

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of

ORECK CORPORATION,
a corporation.

FILE NO. 102 3033

AGREEMENT CONTAINING
CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of Oreck Corporation, a corporation (“proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Oreck Corporation, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Oreck Corporation is a Delaware corporation with its principal office or place of business at 565 Marriott Drive, Suite 300, Nashville, Tennessee 37214.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30)

days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

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

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.
2. Unless otherwise specified, "respondent" shall mean Oreck Corporation, a corporation, its successors and assigns and its officers, agents, representatives, and employees.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the Oreck Halo or any other vacuum cleaner, in or affecting commerce, shall not make, or assist others in making, any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration:

- A. that such product reduces the risk of or prevents the flu;
- B. that such product reduces the risk of or prevents illnesses or ailments caused by bacteria, viruses, molds, or allergens, such as the common cold, diarrhea, upset stomachs, asthma and allergy symptoms;
- C. that such product will eliminate all or virtually all germs, bacteria, dust mites, molds, viruses or allergens from a user's floor;
- D. about the ability of such product to eliminate any percent or numerical quantity of germs, bacteria, dust mites, molds, viruses or allergens from a user's floor; and
- E. that ultraviolet light is effective against germs, bacteria, dust mites, molds, viruses or allergens embedded in carpets;

unless the representation is non-misleading and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the Oreck ProShield Plus or any other air cleaning product, in or affecting commerce, shall not make, or assist others in making, any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration:

- A. that such product reduces the risk of or prevents the flu;
- B. that such product reduces the risk of or prevents illnesses or ailments caused by bacteria, viruses, molds, or allergens, such as the common cold, asthma and allergy symptoms;

- C. that such product will eliminate all or virtually all indoor airborne particles under normal living conditions; and
- D. about the ability of such product to eliminate any percent or numerical quantity of indoor air contaminants under normal living conditions;

unless the representation is non-misleading and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not make, or assist others in making, any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, other than representations covered under Parts I and II of this order, about the absolute or comparative health benefits of such product, unless the representation is non-misleading, and, at the time of making such representation, the respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not misrepresent, or assist others in misrepresenting, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

V.

IT IS FURTHER ORDERED that respondent shall, within thirty (30) days after the date of entry of this order, provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased the Oreck Halo or the Oreck

ProShield Plus from January 1, 2009 through August 31, 2010, to the extent it has such information in its possession or control, including information available upon request from franchisees or others. Such file: (1) shall include each consumer's name and address, the product(s) purchased, the total amount of moneys paid less any amount credited for returns or refunds, the date(s) of purchase, and, if available, the consumer's telephone number and email address; (2) shall be updated through the National Change of Address database; and (3) shall be accompanied by a sworn affidavit attesting to its accuracy.

VI.

IT IS FURTHER ORDERED that respondent shall pay to the Federal Trade Commission the sum of seven hundred fifty thousand dollars (\$750,000). This payment shall be made in the following manner:

- A. The payment shall be made by wire transfer made payable to the Federal Trade Commission, the payment to be made no later than five (5) days after the date that this order becomes final.
- B. In the event of default on any obligation to make payment under this order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for ten (10) calendar days beyond the date that payment is due, the entire amount shall immediately become due and payable.
- C. All funds paid to the Commission pursuant to this order shall be deposited into an account administered by the Commission or its agents to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after the redress to consumers is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to respondent's practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Respondent shall have no right to challenge the Commission's choice of remedies under this Part. Respondent shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payment under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.
- D. Respondent relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.
- E. Respondent agrees that the facts as alleged in the complaint filed in this action

shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this order, including but not limited to a nondischargeability complaint in any bankruptcy case. Respondent further agrees that the facts alleged in the complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S. C. § 523(a)(2)(A), and that this order shall have collateral estoppel effect for such purposes.

- F. In accordance with 31 U.S.C. § 7701, respondent is hereby required, unless it has done so already, to furnish to the Commission its taxpayer identifying number, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of respondent's relationship with the government.
- G. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this order.

VII.

IT IS FURTHER ORDERED that respondent Oreck Corporation and its successors and assigns shall send as soon as practicable, but in no event later than thirty (30) days after entry of this order, by first-class mail, postage prepaid and return receipt requested, an exact copy of the notice attached hereto as Attachment A, showing the date of mailing, to all of respondent's franchisees. The notice required by this paragraph shall include a copy of this order, but shall not include any other document or enclosures and shall be sent to the principal place of business of each entity.

VIII.

IT IS FURTHER ORDERED that respondent Oreck Corporation and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IX.

IT IS FURTHER ORDERED that respondent Oreck Corporation and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and other employees having primary responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent Oreck Corporation and its successors and assigns shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

X.

IT IS FURTHER ORDERED that respondent Oreck Corporation and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line: In the Matter of Oreck Corporation, FTC File Number 102-3033. Provided, however, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at Debrief@ftc.gov.

XI.

IT IS FURTHER ORDERED that respondent Oreck Corporation and its successors and assigns shall, within sixty (60) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

XII.

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

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

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

ORECK CORPORATION

Date: _____

By: _____

JOHN G. ARENA
Vice President, General Counsel and Secretary
Oreck Corporation

Date: _____

MICHAEL L. SIBARIUM
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1122

Date: _____

BRIAN D. FERGEMANN
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601-9703

Attorneys for Respondents

Date: _____

MATTHEW D. GOLD
KERRY O'BRIEN
Counsel for the Federal Trade Commission

APPROVED:

JEFFREY KLURFELD
Director
Western Region

DAVID C. VLADECK
Director
Bureau of Consumer Protection

[ON ORECK CORPORATION LETTERHEAD]

IMPORTANT NOTICE ABOUT GOVERNMENT ACTION

[insert addressee name]

[insert addressee address]

Dear Oreck franchisee:

In a recent lawsuit, the Federal Trade Commission (FTC) alleged that Oreck Corporation made misleading representations in its advertising and marketing of the Oreck Halo vacuum cleaner and the Oreck ProShield Plus portable air cleaner. Among other things, the FTC alleged that Oreck deceptively claimed that these products substantially reduce the risk of or prevent the flu and other illnesses or ailments. In addition, the FTC alleged that Oreck made several other deceptive claims regarding the products' health benefits and effectiveness in removing germs and allergens from the floor and air.

Oreck resolved this matter with the FTC by a settlement in which it did not agree to any wrongdoing. Oreck has agreed to send this notification to you as part of its settlement with the FTC.

Oreck hereby requests that you immediately stop using all advertising and marketing materials previously provided to you by Oreck relating to the Oreck Halo vacuum cleaner and the Oreck ProShield Plus portable air cleaner. Under separate cover, Oreck will provide you with instructions regarding future advertising and marketing for these products.

For further information about this matter, go to www.ftc.gov and search for "Oreck."

Very truly yours,

John Arena
Vice President, General Counsel and Secretary
Oreck Corporation