

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

NATIONAL FIRE HOSE CORPORATION, ET AL.

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

Docket C-2935. Consent Order, Nov. 1, 1978—Set Aside Order, Jan. 6, 1987

The Federal Trade Commission has set aside a 1978 consent order with National Fire Hose Corp. (92 F.T.C. 660), thus removing restrictions on the company's relations with its distributors.

ORDER REOPENING AND SETTING ASIDE ORDER
ISSUED ON NOVEMBER 1, 1978

On September 5, 1986, respondents National Fire Hose Corporation, Raymond L. Pepp and Dudley H. Pepp ("National") filed their Petition To Reopen Proceeding and To Set Aside Consent Order ("Petition"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, requesting that the Commission set aside or modify the order in Docket No. C-2935, issued on November 1, 1978. The order, among other things, prohibits the respondents from restricting or limiting the territory in which a distributor may sell National's products. The Petition was placed on the public record for thirty days, pursuant to Section 2.51 of the Commission's Rules. One comment was received.

The complaint in this case alleged that National, the leading domestic manufacturer and seller of fire hose, had, by imposing territorial restrictions on its distributors of municipal fire hose, restricted competition among distributors of National's products and foreclosed the entry of new distributors into competition with National's distributors. The order prohibits National from restricting the territories in which its distributors may sell National products, from restricting the customers to which a distributor may sell and from communicating with any distributor about the establishment of new distributor-

ships.¹

In the Petition, National asserts that the prohibitions of the order hinder National from developing an effective and efficient distribution program and that, as a result, the order has placed National at a competitive disadvantage in the municipal fire hose market. National notes that none of its competitors is currently subject to the restrictions imposed on National by the order. National claims that setting aside the order would enable National to become a more effective interbrand competitor, because National would be able to foster the promotional and sales development efforts of its local distributors. National's local distributors presently are reluctant to undertake such efforts, because they risk losing business to distant National distributors who exploit the market created through the efforts of National's local distributors.

Based on the information provided by National and other available information, the Commission has concluded that National has failed to make a satisfactory showing of changed conditions of fact or law that require reopening. The Commission has determined, however, that the public interest warrants reopening the proceeding in Docket No. C-2935 and setting aside the order. National's inability under the order to impose otherwise lawful territorial restrictions on its fire hose distributors may impede National's ability to compete by lessening the efficiency of National's distribution system and by discouraging distributors from offering and promoting National's products. In addition, purchasers of National's municipal fire hose may have difficulty obtaining post-sale services and training from distributors that have lost sales due to "free riding" by other distributors and, therefore, may be exposed to increased risk of injury. As a result, National may be exposed to personal injury claims.

The impediments to effective competition resulting from the order outweigh any reasons to retain the order. There do not appear to be any significant impediments to entry into either the manufacture or distribution of fire hose, and, in fact, significant entry has occurred since the order in this case was entered. An absolute prohibition upon the use of territorial restrictions by National appears to be no longer necessary under the facts presented, because National's use of exclusive territorial arrangements with its distributors is unlikely to foreclose competitors from distributional outlets.

The legality of distributional restraints, such as territorial restrictions, standing alone or coupled with exclusive distribution arrangements, must be determined on a case by case basis under applicable legal standards. Under the particular circumstances of this case, the

¹ The order prohibits National from imposing territorial restrictions on its distributors. The order does not bar National from entering into exclusive distributorship agreements with its distributors.

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Set Aside Order

likely impediment to National's ability to compete outweighs any need to retain the order, and it is therefore in the public interest to set aside the order in this case.

Accordingly, *it is ordered* that the order of November 1, 1978, in this matter be, and it hereby is, set aside.

Commissioner Bailey was recorded as voting in the negative.

Modifying Order

109 F.T.C.

IN THE MATTER OF

GLENDINNING COMPANIES, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 8824. Consent Order, Oct. 26, 1976—Modifying Order, Jan. 13, 1987*

The Federal Trade Commission has modified a 1976 consent order with respondent (88 F.T.C. 656) by lifting a prohibition against running skill contests that are not based on "matters of established provable fact." Provisions in the original consent order that required skill contests to be based on reference materials that are available in the typical public library and disclosure of the reference books containing the answers were replaced in the modified order with new provisions requiring that correct answers be ascertainable from "authoritative reference works" and that contestants be informed of that fact.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On September 15, 1986, Glendinning Associates, Inc. (Petitioner), successor to the respondent under the order, Glendinning Companies, Inc., filed a request to reopen and modify the consent order issued by the Commission on October 26, 1976, in Docket No. 8824. (88 F.T.C. 656.)

The request to reopen and modify the consent order was placed on the public record on October 9, 1986, and a press release concerning the petition was issued on the same date. A notice of 30-day period for public comments on the petition was published in the *Federal Register* on October 24, 1986 [51 FR 37741 (1986)]. The public comment period ended on November 10, 1986, and no comments were filed. The deadline for the Commission to rule on Petitioner's request was January 13, 1987.

Petitioner is engaged in the manufacture, promotion, sale, and distribution of promotional games used to induce the sale of consumer products. Paragraph 1 of the order relates to all promotional games, contests and sweepstakes in which a prize is offered. Paragraph 2 relates only to skill contests. Petitioner asserts that the public interest requires that the Commission replace Paragraph 2 with a new Paragraph 2.

Paragraph 2 now orders Petitioner to cease and desist from:

2. Engaging in, promoting the use of, or participating in the development or operation of any skill contest, unless:

Modifying Order

- a. The skill contest is based solely on matters of established, provable fact.
- b. The factual subject matter is obtainable from readily available reference materials, *e.g.*, those available in the typical public library.
- c. Contest materials and advertising disclose clearly and conspicuously that a substantial degree of skill is involved and also the specific reference works on which the answers are based (*e.g.*, a specific dictionary, encyclopedia, atlas, or historical work), and contest rules and directions clearly provide all necessary information for the contestant to participate successfully.
- d. Questions and answers with complete supporting data as outlined in Paragraphs (a) and (b) and complete judging procedures are filed with an independent organization prior to promotion implementation.
- e. The correct answers and a list of winners is made available to participants upon request and filed with an independent organization within 60 days of the close of judging of the competition.
- f. Respondent or its designee maintains for at least two years after the closing of each skill contest and the awarding of all prizes in connection therewith, in addition to the records required by Paragraph 1(c), all entry forms submitted by participants in such skill contests.

