

Complaint

101 F.T.C.

IN THE MATTER OF

## CHAMPION HOME BUILDERS CO.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT*Docket 9151. Complaint, Feb. 5, 1981—Decision, Feb. 17, 1983*

This consent order requires a Drydon, Mich. manufacturer and seller of solar energy equipment, among other things, to cease making false or unsubstantiated representations concerning the performance, durability, quality and maintenance requirements of its solar energy equipment. Also prohibited are unsubstantiated claims concerning the energy- and money-savings potential realized from use of such equipment. The order requires the company to contact all purchasers of its equipment and inform them that the company is offering cash settlements to eligible persons. Those accepting the cash settlement would waive any legal claims they may have against the company, and any rights to receive service or repairs under the manufacturer's warranty. Additionally, the company must send a warning package to all purchasers of its equipment, notifying them of precautions that should be taken to minimize any potential for fire in Champion-manufactured solar energy equipment.

*Appearances*

For the Commission: *Marilyn J. Holmes, Joel Winston, T. Bringier McConnell, Anne V. Maher, Lewis Morris and Michael Dershowitz.*

For the respondent: From *Dykema, Gossett, Spencer, Goodnow & Trigg, Howard E. O'Leary, Washington, D.C. and Fred Woodworth, Detroit, Mich.*

## COMPLAINT

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

PARAGRAPH 1. For the purposes of this complaint, *solar energy equipment* shall mean any device or piece of equipment designed to collect and store heat from the sun's rays and transfer the heat for use in heating water or air space indoors, or any component thereof,

manufactured, sold or distributed by respondent, including the "Solar Furnace."

PAR. 2. Respondent Champion Home Builders Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 5573 E. North Street, Dryden, Michigan.

PAR. 3. Respondent has been engaged in the manufacture, offering for sale, sale, and distribution of solar energy equipment. Respondent has operated through distributors and dealers in more than 30 states.

PAR. 4. In the course and conduct of its business, respondent has caused the said solar energy equipment, when sold, to be transported from manufacturing plants located in various States of the United States to dealers and distributors thereof located in various other States of the United States. In the further course and conduct of its business, respondent has disseminated and caused to be disseminated by its dealers and distributors advertisements, promotional literature, and other written materials concerning respondent's solar energy equipment by various means, including the insertion of advertisements in magazines with national circulation and the distribution of promotional materials to consumers, for the purpose of inducing and in a manner likely to induce, directly or indirectly, the purchase of said products in commerce. Respondent at all times mentioned herein has maintained a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of its business respondent has, directly or by implication, through advertisements, promotional literature or other written materials, made representations as to the performance, durability, reliability, and quality of its solar energy equipment. Typical and illustrative of these statements and representations, but not all-inclusive thereof, are the following:

Respondent's Solar Furnace "should work automatically with little or no maintenance;"

Respondent's Solar Furnace is "virtually maintenance free;"

\* \* \* \* \*

Respondent's Solar Furnace is built "with quality longlife materials;"

\* \* \* \* \*

Respondent's Solar Furnace collector is built of "high temperature

materials" and can withstand temperatures "up to 375° F." without damage;

\* \* \* \* \*

Consumers "can have confidence in the Solar Furnace built and backed by Champion Home Builders Company! . . .—60 Factories from Coast to Coast!—22-Year Record of High Quality Mass-Production!—3,200 Dealers Nationwide to Provide Prompt Service!;"

Respondent's Solar Furnace is "backed by a national network of trained dealers;"

\* \* \* \* \*

Respondent's Solar Furnace has been "independently tested—3rd party verification tests [were] completed by two professional engineering firms;" and

Respondent's Solar Furnace "has been completely tested by two independent third-party engineering firms—Midwest Engineering and Barber Nichols, both of Denver, Colorado."

PAR. 6. Through the use of the statements and representations set forth in Paragraph Five, respondent has represented directly or by implication that:

(1) Respondent's Solar Furnace does not have any defect which substantially impairs the reliability, durability, or performance of the Solar Furnace;

(2) Little or no maintenance is required to keep Solar Furnaces in operating condition;

(3) All Solar Furnaces and the materials and components therein are durable and reliable;

(4) Respondent's Solar Furnace collector is not adversely affected by high temperatures;

(5) Respondent has 60 factories producing solar energy equipment, has a 22-year record of mass producing high-quality solar energy equipment, and has 3,200 trained dealers nationwide to provide prompt service on its solar energy equipment; and

(6) Competent, independently-conducted tests have verified the performance or quality of respondent's Solar Furnaces.

