-5530-5 SW




AMERICA'S FAVORITE



fix a flat BRAND

PERMANENT REPAIR
Safe • Fast • Non-Flammable
EMERGENCY TIRE REPAIR SYSTEM



CAUTION: CONTENTS UNDER PRESSURE
READ ALL CAUTIONS AND DIRECTIONS
ON BACK PANEL BEFORE USING
NET WT. 9 OZ. (255g)

SNAP fix-a-flat

FIX-A-FLAT is the most advanced emergency tire repair system available today. Developed to seal and inflate 13" and 14" tires for passenger cars, quickly and safely.

- Seals and inflates most tires in as few as 30 seconds. No jacks or tools required. Reducing your exposure to the hazards of the highway.
- Non-flammable and environmentally formulated. Contains no CFC's or Volatile Organic Compounds (VOC's).
- Special advanced Rubber compound provides permanent repair for most punctures. Contains inhibitors to help control rust and corrosion. Will not harm tires.

DIRECTIONS

1. Whenever possible, remove object from tire which caused flat.
2. Shake can well (warm can using car heater vent if weather is sub-zero).
3. With tire valve near the 8 o'clock position, remove plastic nozzle dockhead onto tire valve. Holding sure can and stem are vertically aligned. Sealant and inflation gas will automatically discharge into tire.
4. After all product has discharged into tire, uncock nozzle.
5. Although tire may appear under-inflated, immediately drive vehicle a short distance, usually 2 to 4 miles, to allow tire pressure to increase and sealant to spread evenly.
6. Tire pressure should be monitored and air added if necessary.

This product has been formulated to provide a permanent seal for most punctures. It is recommended that tires be checked by qualified repair professional at earliest opportunity. Fix-A-Flat will not repair severe damage, sidewall injury, cracks in wheels or most rim leaks. Tires that have become flat may have structural damage and should be inspected by a tire professional to ensure safety.

For use on passenger cars only. Do not use on motorcycles or any two-wheeled vehicles.

Do not use with any other tire sealant/inflator products. Do not store in areas over 120°F. Store only in trunk of vehicle, preferably in spare tire well. As with any aerosol, never store near heat, in direct sunlight or in interior of car.

Never used on tire rims as recommended by tire and wheel manufacturers.

CAUTION: Contents under pressure. Keep away from extreme heat and open flame. May be harmful or toxic if swallowed. Vapor can be harmful. CONTAINS CHLOROFORMETHANE. Contact with open flame or extreme heat may produce toxic fumes. If swallowed, do not induce vomiting. Call physician immediately. In case of eye contact, flush immediately with water for 15 minutes. Rinse face. Use with adequate ventilation. Avoid breathing vapor. Irritation to nose by direct contact with spray and/or inhaling can be harmful or fatal. In the event of contact with skin, wash with soap and water. Do not puncture or otherwise damage can.

USE ONLY AS DIRECTED
KEEP OUT OF REACH OF CHILDREN

Contains Chloroformethane (CAS# 75-45-6), 111 Trichloroethane (CAS# 71-55-8), Inert Gas (N2O).

SNAP and Fix-a-Flat are registered trademarks of Nationwide Industries, Inc.

PATENT PENDING
NATIONWIDE INDUSTRIES, INC.