Petitioner argues that the unintended effect of the order is to preclude it from conducting any skill contest except those based on "established provable fact." Therefore, Petitioner contends that it is forbidden by the order from conducting other skill contests such as those involving "checker problems, chess problems, crossword puzzles, photography or drawing contests, poetry contests and contests awarding prizes for the best jingle, slogan, product name, letter, or essay."

Petitioner argues further that subparagraph b. of Paragraph 2 prevents it from conducting a current events or contemporary history quiz dealing with recent events because the answers to such quizzes may not be readily available in published reference materials in the typical public library. A trivia quiz may also be questionable, according to Petitioner, because the typical public library "may not have reference materials concerning sports data, motion picture lore, or data on operas, Broadway shows, radio and television shows, their stars and plots."

Petitioner asserts that the requirement in subparagraph c. of Paragraph 2 that contest materials and advertising disclose the specific reference works on which answers are based, "(*e.g.*, a specific dictionary, encyclopedia, atlas or historical work)," reduces a skill contest to a research project. Under such conditions, Petitioner argues, almost every contestant could become a winner by looking up the answers in the reference books. Therefore, according to Petitioner, large prizes could not be offered and there would be no incentive to participate if nominal prizes were offered.

Petitioner's proposed Paragraph 2 restructures order Paragraph 2 so that the requirements that apply to all skill contests are set forth

in new subparagraphs (a) and (b) and those requirements that apply only to skill contests based on fact are listed separately under new subparagraph (c). The Commission considers this modification to be in the public interest because it would permit Petitioner to conduct games of skill that are not based on fact, while preserving the essential requirements of the order. For games of skill based on fact, the modification would eliminate the requirement in subparagraph b. that the factual subject matter be "obtainable from readily available reference materials, e.g., those available in the typical public library." This modification is, in the view of the Commission, in the public interest as it would permit Petitioner to conduct skill contests based on recent events and trivia quizzes that may not be found in reference materials that are readily available in the typical public library. Furthermore, not all answers to a contest need come from a single reference source. However, the answers must be ascertainable from "authoritative reference works."

Petitioner's proposed Paragraph 2 would also eliminate the requirement in subparagraph c. that the specific reference works where answers may be found be disclosed. This modification serves the public interest as it would enable Petitioner to stimulate interest in its contests by offering large prizes. As Petitioner points out in its petition, anyone could win under the order by merely going to the stated reference books and looking up the answers. Therefore, large prizes could not be offered.

Petitioner has not demonstrated a change of law or fact to support its request that the order be reopened and modified as requested, in accordance with Section 5(b) of the Federal Trade Commission Act. However, the facts presented by Petitioner have persuaded the Commission that the public interest requires that the order be reopened and modified as requested.

It is therefore ordered, That the proceeding is hereby reopened and the Decision and Order issued on October 26, 1976, and modified on February 24, 1981, is hereby further modified to read as follows:

ORDER

It is ordered, That respondent Glendinning Companies, Inc., a corporation, its successors and assigns, officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Coca-Cola, Tab, or any food or other product, or in connection with the sale or distribution of "Big Name Bingo," or any other promotional game, contest, sweepstake or similar device which involves or offers the awarding of a prize or anything of value to participants therein,

by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Engaging in, promoting the use of, or participating in any such promotional game, contest, sweepstake or similar device, by means of any announcement, notice or advertisement, unless:

(a) All of the requirements, terms and conditions for participating therein and for entitlement of such prizes are clearly and conspicuously set forth in each advertisement or notice which purports to explain or illustrate the operation of, manner of participation in, or the basis for or prospects of becoming entitled to or receiving a prize in connection with, any such contest or promotional game.

(b) All such prizes are in fact awarded to all participants therein whose entries conform to the stated requirements, terms and conditions for entitlement to and receipt of such prizes.

(c) There are maintained by respondent or its designee for a period of at least two years after the closing of each such promotional game or contest and the awarding of all prizes in such connection therewith, full and adequate records which clearly disclose the operation of such promotional game or contest, the basis or method used to determine entitlement to prizes, and the facts as to the receipt of such prizes by participants entitled thereto; which said records and documents shall be open for inspection during normal business hours by each contest participant or his duly authorized representative.

2. Engaging in, promoting the use of, or participating in the development or operation of any skill contest, unless:

(a) Contest materials and advertising disclose clearly and conspicuously that a substantial degree of skill is involved and, contest rules and directions clearly provide all necessary information for the contestant to participate successfully.

(b) Respondent or its designee maintains for at least two years after the closing of each skill contest and the awarding of all prizes in connection therewith, in addition to the records required by Paragraph 1(c), all entry forms submitted by participants in such skill contests.

(c) In any skill contest based on fact: (1) each correct answer or solution is ascertainable from authoritative reference works; (2) the contest materials and advertising disclose, clearly and conspicuously in addition to the disclosures required by Paragraph 2(a), that the answers are ascertainable from authoritative reference works; (3) questions and answers with complete supporting data and complete judging procedures are filed with an independent organization prior to promotion implementation; and (4) the correct answers and a list

of winners is made available to participants upon request and filed with an independent organization within 60 days of the closing of judging of the competition.

For purposes of this order a *skill contest* is defined as any promotional contest or device in which the award of a prize or anything of value to the participants is determined on the basis of the winning answers or solutions submitted by participants through the exercise of a substantial degree of skill in determining the winning answers or solutions to the questions or problems which are the subject of the contest or device.

In the event that the Commission promulgates a final trade regulation rule concerned with skill contests, then such trade regulation rule shall completely supersede and replace Paragraph 2 and such trade regulation rule shall become part of this order.

It is further ordered, That the terms of this order shall not apply to a promotional game, contest or device conducted by or under the direction of a governmental instrumentality, or where the respondent neither knew nor had reason to know of failure to comply with the terms of this order.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

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

IN THE MATTER OF
INTERNATIONAL MASTERS PUBLISHERS INC.

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

Docket C-3205. Complaint, Jan. 14, 1987—Decision, Jan. 14, 1987

This consent order requires, among other things, a Los Angeles mail-order seller of recipe cards to honor cancellation and return requests in a timely manner and prohibits respondent from misrepresenting its return and cancellation policies.

Appearances

For the Commission: *Jerome M. Steiner, Jr.*

For the respondents: *Anne B. Roberts, O'Donnell & Gordon, Los Angeles, Calif.*

COMPLAINT

The Federal Trade Commission, having reason to believe that International Masters Publishers Inc., a corporation ("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 International Masters Publishers Inc., is a California corporation. It has its principal office or place of business at 4929 Wilshire Blvd., Los Angeles, California.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed recipe cards directly to the public through a continuity sales program entitled "My Great Recipes."