PAR. 7. In truth and in fact:

(1) Respondent's Solar Furnace suffers or may suffer from one or

more defects, including but not limited to controller malfunctions, foam insulation expansion, and wood frame outgassing, which substantially impair or may substantially impair the reliability, durability, or performance of the Solar Furnace;

(2) Respondent's Solar Furnace and the components thereof experience a high rate of failure and require extensive maintenance and repairs on a regular and continuing basis;

(3) Several of the materials and component parts in respondent's Solar Furnace are not durable or reliable;

(4) Respondent's Solar Furnace collector is adversely affected by high temperatures;

(5) Respondent does not have and has never had 60 factories producing solar energy equipment; does not have and has never had a 22-year record of mass producing high-quality solar energy equipment; does not have and has never had 3,200 trained dealers nationwide to service its solar energy equipment; and

(6) The performance or quality of respondent's Solar Furnace has not been verified by competent, independently conducted tests.

Therefore, the statements and representations set forth in Paragraphs Five and Six were and are false, misleading, or deceptive.

PAR. 8. In the course and conduct of its business, respondent has, directly or by implication, through advertisements and other promotional materials, made representations as to the thermal performance and cost recovery or "payback" potential of its solar energy equipment. Typical and illustrative of these statements and representations, but not all-inclusive thereof, are the following:

Respondent's Solar Furnace "has been shown to replace 45% to 90% of annual home fuel needs of any present forced-air heating system when used in conjunction with" respondent's "Solar Insulation Package;"

Respondent's Solar Furnace "provides 45% to 90% of your heat;"

\* \* \* \* \*

Respondent's model 96 Solar Furnace will supply a projected 56 to 76 percent of the fuel requirements of a 5,000 degree day house in Washington, D.C.;

Respondent's Solar Furnace has an "estimated percentage capability" of providing 72 percent "of average heating requirements for the 270 day heating season" for a 1,000 square foot, 5,000 degree day house in Washington, D.C.;

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\* \* \* \* \*

Respondent's model 96 Solar Furnace, "installed on a solar insulated 1,000 square foot home in Dover, Delaware," will pay for itself in eight years;

\* \* \* \* \*

"Dollar for dollar, Btu for Btu," respondent's Solar Furnace "is the best solar heating system available today;"

Respondent's Solar Furnace "is an investment in real property, a home improvement which has a tendency to become worth more and more;" and

Respondent's Solar Furnace tends "to go up in value year by year."

PAR. 9. At the time the representations and statements set forth in Paragraph Eight were made, respondent did not possess and rely upon a reasonable basis for such representations. Therefore, the representations set forth in Paragraph Eight were and are deceptive, misleading, or unfair.

PAR. 10. The advertisements and promotional materials referred to in Paragraph Eight represent, directly or by implication, that respondent had a reasonable basis for making, at the time they were made, the representations alleged in Paragraph Eight. In truth and in fact, respondent had no reasonable basis for such representations. Therefore, the representations set forth in Paragraph Eight were and are deceptive, misleading, or unfair.

PAR. 11. A significant number of Solar Furnaces are subject to or potentially subject to one or more conditions which are costly to correct or may significantly affect the quality, reliability, durability or performance of the Solar Furnaces. Such conditions include but are not limited to controller malfunctions, motor malfunctions, foam insulation expansion and air leakage, and wood frame outgassing. Respondent knew or should have known and failed to disclose to purchasers of Solar Furnaces facts which relate to the existence, nature and extent of these conditions. Respondent's failure to disclose these material facts which, if known to prospective purchasers, would have been likely to affect their purchasing decisions, was and is deceptive or unfair.

PAR. 12. The use by respondent of the aforesaid false, misleading, unfair, or deceptive statements, representations, acts, and practices, and the placement in the hands of others of the means and instrumentalities by and through which others may have used the aforesaid

false, misleading, unfair, or deceptive statements, representations, acts, and practices, have had the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations are true and complete, and to induce a substantial number of such persons to purchase from respondent said solar energy equipment by reason of said erroneous and mistaken belief.

PAR. 13. The acts and practices of respondent as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

#### DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter, having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25(f) of its Rules; and

Respondent and complaint counsel having thereafter submitted modifications to the consent agreement by letter dated January 14, 1983;

Now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Champion Home Builders Co. is a corporation orga-

nized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 5573 East North Street, in the City of Dryden, State of Michigan.

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:

(1) *Solar energy equipment* shall mean all space heating or cooling or water heating equipment utilizing energy from the sun, including but not limited to Solar Furnaces and solar collectors manufactured by respondent, whether sold under the Champion brand name or another brand name.