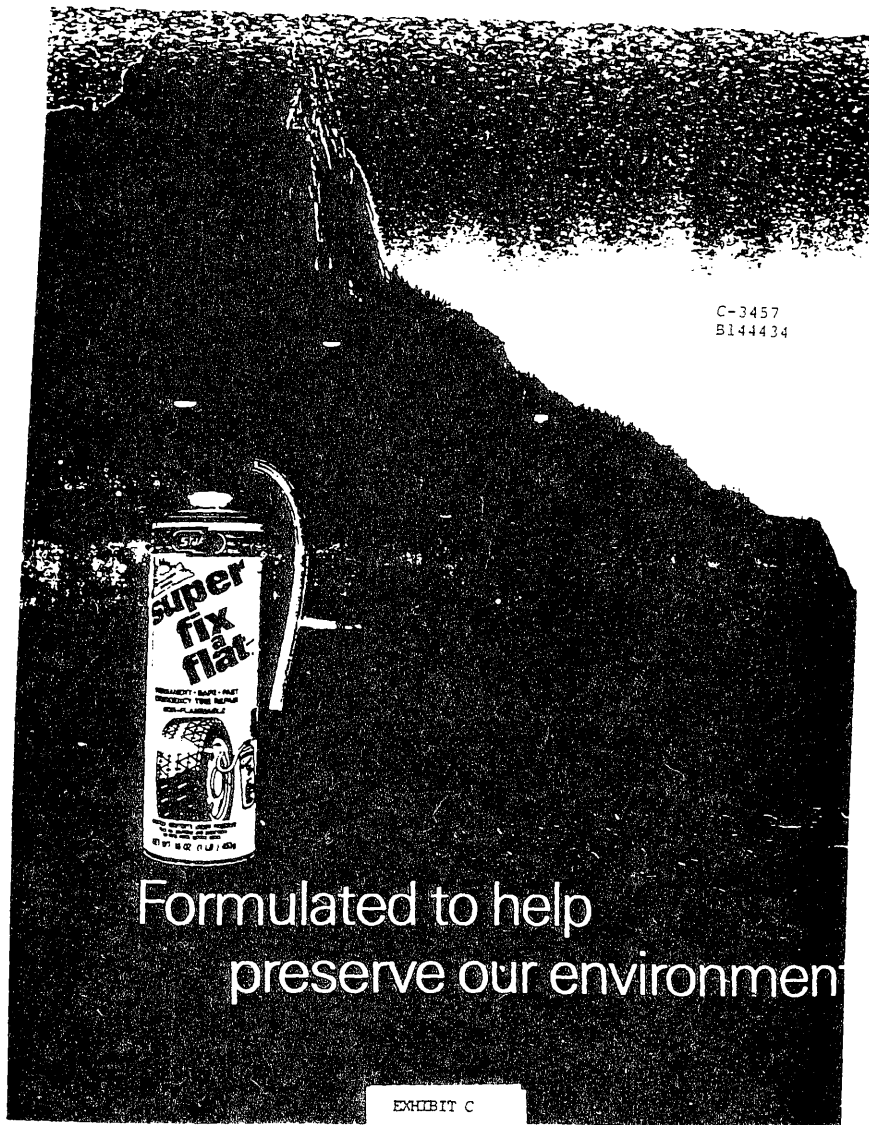
Durham, NC 27702

Made in U.S.A. PART #S457MF

dot: 211-5530-5



EXHIBIT C



C-3457
B144434

Formulated to help
preserve our environment

EXHIBIT C

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the 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 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 Nationwide Industries, Inc. ("Nationwide") is a Pennsylvania corporation with its office and principal place of business at 2200 West Main Street, Suite 3000, Durham, North Carolina.
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

DEFINITIONS

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

“Class I ozone depleting substance” means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in Title 6 of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, and any other substance which may in the future be added to the list pursuant to Title 6 of the Act. Class I substances currently include chlorofluorocarbons, halons, carbon tetrachloride and 1, 1, 1-trichloroethane.

“Class II ozone depleting substance” means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in Title 6 of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, and any other substance which may in the future be added to the list pursuant to Title 6 of the Act. Class II substances currently include hydrochlorofluorocarbons.

I.

It is ordered, That respondent Nationwide Industries, Inc. (hereinafter “Nationwide”), a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, through the use of such terms as “no CFCs,” “CFC free,” “no CFCs, environment friendly,” “no CFCs, environmentally formulated,” “formulated to help preserve the environment,” “ozone safe,” “ozone friendly,” or any substantially similar term or expression, or, by words, depictions, or symbols, directly or by implication, that any such product containing any Class I or Class II ozone depleting substance will not deplete,

destroy, or otherwise adversely affect ozone in the upper atmosphere.

II.

It is further ordered, That respondent Nationwide, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions or symbols that any product offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such 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 “competent and reliable” 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 by others in the profession to yield accurate and reliable results.

III.

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

1. All materials that respondent relied upon in disseminating any representation covered by this order.
2. All tests, reports, studies or surveys in respondent’s possession or control that contradict, qualify, or call into question such

representation or the basis upon which respondent relied for such representation.

IV.

It is further ordered, That respondent shall 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, promotional materials, product labels or other such sales materials covered by this order.

V.

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

VI.

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

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC., ET AL.

Docket 9189. Interlocutory Order, August 30, 1993

ORDER

Counsel for the General Motors and Lincoln Mercury respondents have moved that the complaint against ten respondents be dismissed and that their names be removed from the order of February 22, 1989. The assets of the following eight dealerships have been sold, and their dealership franchises have been terminated: Porterfield Wilson Pontiac-GMC Truck, Inc., Packer Pontiac Company, Dexter Chevrolet Company, Walt Lazar Chevrolet, Inc., Crissman Cadillac, Inc., Roger Rinke Cadillac Company, Avon Lincoln Mercury, Inc., and Barnett Pontiac, Inc. Except for the assets of Roger Rinke Cadillac Company, which were sold to a related individual who is subject to the Commission's order, the sales were to unrelated buyers, and the sellers retained no interest in the assets or dealerships. Two individually named respondents, Harry C. Demorest and Roger A. Rinke, are deceased. Complaint counsel do not oppose the motion.

The Commission has considered the motion and determined to grant it. Accordingly,

It is ordered, That the complaint against Mr. Demorest, Mr. Rinke, Porterfield Wilson Pontiac-GMC Truck, Inc., Packer Pontiac Company, Dexter Chevrolet Company, Walt Lazar Chevrolet, Inc., Crissman Cadillac, Inc., Roger Rinke Cadillac Company, Avon Lincoln Mercury, Inc., and Barnett Pontiac, Inc. is hereby dismissed.

It is further ordered, That the order of February 22, 1989, of the Commission is hereby modified to delete their names.