PAR. 3. The acts or practices of respondent alleged in this complaint were in or affecting commerce.

PAR. 4. In the course and conduct of its business, and in order to induce the sale of its recipe cards, respondent disseminated directly to consumers certain promotional materials and advertisements, an example of which is attached hereto as Exhibit A.

PAR. 5. Statements contained in said promotional materials included:

A. We'll also send you 72 additional cards for free examination. If you are not satisfied with these additional cards, simply return them. There is no obligation whatsoever.

B. [A]bout every 3 to 4 weeks, we'll send you an additional 3 packages of 24 recipe cards each, at \$2.25 per package, plus a small charge for postage and handling. You are never under any obligation to accept a package of recipe cards. *And*, you may discontinue receiving recipes at any time. The free gifts are yours to keep regardless.

I.

Alleging violations of Section 5(a) of the Federal Trade Commission Act, the allegations of Paragraphs One through Five are incorporated herein by reference.

PAR. 6. Through the use of the statements referred to in Paragraph Five, and others not specifically set forth therein, respondent represented, directly or by implication, that respondent would honor enrollment cancellation requests within a reasonable period of time.

PAR. 7. In truth and in fact, respondent did not honor enrollment cancellation requests within a reasonable period of time. In many instances, consumers who refused to pay for cancelled enrollments were billed and dunned by respondent for nonpayment, and had their accounts referred to collection agencies. Therefore, the representations set forth in Paragraph Six were, and are false and misleading, and the acts and practices described in this paragraph were, and are, unfair.

PAR. 8. The representations, acts, and practices set forth above were likely to induce consumers to order respondent's recipe cards and to receive and pay for recipe cards after cancellation. Respondent's representations, acts, and practices thus caused substantial consumer injury that was not outweighed by countervailing benefits to consumers or competition and was not reasonably avoidable by consumers. Therefore, dissemination of respondent's representations, and respondent's acts and practices constituted and constitute unfair and deceptive acts and practices in violation of Section 5(a) of the Federal Trade Commission Act.

II.

Alleging violations of Section 5(a) of the Federal Trade Commission Act, the allegations of Paragraphs One through Five are incorporated herein by reference.

PAR. 9. Through the use of the statements referred to in Paragraph Five, and others not specifically set forth therein, respondent represented, directly or by implication, that respondent would honor returns of recipe cards within a reasonable period of time.

PAR. 10. In truth and in fact, respondent did not honor returns of recipes cards within a reasonable period of time. In many instances, consumers who refused to pay for returned merchandise were billed

and dunned, and had their accounts referred to collection agencies. Therefore, the representations set forth in Paragraph Nine were, and are, false and misleading, and the acts and practices described in this paragraph were, and are, unfair.

PAR. 11. The representations, acts, and practices set forth above were likely to induce consumers to order respondent's recipe cards and to pay for recipe cards returned to respondent. Respondent's representations, acts, and practices thus caused substantial consumer injury that was not outweighed by countervailing benefits to consumers or competition and was not reasonably avoidable by consumers. Therefore, the dissemination of respondent's representations, and respondent's acts and practices constituted and constitute unfair and deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

III.

Alleging violations of Section 5(a) of the Federal Trade Commission Act, the allegations of Paragraphs One through Four are incorporated herein by reference.

PAR. 12. In the course and conduct of its business and for the purpose of collecting debts allegedly resulting from consumer purchases of recipe cards, respondent disseminated various collection and dunning notices to consumers. Examples of said notices are attached hereto as Exhibits B and C.

PAR. 13. Statements contained in such materials included:

A. Unless payment is received within ten days of this notice, your account will be forwarded to a national credit bureau which maintains a national delinquent account file. This alone may result in severe restrictions on your future credit transactions.

B. Moreover, I will be compelled to forward your name to a national credit bureau which maintains a national delinquent account file. This could seriously impair your valued credit rating and restrict future credit dealings of all kinds until this matter is settled.

PAR. 14. Through the use of the statements set forth in Paragraph Thirteen, and others not specifically set forth therein, respondent represented, directly or by implication, that referral of a consumer's name to the credit reporting agency with which respondent deals may adversely affect the consumer's ability to obtain credit for typical consumer transactions.

PAR. 15. In truth and in fact, referral of a consumer's name to the credit reporting agency with which respondent deals would not adversely affect the consumer's ability to obtain credit for typical con-

sumer transactions. Therefore, the representation set forth in Paragraph Fourteen was, and is, false and misleading.

PAR. 16. The representations set forth above were likely to mislead consumers into the erroneous belief that the representations were true and to induce the payment of alleged debts by virtue of said erroneous belief. Therefore, respondent's representations constituted and constitute deceptive acts and practices in violation of Section 5(a) of the Federal Trade Commission Act.

PAR. 17. 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.

EXHIBIT A



**U.S. COURT ORDERS FREE RECIPES
SENT TO SUBSCRIBERS OF
GREAT RECIPES OF THE WORLD**

As a paid subscriber to Great Recipes of the World, you are entitled to all of the following by returning your enclosed rebate check:

| | | | | |
|-------------------|---|--------------------|---|-------|
| 72 Recipe Cards | - | \$8.95 | - | FREE! |
| 33 Divider Cards | - | \$1.00 | - | FREE! |
| 12 Blank Cards | - | .85 | - | FREE! |
| 1 Recipe File Box | - | \$9.95 | - | FREE! |
| Total: | | \$19.95 | | FREE! |

We'll also send you 72 additional cards for free examination. If you are not satisfied with these additional cards, simply return them. There is no obligation whatsoever. And the other free gifts are yours to keep regardless.

You must return the enclosed rebate check in order to receive your free gifts. The rebate check is not transferable — it is made out to you, and can only be used by you alone. We can ship only to the name on the check (address corrections are acceptable.)

These free gifts are offered in exchange for the balance of the "Great Recipes of the World" issues owed to you. "Great Recipes of the World" will no longer be publishing their magazine.

My Great Recipes, a company well established in the recipe card business, is making this offer as a way of introducing our recipes to you. However, by sending in the rebate check, you are not obligated to buy anything whatsoever!

Once you send in your rebate check, we will send you all the items mentioned earlier. Then, about every 3 to 4 weeks, we'll send you an additional 3 packages of 24 recipe cards each, at \$2.25 per package, plus a small charge for postage and handling. You are never under any obligation to accept a package of recipe cards. And, you may discontinue receiving recipes at any time. The free gifts are yours to keep regardless.