(2) *Solar Furnace* shall mean the solar heating equipment manufactured by respondent between approximately 1976 and 1979, consisting of a self-contained A-frame structure with a collector and storage compartment, including but not limited to equipment designated by respondent, or possessing the same design and physical characteristics as equipment designated by respondent, as models 96, 128, 160, 1500, 2000, and 2500, whether sold under the Champion brand name or another brand name.

(3) *Solar collector* shall mean the solar heating equipment manufactured by respondent between approximately 1976 and 1979, consisting of a glass-covered box with a dark absorber surface over which air can pass, including but not limited to the product marketed under the name "Champion Vertafin Collector."

(4) *Solar collector system* shall mean each distinct system of solar collector(s), air handlers, and controls.

(5) As used in this Order, the requirement to cease and desist from representing or misrepresenting shall include representing or misrepresenting orally, visually, in writing, or in any other manner, directly or by implication.

(6) *Competent and reliable scientific test* shall mean a test in which persons with skill and expert knowledge in the field to which the test pertains conduct the test and evaluate its results in an objective manner using testing, evaluation, and analytical procedures that ensure accurate and reliable results.

(7) *Purchaser* shall mean any person who purchased a Solar Furnace or solar collector for his or her own use as heating equipment or as a demonstrator, and who did not sell any Solar Furnace or solar

collector (except for second-hand resale of the Solar Furnace or solar collector purchased by such person for his or her own use). This term shall include any dealer as defined below who did not sell any Solar Furnace or solar collector (except for second-hand resale of the Solar Furnace or solar collector purchased by such dealer for his or her own use).

(8) *Dealer* shall mean any person authorized by respondent, by a distributor of respondent, or by a licensee or a distributor of a licensee of International Solarthermics Corporation, to sell Solar Furnaces or solar collectors to purchasers.

(9) *Eligible direct purchaser* shall mean any purchaser who purchased a Champion brand name Solar Furnace or solar collector, as new. This term shall not include any purchaser who, prior to April 1, 1982, waived all claims with respect to the Solar Furnace or solar collector in exchange for monetary compensation, or who received a judgment in a court of law for monetary damages or for a full or partial refund of the purchase price in an action against respondent with respect to the Solar Furnace or solar collector.

(10) *Eligible direct dealer* shall mean any dealer who purchased a Champion brand name Solar Furnace or solar collector, as new, for his or her own use as heating equipment or as a demonstrator, and who sold at least one but less than three Solar Furnaces and solar collectors to purchasers. This term shall not include any dealer who, prior to April 1, 1982, waived all claims with respect to the Solar Furnace or solar collector in exchange for monetary compensation, or who received a judgment in a court of law for monetary damages or for a full or partial refund of the purchase price in an action against respondent with respect to the Solar Furnace or solar collector.

(11) *Eligible licensee purchaser* shall mean any purchaser who purchased a Solar Furnace or solar collector of a brand name other than Champion, as new. This term shall not include any purchaser who, prior to April 1, 1982, waived all claims with respect to the Solar Furnace or solar collector in exchange for monetary compensation, or who received a judgment in a court of law for monetary damages or for a full or partial refund of the purchase price in an action against respondent with respect to the Solar Furnace or solar collector.

#### PART I

*It is ordered*, That respondent Champion Home Builders Co., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any solar energy



equipment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing in any manner that:

(1) Respondent's solar energy equipment does not have any defect which substantially impairs the reliability, durability, or performance of the equipment;

(2) Little or no maintenance is required to keep respondent's solar energy equipment in operating condition;

(3) Respondent's solar energy equipment, or any material or component thereof, is durable or reliable;

(4) Respondent's solar energy equipment, or any material or component thereof, is not adversely affected by high temperatures;

(5) Respondent has 60 factories producing solar energy equipment, has a 22-year record of mass producing solar energy equipment, or has 3,200 trained dealers nationwide to provide prompt service on its solar energy equipment; or

(6) Competent, independently conducted tests have verified the performance or quality of respondent's solar energy equipment;

unless such representation is true, and unless, at the time that the representation is made, respondent possesses and relies upon a competent and reliable scientific test or other objective material which substantiates the representation.

B. Representing in any manner the thermal or economic performance or efficiency, energy savings, heat output, cost recovery, "pay-back" potential, or investment potential of respondent's solar energy equipment unless such representation is true, and unless, at the time that the representation is made, respondent possesses and relies upon a competent and reliable scientific test or other objective material which substantiates the representation.