Our recipes are quick and easy. Each recipe is beautifully photographed and protected with a special laminated coating. All recipes are stain-proof, waterproof, and chip-proof. If you should ever lose one, we'll replace it free of charge.

EXHIBIT A
P. 1 OF 4

(over please)

FEDERAL TRADE COMMISSION DECISIONS

Complaint

109 F.T.C.

Send in your rebate check today. The free gifts are yours to keep, by order of the U.S. Court. But you must send in your rebate check to receive them!

Hurry, this offer expires May 31, 1985. Send in your rebate check today.

Sincerely,

Mary Masters

Mary Masters

P.S. — Remember, sending in your rebate check does not obligate you to buy anything. We can only ship you your free gifts after we've received your rebate check. The reply envelope enclosed requires no postage.

EXHIBIT A
P. 2 OF 4

Mary Masters, My Great Recipes

My Great Recipes

4929 Wilshire Blvd.
Los Angeles, CA 90010

The U.S. Court has given you the opportunity to exchange what is now basically a worthless subscription, for valuable products.

There's no obligation or hidden catch of any kind.

My Great Recipes[®] is doing this because we know you'll be so pleased with our quick and easy recipes, you'll want to buy more. By sending in your rebate check, you'll get a "taste" of our recipes. And we're so sure you'll hunger for more, we're willing to give you \$18.95 worth of free gifts.

Even though the balance of the issues owed you is less than \$18.95, our policy is to make sure you're satisfied. We do that by giving you quick and easy recipes, better quality, top-notch service, and value. Our thousands of satisfied customers know this to be true.

All you have to do to receive your free gift is to check "yes" on your enclosed rebate check, and return in the enclosed postage-paid envelope.

Do it now, while you have this in your hand. There's no obligation to buy anything.

Sincerely,

Eric A. Miller

Eric Miller
Vice President
My Great Recipes

P.S. - The time limit on this offer makes it important for you to send back the rebate check today.

Z136

EXHIBIT A
P. 3 OF 4

C149

NON - NEGOTIABLE

GREAT RECIPES OF THE WORLD

My Great Recipes®

P.O. Box 76926
4829 Wilshire Blvd.
Los Angeles, CA 90070

1876

YES! I want to exchange the balance of the "Great Recipes of the World" issues owed to me for the offer outlined in this letter. I understand the free gifts are mine to keep with no obligation, by order of the U.S. court.

NO. Do not exchange the balance of the "Great Recipes of the World" issues owed to me for the offer outlined in this letter. I understand that no additional issues of "Great Recipes of the World" magazine will be sent to me. I also am aware that the Court has made no provision for subscribers other than the free gifts as outlined in this letter.
Check one box only, and return in the enclosed postage paid envelope.

EIGHTEEN AND NINETY FIVE/100

DOLLARS

\$18.95

PAY TO THE ORDER OF

**ZELMA G HANKHEE
16720 191ST PL NE
WOODINVILLE, WA 98072**

Memo: The rebate check, if received by May 31, 1989 may be used in exchange for the offer outlined in the enclosed letter.

PHYS:CM

Non-transferable

190699

EXHIBIT TENB
File No. 88-1-3262

Eric A. Miller

*EXHIBIT A
P. 4 of 4*

Complaint

EXHIBIT B



4929 Wilshire Boulevard, Suite 800, Los Angeles, CA 90010 (213) 835-9127

Dear Member:

By now you have received several sets of my great tasting recipes, but I was surprised to see you have not paid for any of them yet.

Please take a moment to review the enclosed statement of your account, and if there are any problems let me know right away. The amount due reflects a total of all shipments sent to you thus far, however, you may not as yet received the last shipment.

Unless payment is received within ten days of this notice, your account will be forwarded to a national credit bureau which maintains a national delinquent account file. This alone may result in severe restrictions on your future credit transactions.

In order to avoid such a drastic measure please mail your check today using the enclosed envelope.

Cordially,

Mary Masters

MAKE CHECK OR MONEY ORDER PAYABLE TO:

My Great Recipes ©

4929 WILSHIRE BLVD., LOS ANGELES, CA 90010

KEEP THIS STUB

ACCOUNT NUMBER

23-15187297

PLEASE! Return this portion with your payment to insure proper credit to your account.

| AMOUNT |
|--------|
| 42.16 |

| SHIP DATE | SET NO. | AMOUNT |
|-----------|----------|--------|
| 04/21/84 | 20,21,22 | 8.45 |
| 03/31/84 | 32,33,34 | 8.45 |
| 03/10/84 | 35,36,37 | 5.42 |
| 02/20/84 | 29,30,31 | 8.42 |
| 01/30/84 | 47,48,49 | 8.42 |

Write your account No. on check and envelope

| YOUR ACCOUNT NUMBER | DATE |
|---------------------|-------------|
| 23-15187297 | S9 04/24/84 |

MISS LORI APGAR
200 LONE-TREE RD
MOLLISTER CA 95023

010323151872970004216015

RETURN THIS PORTION

PAYABLE UPON RECEIPT

| AMOUNT |
|--------|
| 42.16 |

enclosed

EXHIBIT B

Complaint

109 F.T.C.

EXHIBIT C

My Great Recipes

4225 Wilshire Boulevard, Suite 600, Los Angeles, CA 90048 (213) 838-9127

Dear Member:

Your account is now seriously past due. You have failed to live up to the terms of your membership agreement.

And, you have failed to advise us of any problems as we patiently asked. So, we can only assume you are using and enjoying the recipes we have sent you thus far, in good faith.

I have been forced to halt any further shipments, a step we always take with greatest regrets. Your 10-day evaluation period has expired. You cannot return the recipes we sent under terms of our agreement. However, this in no way cancels your outstanding balance owed.

Moreover, I will be compelled to forward your name to a national credit bureau which maintains a national delinquent account file. This could seriously impair your valued credit rating and restrict future credit dealings of all kinds until this matter is settled.

This is a drastic measure. I would much rather receive your check within the next ten days and avoid such action.

Eric Gordon,



Credit and Collection Manager

EXHIBIT C

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

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

1. Respondent International Masters Publishers Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its offices and principal place of business located at 4929 Wilshire Blvd., Los Angeles, 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

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

A. *Continuity sales plan* means a sales plan requiring the consumer to receive periodic installments of merchandise or services on approval.

B. *Billing cycle* means that period of time between the sending of one scheduled invoice or billing document (whether accompanying a

shipment of goods or not) and the sending of the following scheduled invoice or billing document.

C. *Return* means any item returned under the provisions of a continuity sales plan, as defined above.

D. *Received by respondent* or *receipt by respondent* includes material received at any mail drop respondent has established.

I.

It is ordered, That respondent International Masters Publishers Inc. ("IMP"), its successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of recipe cards or any other product or service by means of a continuity sales plan in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, any term or condition for cancellation of enrollment or return of merchandise, or misrepresenting, in any manner, directly or by implication, any right granted to, or any duty or obligation imposed on, any consumer.

B. Failing, by the end of the first billing cycle following the billing cycle in which a consumer's request for cancellation of enrollment is received by respondent, to cancel that consumer's enrollment, and, if thereafter the consumer is contacted in connection with any obligation arising out of the enrollment, to notify that consumer in writing that the enrollment has been cancelled.

C. Sending a consumer more than one additional installment of merchandise following receipt by respondent of an enrollment cancellation request.

D. Failing, by the end of the first billing cycle following the billing cycle in which a consumer's return of merchandise or goods is received by respondent, to credit that consumer's account for the return, and, if thereafter the consumer is contacted in connection with any obligation arising out of the enrollment, to notify the consumer in writing that the account has been credited for the return; *provided, however*, that such written notification may be made in a scheduled billing document or in a separately mailed document.

E. Failing to include in the first communication from respondent to each consumer following enrollment in any of respondent's continuity sales programs the statement attached hereto as Attachment A, or a statement similar thereto, explaining return and cancellation poli-

cies; *provided, however*, that should respondent represent to consumers that cancellations of enrollment, credits for returns of merchandise, or the sending of written confirmations thereof will be accomplished in a shorter time than required under Paragraphs I. B or I. D of this order, respondent, its successors and assigns, shall amend Attachment A to conform with such representation.

II.

It is further ordered, That respondent International Masters Publishers Inc., its successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any recipe card or other product or service 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 consumer's credit rating will or may be adversely affected, or representing, in any manner, directly or by implication, that there will or may be any adverse consequence to failing to pay any amount claimed to be delinquent, unless there is a reasonable likelihood such rating will be so affected or such consequence will occur.

III.

It is further ordered, That for five (5) years after the date of service of this order respondent, its successors and assigns shall maintain, and upon written request make available to the Federal Trade Commission for inspection and copying the following records:

A. For a period of two (2) years from the date of receipt, all documents containing, reflecting, or referring to each consumer complaint relating to cancellation of enrollment in a continuity sales plans, return of merchandise, alleged billing error, or collection effort, as well as such documents or records as will disclose any response thereto.

B. For a period of one year from the date of receipt, copies of each written request for cancellation of enrollment received during the week starting with the third Monday of each month.

C. For a period of one year from the date of preparation, records sufficient to show the date on which each return of merchandise and request for cancellation was made effective.

D. For a period of two years from the date of their last use, specimen copies of all form communications, promotional materials, and adver-

tisements as well as documents sufficient to show the period of time when such documents or materials were in use.

IV.

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

V.

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

ATTACHMENT A

IMPORTANT INFORMATION: PLEASE RETAIN FOR YOUR RECORDS

RETURNING MERCHANDISE

To return merchandise to us at no cost to you, simply place the goods in the original package, reseal it, and deposit it in a mailbox. Please allow up to two billing cycles [number of days in two billing cycles] for us to process the return. If you receive an invoice or other request for payment for the merchandise returned, you do not need to pay it.

CANCELLATION INFORMATION

You may cancel your enrollment in our program by calling, [number] or by writing to us at [address]. Please allow up to two billing cycles [number of days in two billing cycles] for us to process the cancellation.

In some circumstances, because of unforeseen delays, you may receive one additional shipment from us. If so, merely return the merchandise and any enclosed invoice to us. You will not be charged for that shipment.

IN THE MATTER OF
SOLAR AGE INDUSTRIES, INC.

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

Docket C-3206. Complaint, Jan. 28, 1987—Decision, Jan. 28, 1987

This consent order prohibits, among other things, an Albuquerque, N.M. manufacturer and seller of solar energy heaters from misrepresenting the efficacy and performance of its solar space heaters or any other kind of solar energy equipment, unless it can substantiate its claims. Additionally, respondent is prohibited from using the phrase "up to" in energy-related claims, unless the upper limit of potential savings indicated in the claim can be achieved by an appreciable number of consumers.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondent: *Robert N. Singer, Singer, Smith & Powell, Albuquerque N.M.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Solar Age Industries, Inc. ("Solar Age"), a corporation, 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. Solar Age Industries, Inc. is a Nevada corporation with its principal office or place of business at 6400 Uptown Boulevard, Northeast, Albuquerque, New Mexico.

PAR. 2. Respondent manufactures, advertises, offers for sale, sells and distributes solar energy equipment including, *inter alia*, a "solar space heater" which consists of one or more rooftop collectors, one hot and one cold air duct and one small inlet fan, and which is designed to collect, but not store, the sun's rays for supplemental heating of individual residences or other small buildings.

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

PAR. 4. In advertisements and through the use of consumer testimonials contained therein, and through promotional materials disseminated to respondent's distributors, respondent has made various statements about the energy savings capability and area heating

capability of its solar space heater sold under the brand name "Solar Age Model 37," or sometimes referred to as "Solar Age Manufacturing Hot Air Collector Kit." Typical and illustrative of these statements, but not all-inclusive thereof, are the following from the advertisements attached hereto as Exhibits A, B and C:

Cut your heating bills up to 40%.

* * * * *
 . . . with a Solar Age Manufacturing Hot Air Collector Kit you can cut [heating] costs almost in half.

* * * * *
 Our Solar Age system has reduced our gas bills by over 30%.

* * * * *
 Enough [BTUS] to heat 600-800 sq. ft.!

* * * * *
 Our Solar Age heating system heats our whole house, even the garage!

* * * * *
 Solar Age Mfg. Collector Kits have an average 4 year pay back period.

* * * * *
 Solar Age Manufacturing collectors have been given a higher BTU output rating per square foot than any other in the country.

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

1. Use of the Hot Air Collector Kit will save an appreciable number of consumers 40% or close to 40%, and possibly as much as 50%, on their heating bills under reasonably foreseen circumstances.

2. Advertised savings of over 30% on the heating bills of one consumer reflect savings that other consumers will obtain with the use of the Hot Air Collector Kit under reasonably foreseen circumstances.