C. Misrepresenting in any manner:

(1) The reliability, durability, performance capabilities, or maintenance requirements of respondent's solar energy equipment;

(2) The production capabilities, manufacturing experience, or service capabilities of respondent relating to solar energy equipment; or

(3) The results or conclusions of any test upon which respondent relies to substantiate any representation relating to solar energy equipment.

## PART II

*It is further ordered, That respondent shall:*

A. Within 45 days after the date of service of this Order, determine the names and last known addresses of all purchasers and the names and last known addresses of all dealers. In making these determinations, respondent shall search all relevant records in its possession, custody, or control, and shall obtain and search all relevant service and repair records maintained by International Solar Technologies, Inc. as of the date of service of this Order.

B. Send by first-class mail, address correction requested, within 45 days after the date of service of this Order, to the last known address of each purchaser and dealer identified by respondent pursuant to Subpart A of this Part or identified by the Federal Trade Commission or its staff, a notice package consisting of: (i) a copy of the letter attached to this Order as Attachment A, incorporated herein by reference, with the return date filled in; (ii) a copy of the questionnaire form attached to this Order as Attachment B, incorporated herein by reference, with the return date filled in; (iii) a self-addressed, postage-paid envelope; and (iv) an envelope containing the materials described in subsections (i) through (iii) and bearing the legend "CHAMPION SOLAR PROGRAM, IMPORTANT CASH SETTLEMENT OFFER." For the purposes of this Subpart, the return date shall be the date 90 days after the date of service of this Order.

Respondent shall also send by first-class mail a notice package to each person who, within 85 days after the date of service of this Order, contacts respondent or about whom respondent receives information indicating that the person may be a purchaser or dealer, and who has not received a notice package or received a notice package but subsequently lost it. The notice package shall be sent within five days after respondent's receipt of the contact or information.

*Provided that* respondent may refrain from sending a notice package to any person identified pursuant to Subparts A or B of this Part who respondent's records conclusively show is not an eligible direct purchaser, eligible direct dealer, or eligible licensee purchaser.

C. Determine all eligible direct purchasers, eligible direct dealers, and eligible licensee purchasers. These determinations shall be based upon all information received by respondent from returned Attachment B questionnaires, and all other information in respondent's possession, as of the date 105 days after the date of service of this Order.

*Provided that* respondent may determine that a person is or is not an eligible direct purchaser, eligible direct dealer, or eligible licensee

purchaser notwithstanding the information provided by such person in an Attachment B form if respondent's records conclusively show that the person does or does not meet the definition of eligible direct purchaser, eligible direct dealer, or eligible licensee purchaser as set forth in Definitions (9), (10), and (11) of this Order.

D. Determine a tentative cash settlement amount for each eligible direct purchaser and eligible direct dealer identified pursuant to Subpart C of this Part. The tentative cash settlement amounts shall be determined according to the status of the person at the time of purchase of each Solar Furnace or solar collector and shall consist of the following:

(1) \$1500 for each Solar Furnace or solar collector system purchased by an eligible direct purchaser who currently owns the unit(s) or who disposed of the unit(s) not for value;

(2) \$1000 for each Solar Furnace or solar collector system purchased by an eligible direct purchaser and subsequently disposed of for value; and

(3) \$750 for each Solar Furnace or solar collector system purchased by an eligible direct dealer which was purchased for the dealer's own use, either as heating equipment or as a demonstrator.

*Provided that* if the aggregate dollar value of all tentative cash settlements determined pursuant to subsections (1) through (3) of this Subpart exceeds \$375,000, then each tentative cash settlement shall be prorated by multiplying the tentative cash settlement amount by the ratio of \$375,000 to the aggregate dollar value of all tentative cash settlements determined pursuant to subsections (1) through (3).

E. Determine a tentative cash settlement amount for each eligible licensee purchaser identified pursuant to Subpart C of this Part. The tentative cash settlement amounts shall be determined according to the status of the person at the time of purchase of each Solar Furnace or solar collector and shall consist of the following:

(1) \$750 for each Solar Furnace or solar collector system purchased by an eligible licensee purchaser who currently owns the unit(s) or who disposed of the unit(s) not for value; and

(2) \$500 for each Solar Furnace or solar collector system purchased by an eligible licensee purchaser and subsequently disposed of for value.

*Provided that* if the aggregate dollar value of all tentative cash settlements determined pursuant to subsections (1) and (2) of this Subpart exceeds \$150,000 plus any remaining portion of the \$375,000 amount provided in Subpart D, then each tentative cash settlement shall be prorated by multiplying the tentative cash settlement

amount by the ratio of \$150,000 plus any remaining portion of the \$375,000 amount to the aggregate dollar value of all tentative cash settlements determined pursuant to subsections (1) and (2).