3. The Hot Air Collector Kit will provide enough heat to heat 600-800 square feet of space in residences or other small buildings under reasonably foreseen circumstances.

4. Advertised whole-house heating of one consumer's residence with the use of the Hot Air Collector Kit reflects the heating performance that other consumers will obtain under reasonably foreseen circumstances.

5. It will take an average of 4 years for consumers to save enough money on their heating bills by using the Hot Air Collector Kit to recoup the retail cost of the Hot Air Collector Kit.

6. Solar Age collectors are the highest BTU-rated collectors, per square foot, in the country.

PAR. 6. In truth and in fact:

1. Few, if any, consumers will save 40% or close to 40%, on their heating bills as a result of using the Hot Air Collector Kit under reasonably foreseen circumstances.

2. Advertised savings of over 30% on the heating bills of one consumer do not reflect savings that other consumers will obtain with the use of the Hot Air Collector Kit under reasonably foreseen circumstances.

3. The Hot Air Collector Kit will almost never be able to provide enough heat to heat 600-800 square feet of space in residences or other small buildings under reasonably foreseen circumstances.

4. Advertised whole-house heating of one consumer's residence with the use of the Hot Air Collector Kit does not reflect the heating performance that other consumers will obtain under reasonably foreseen circumstances.

5. Few, if any, consumers will save enough money on their home heating bills by using the Hot Air Collector Kit to recoup the retail cost of the Hot Air Collector Kit within an average of 4 years.

6. Solar Age collectors are not the highest BTU-rated collectors, per square foot, in the country.

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

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

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

PAR. 9. The acts or practices of respondent as alleged in this complaint, and respondent's placement in the hands of its distributors of the means and instrumentalities by and through which others may have used the aforesaid false, misleading and deceptive representations, constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

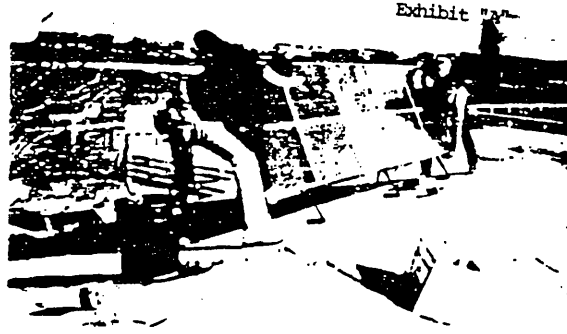
Complaint

109 F.T.C.

EXHIBIT A

Exhibit A

You can start saving today no matter where you live because now there's a solar hot air system that's good enough and simple enough to install yourself.



Cut your heating bills up to 40%. Really.

No one has to tell you how expensive it is to heat your home. But with a Solar Age Manufacturing Hot Air Collector Kit you can cut those costs almost in half.

You can do-it-yourself.

Our collector kit really is easy to install. There's only 3 moving parts. You just mount it, duct it, and plug it in.

Our collector is cost effective.

Solar Age Manufacturing collectors have been given a higher BTU output rating per square foot than any other in the country. You can expect an efficiency of as much as 34,000 BTUs per day. Enough to heat 600-800 sq. ft.

Safe insulation.

Solar Age Mfg. does not use Polystyrene in its insulation. There's no chance of our system giving off harmful gases.

It's inexpensive.

We know that's a relative statement but once the collector is installed the sunshine is free. Solar Age Mfg. Collector Kits have an average 4 year pay back period. In addition the federal government will pay 40% in tax credits for your new heating system. With individual state credits the percentage could go even higher.

A reputation to maintain.

Solar Age Mfg. is the nation's largest solar air manufacturer. Nationally certified by the Solar Rating & Certification Corporation (SRCC) and the Air Conditioning and Refrigeration Institute (ARI) you can buy confidently knowing your system bears the high standards of industry excellence.

- Yes! I've enclosed \$4 for all the information on all three Solar Age Mfg. systems. I understand for that I will receive a cassette tape and tax credit information that pertains to my state.

Name _____
Address _____
City _____ State _____ Zip _____



SOLAR AGE MFG. INC.

Send to: Solar Age Manufacturing Inc.
Dept. 300
9001 Central N.E.
Albuquerque, NM 87123



SOLAR AGE

SOLAR HEAT/HOT WATER
SYSTEMS EVERYONE CAN AFFORD

Mr. George J. Spaulding Says:

"Our Solar Age system has reduced our gas bills by over 30%. Before we had the solar installed, our house was cold and our furnace ran continuously. It is maintenance-free, quiet operating and really circulates the heat in our house."



**SHOULDN'T YOU INVEST
IN A SOLAR AGE SYSTEM?**

- While the tax credits are still available
 - While the 100% financing is still available
- CALL TODAY FOR A FREE ESTIMATE!**

| | | | |
|---|--|---|---|
| UPTOWN 881-3315 6400 Uptown Blvd NE 457-W | RIO RANCHO 892-9589 1453 Rio Rancho Dr Suite E | DOWNTOWN 242-2867 117 Marquette NW #228 | JUAN TABO 292-6092 2705 Juan Tabo N Bldg. A Suite 1 |
|---|--|---|---|

**ASK ABOUT OUR NEW SOLAR
SUNSCREEN — SAVING YOU
MONEY "YEAR ROUND"**

CENTRAL AVE.
298-3258
9001 Central NE



SOLAR AGE

SOLAR HEAT/HOT WATER
SYSTEMS EVERYONE CAN AFFORD



*Mr. Arthur
Moreland Says:*

"Our Solar Age heating system heats our whole house, even the garage! It has no maintenance and quiet operation."

SHOULDN'T YOU INVEST IN A SOLAR AGE SYSTEM?

- While the tax credits are still available
- While the 100% financing is still available

CALL TODAY FOR A FREE ESTIMATE!

| | | | |
|---|--|--|---|
| CENTRAL AVE. 296-3256 9001 Central NE | RIO RANCHO 892-9589 1453 Rio Rancho Dr. Suite E | DOWNTOWN 242-2867 117 Marquette NW #228 | JUAN TABO 292-5092 2705 Juan Tabo NE Bldg. A Suite 1 |
|---|--|--|---|

| | |
|---|--|
| ASK ABOUT OUR NEW SOLAR SUNSCREEN SAVING YOU MONEY "YEAR ROUND" | UPTOWN 883-3215 6400 Uptown Blvd NE 457-W |
|---|--|

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 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 Solar Age Industries, Inc., is a corporation with its office and principal place of business located at 6400 Uptown Boulevard, Northeast, Albuquerque, New Mexico.
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:

Energy-related claim means any general or specific, oral or written representation that, directly or by implication, describes or refers to energy savings, energy cost savings, area heating capability, efficiency or conservation, "payback," or "payback" potential.

A competent and reliable test means any scientific, engineering,

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

A *solar space heater* is a particular type of solar energy equipment. Specifically, it is equipment which typically consists of one or more rooftop collector panels, one hot and one cold air duct and a small inlet fan, and which is designed to collect, but not store, the sun's rays for supplemental heating of individual residences or other, small buildings. The term describes, *inter alia*, respondent's "Solar Age Model 37," also referred to by respondent as its "Hot Air Collector Kit."

PART I

It is ordered, That respondent Solar Age Industries, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any solar space heater or any other solar energy equipment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

(1) More than a few consumers may be able to reduce their heating bills by 40%, or close to 40%, by using the Hot Air Collector Kit or any other such solar space heater, as defined herein.

(2) Any one consumer's experience with respondent's solar space heater reflects what other consumers will experience under circumstances they can reasonably foresee, unless such is the case.

(3) The Hot Air Collector Kit or any other such solar space heater will provide more than a few consumers enough heat by itself to heat 600–800 square feet of space in residences or small buildings.

(4) More than a few consumers may be able to save enough money on their heating bills by using the Hot Air Collector Kit by itself to recoup the retail cost of the Hot Air Collector Kit or any other such solar space heater which ranges in cost from \$1,095 to \$3,595, within an average of 4 years.

(5) Its solar collector is the highest Btu-rated solar collector per square foot, in the country, unless such is the case.

B. Making any energy-related claim for any solar space heater, or any other solar energy equipment, unless at the time that the claim

is made, respondent possesses and relies upon a competent and reliable test or other objective material which substantiates the claim.

C. Making any energy-related claim which uses the phrase "up to" or words of similar import unless the maximum level of savings or performance can be achieved by an appreciable number of consumers; and, further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the maximum level of savings or performance, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the maximum level of savings or performance.

D. Misrepresenting, directly or by implication, in any manner, the purpose, content, or conclusion of any test, study, analysis, rating or survey upon which respondent relies as substantiation for any energy-related claim, or making any representation which is inconsistent with the results or conclusions of any such test, study, rating or survey.

PART II

It is further ordered, That respondent Solar Age Industries, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, or distribution of any solar space heater or any other solar energy equipment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, for at least three years from the date of the last dissemination of energy-related claims, maintain and upon request make available to Federal Trade Commission staff for inspection and copying, copies of:

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

PART III

It is further ordered, That respondent shall:

A. Within thirty (30) days after the date of service of this order, send the following material via first class mail to every person or firm that is a current distributor of respondent's solar energy equipment and thereafter to every person or firm that becomes a distributor during the first year from the date of service of this order:

1. a copy of this order, and
2. a copy of the cover letter attached to this order as Attachment A, incorporated herein by reference.

B. Distribute a copy of this order to each of respondent's operating divisions, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements or other sales materials.

C. Supply to the Federal Trade Commission upon request the names and addresses of those parties to whom respondent distributed the material required by Paragraphs A and B of Part III of this order.

PART IV

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

PART V

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

ATTACHMENT A

[Solar Age Letterhead]

[Solar Age Distributors]

Re: Advertising Claims and Practices

Dear Solar Age Distributors:

As a result of a Federal Trade Commission investigation of advertising claims for our Solar Age Model 37 Solar Space Heater (the Hot Air Collector Kit), we have entered into the enclosed Consent Order Agreement. The agreement is for settlement purposes only and does not constitute an admission that Solar Age or its distributors have violated the law. At issue in the investigation were a number of energy cost savings, performance and payback claims.

We agree to conform our future advertising practices to the standards set forth in this agreement, and to refrain from the use of all promotional material that may contain contrary claims. In order to insure that such claims will no longer be made, we request that you refrain from making them, either orally or in writing, and to advise your dealers to do so as well. Please forward to us any remaining literature relating to our products which may be in your possession or that of your dealers and which does not conform to the enclosed agreement.

Thank you very much for your assistance in this regard.

Sincerely,
SOLAR AGE INDUSTRIES, INC.

By: _____
Alan D. Schwanke, President

IN THE MATTER OF

AQUANAUTICS CORPORATION

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

Docket C-3207. Complaint, Feb. 17, 1987—Decision, Feb. 17, 1987

This consent order requires, among other things, a San Francisco manufacturer of marine survival suits to notify owners and users of its suits of a safety defect that is potentially life-threatening and send a repair kit to all users and purchasers it can identify to correct the product defect.

Appearances

For the Commission: *Theodore H. Hoppock.*

For the respondents: *Theodore C. Whitehouse, Willkie, Farr & Gallagher, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Aquanautics Corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 4560 Horton Street, Building Q, #111, Emeryville, CA.

PAR. 2. Respondent owns and controls a wholly-owned subsidiary, Bremerton Asset Corporation, formerly called Imperial Manufacturing Corporation ("Imperial"). Prior to the sale of part of Imperial's assets on or about March 1985, Imperial was engaged in the manufacturing, advertising, marketing, distributing, and selling to the public of exposure suits—one-piece, hooded, jump suit-like garments made of flexible, buoyant material—which are designed for emergency use to increase the chance of survival in cold water.

PAR. 3. Prior to April 1980, a predecessor to respondent's wholly-owned subsidiary Imperial, called Imperial Manufacturing Company,

manufactured exposure suits equipped with an inflatable bladder called a high rider ring which is intended to be inflated after the exposure suit has been put on by means of an inflator tube glued to the elbow of the high rider ring (hereinafter "the Imperial exposure suit"). In the course and conduct of the business of the predecessor to respondent's wholly-owned subsidiary Imperial, the Imperial exposure suit was offered for sale and sold to purchasers located in various States of the United States and the District of Columbia. Respondent's wholly-owned subsidiary Imperial and its predecessor, at all times mentioned herein, maintained a substantial course of trade in exposure suits in or affecting commerce, as "commerce" is defined by the Federal Trade Commission Act, as amended.

PAR. 4. In the further course and conduct of its aforesaid business, respondent's wholly-owned subsidiary Imperial and its predecessor at all times mentioned herein made numerous statements in various advertisements and promotional materials prepared and disseminated for use in selling the Imperial exposure suit. Illustrative and typical, but not inclusive of the statements employed as aforesaid, are the following:

1. Imperial Survival Suits combine the best thermal protection available with indestructible flotation.
2. Our suit gives you the thermal protection and buoyancy needed to stay alive for hours. . . .
3. A revolutionary advancement in life-saving devices, the Imperial Survival Suit gives you the flotation and warmth needed to survive the rigors of the cold, unforgiving ocean.
4. High Rider Ring—A flotation ring that may be attached to the suit for added support to the head and shoulders.