F. Send by first-class mail, within 125 days after the date of service of this Order, to each eligible direct purchaser, eligible direct dealer, and eligible licensee purchaser who is determined pursuant to Subpart C of this Part: (i) a copy of the letter attached to this Order as Attachment C, incorporated herein by reference, with the tentative cash settlement amount and the return date filled in; (ii) a copy of the acceptance and waiver form attached to this Order as Attachment D, incorporated herein by reference, with the tentative cash settlement amount, the return date, and the date of the Attachment C letter filled in; and (iii) a self-addressed, postage-paid envelope. The tentative cash settlement amount shall be determined as provided in Subparts D and E of this Part. For the purposes of this Subpart, the return date shall be the date 155 days after the date of service of this Order.

G. Send by first-class mail, within 180 days after the date of service of this Order, a cash settlement check to each eligible direct purchaser and eligible direct dealer who returned to respondent a signed Attachment D form which was received by respondent on or before the date 170 days after the date of service of this Order. Each cash settlement shall be in the amount determined as provided in Subpart D, subsections (1) through (3) of this Part, and shall be determined according to the status of the person at the time of purchase of each Solar Furnace or solar collector.

*Provided that* if the aggregate dollar value of all cash settlements as determined above exceeds \$375,000, then each cash settlement shall be prorated by multiplying the cash settlement amount by the ratio of \$375,000 to the aggregate dollar value of all cash settlements as determined above.

H. Send by first-class mail, within 240 days after the date of service of this Order, a cash settlement check to each eligible licensee purchaser who returned to respondent a signed Attachment D form which was received by respondent on or before the date 170 days after the date of service of this Order. Each cash settlement shall be in the amount determined as provided in Subpart E, subsections (1) and (2) of this Part, and shall be determined according to the status of the person at the time of purchase of each Solar Furnace or solar collector.

*Provided that* if the aggregate dollar value of all cash settlements as determined above exceeds \$150,000 plus any undistributed portion of the \$375,000 fund provided in Subpart G of this Part, then each cash settlement shall be prorated by multiplying the cash settlement amount by the ratio of \$150,000 plus any undistributed portion of the

\$375,000 fund to the aggregate value of all cash settlements as determined above.

I. Send by first-class mail to each person who, within 86 to 270 days after the date of service of this Order, contacts respondent or about whom respondent receives information indicating that the person may be a purchaser or dealer, and who has not received a notice package as provided in Subpart B or who received a notice package as provided in Subpart B but subsequently lost it, a notice package consisting of: (i) a copy of the letter attached to this Order as Attachment E, incorporated herein by reference, with the return date filled in; (ii) a copy of Attachment B, with the return date filled in; (iii) a self-addressed, postage-paid envelope; and (iv) an envelope containing the materials described in subsections (i) through (iii) and bearing the legend "CHAMPION SOLAR PROGRAM, IMPORTANT CASH SETTLEMENT OFFER." For the purposes of this Subpart, the return date shall be the date 275 days after the date of service of this Order. The notice package shall be sent within five days after respondent's receipt of the contact or information.

*Provided that* respondent may refrain from sending a notice package to any person who respondent's records conclusively show is not an eligible direct purchaser, eligible direct dealer, or eligible licensee purchaser.

J. Determine all additional eligible direct purchasers, eligible direct dealers, and eligible licensee purchasers. These persons shall include (i) persons whose Attachment B forms were received by respondent subsequent to the date 105 days after the date of service of this Order, and (ii) persons whose Attachment D forms were received by respondent subsequent to the date 170 days after the date of service of this Order. The determinations shall be based upon all information received by respondent from returned Attachment B questionnaires, and all other information in respondent's possession, as of the date 290 days after the date of service of this Order.

*Provided that* respondent may determine that a person is or is not an eligible direct purchaser, eligible direct dealer, or eligible licensee purchaser notwithstanding the information provided by such person in an Attachment B form if respondent's records conclusively show that the person does or does not meet the definition of eligible direct purchaser, eligible direct dealer, or eligible licensee purchaser as set forth in Definitions (9), (10), and (11) of this Order.

K. Determine a tentative cash settlement amount for each eligible direct purchaser, eligible direct dealer, and eligible licensee purchaser identified pursuant to Subpart J of this Part. The tentative cash settlement amounts shall be determined according to the status of the person at the time of purchase of each Solar Furnace or solar collector