PAR. 5. Respondent's wholly-owned subsidiary Imperial and its predecessor through the use of the aforesaid statements, and by the offering of the Imperial exposure suit for sale by said predecessor of Imperial as a product fit for improving the chance of survival in ocean waters have represented, directly or by implication, that the Imperial exposure suit will consistently and safely provide the necessary flotation and head and shoulder support for the user to float safely in cold ocean water for lengthy periods of time, thereby substantially diminishing the likelihood of drowning.

PAR. 6. In truth and in fact, due to the design of the inflator tube and the high rider ring, the high rider ring on the Imperial exposure suit, which is intended to provide the support of the head and shoulders, would not consistently inflate or remain inflated in actual use. Therefore, the Imperial exposure suit will not consistently and safely provide the necessary flotation and head and shoulder support for the

user to float safely in cold ocean water for lengthy periods of time, thereby substantially diminishing the likelihood of drowning.

Therefore the representation set forth in Paragraph Five was false and misleading.

PAR. 7. The acts and practices of respondent, herein alleged, were all to the prejudice and injury of the public and constituted unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a) 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 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;

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

1. Respondent Aquanautics Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Maritime Plaza, Suite 1750, in the City of San Francisco, State of 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

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

1. *The Imperial exposure suit* means an exposure suit manufactured by Imperial Manufacturing Corporation before April 1980 for sale in the United States or for use on vessels documented or numbered pursuant to 46 U.S.C. 12101-12122 or on mobile offshore drilling units subject to Coast Guard regulation pursuant to 43 U.S.C. 1333, equipped with an inflatable bladder, called a high rider ring, which includes an inflator tube which is glued, but not clamped, to the elbow of the high rider ring.

2. *Imperial Manufacturing* means the company which manufactured and sold the Imperial exposure suit.

3. *Person* means any individual, partnership, corporation, firm, trust, estate, cooperative, association, or other entity.

4. *Distributor* means any person who purchased or received on consignment the Imperial exposure suit for resale.

5. *Retailer* means any person, other than a distributor, who sold the Imperial exposure suit to the public.

6. *Owner* means any person who purchased the Imperial exposure suit from Imperial Manufacturing, a distributor, or a retailer.

7. *User* means any person who uses or has available for use the Imperial exposure suit irrespective of the ownership of that suit.

8. *Panduit strap* means the plastic strap of the type used to secure the inflator tube to the high rider rings used on exposure suits manufactured by Imperial Manufacturing after April 1980.

9. *The modification contemplated by this order* means the installation of two Panduit straps to reinforce the attachment of the inflator tube to the elbow of the high rider ring and installation of two additional Panduit straps to reinforce the attachment of the inflator nozzle to the inflator tube.

10. *United States* means the fifty states, the District of Columbia and all commonwealths, territories and possessions.

I.

It is ordered, That respondent Aquanautics Corporation, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Imperial exposure suit or any other exposure suit 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 any such exposure suit provides the necessary flotation and head and shoulder support for the user to float safely in cold or rough water or diminishes the likelihood of drowning, unless such is the case.

II.

It is further ordered, That respondent do forthwith cease and desist from failing to:

A. Not later than twenty (20) days after the date of service of this order, send, by first-class mail in an envelope clearly marked on the front with the words "Contains Exposure Suit Safety Information And New Safety Straps", to each owner or user of the Imperial exposure suit for whom respondent possesses, controls, or has access to a mailing address the following:

1. A copy of Attachment A(1) to this order. The "Customer Response Card" depicted in Attachment A(1) shall be provided with prepaid postage sufficient to allow it to be mailed first class to the address contained thereon without the need of any additional postage;

2. A sufficient number of Panduit straps to effect the modification contemplated by this order on each of the Imperial exposure suits respondent's records show that the owner or user has;

3. A copy of Attachment B to this order.

B. Respondent shall not be obliged to send the materials listed in subparagraphs 1 through 3 of Paragraph A herein to the owner or user of the Imperial exposure suit if respondent has records which show that:

1. The owner or user of the Imperial exposure suit previously has received the modification contemplated by this order; or

2. The Imperial exposure suit was purchased for use on vessels or structures on which the United States Coast Guard requires the carriage of Coast Guard approved exposure suits pursuant to the following regulations:

- a. 46 CFR 33.37;
- b. 46 CFR 94.41;
- c. 46 CFR 108.513; or
- d. 46 CFR 192.41.

C. Not later than twenty (20) days after the service of this order, place and cause to be disseminated the advertisements attached as Attachments E(1) and E(2) to this order in two consecutive issues of

the following publications beginning in the earliest possible issue of each such publication:

1. *National Fisherman*;
2. *The Fisherman's News*;
3. *The Fisherman*;
4. *Alaska Fisherman's Journal*;
5. *The Fish Boat*;
6. *Pacific Fishing*; and
7. *Commercial Fisheries News*.

The first such advertisement in each publication shall be full page in size and be in the form of Attachment E(1); the second shall be one-half page in size and be in the form of Attachment E(1) or Attachment E(2).

D. Not later than (30) days after the service of this order, send, by first-class mail, to each of the approximately 8,000 current holders of "Fisheries Entry Permits" issued by the State of Alaska, at the address shown on the list of holders of such permits available from the State of Alaska, a copy of Attachments A(2) and B to this order and a sufficient number of Panduit straps to effect the modification contemplated by this order on one (1) Imperial exposure suit.

III.

It is further ordered, That:

A. Not later than fifteen (15) days after the date of service of this order, respondent shall contact the following distributors of the Imperial exposure suit and obtain from each distributor, or from the distributor's available records, the names and addresses of all persons, including retailers, to whom the Imperial exposure suit was sold by such distributors to the extent that the distributors have such information:

1. Atlantic Survival Company;
2. King Neptune Company;
3. Nordby Company;
4. Seattle Marine and Fishing Supply Co.;
5. Shelikoff Net Company;
6. Eagle Enterprises, Inc.;
7. Englund Marine Supply Company, Inc.; and
8. Harry's Plumbing and Heating.

B. Not later than fifteen (15) days after the date of service of this order, respondent shall send, by first class mail, to all retailers (a) known to it to have sold the Imperial exposure suit or (b) which

