

IN THE MATTER OF

IOWA CHAPTER OF THE AMERICAN
PHYSICAL THERAPY ASSOCIATION

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

Docket C-3242. Complaint, Nov. 4, 1988—Decision, Nov. 4, 1988

This consent order prohibits, among other things, the Iowa Chapter of the American Physical Therapy Association (ICAPTA) from restricting any physical therapist from accepting or continuing employment with any physician, or from declaring such employment illegal or unethical.

Appearances

For the Commission: *Erika R. Wodinsky.*

For the respondent: *Glenn Goodwin, Duncan, Jones, Riley & Finley, Des Moines, Ia.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Iowa Chapter of the American Physical Therapy Association has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Iowa Chapter of the American Physical Therapy Association ("ICAPTA"), sometimes referred to herein as "respondent," is a corporation formed pursuant to the laws of the State of Iowa. Respondent is a voluntary association of approximately 360 physical therapists, who comprise over 65% of the physical therapists licensed to practice in Iowa. Its principal business office is located at 1454 30th Street, Suite 201, West Des Moines, Iowa.

PAR. 2. Respondent's members are generally engaged in the business of providing physical therapy services to patients for a fee. Except to the extent that competition has been restrained as alleged

herein, respondent's members have been and are now in competition among themselves, with other physical therapists, with physical therapy services owned by physicians, and with other health care providers in the State of Iowa.

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

PAR. 4. The acts and practices of respondent, including the acts or practices alleged herein, have been in, or are affecting, commerce, within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 5. Respondent has acted as a combination of at least some of its members or has conspired with at least some of its members to hinder, frustrate, or restrict competition among physical therapists, and between physical therapists and physician-owned physical therapy services in Iowa, by restricting or attempting to restrict its members and other physical therapists from accepting or continuing employment with physicians or with physical therapy services owned by physicians.

PAR. 6. Respondent has engaged in various acts and practices in furtherance of this combination or conspiracy, including the following:

A. In 1983, ICAPTA adopted a resolution stating that it was illegal and unethical for physical therapists to work under an employment agreement with a physician, and calling upon ICAPTA members to report any physical therapists working under such an arrangement to ICAPTA or the Iowa State Board of Physical and Occupational Therapy Examiners. ICAPTA disseminated this resolution widely among physical therapists in Iowa. Shortly thereafter, ICAPTA learned that employment of a physical therapist by a physician did not violate Iowa state law, but never informed its members that this form of practice was not illegal.

B. In 1985, ICAPTA adopted a resolution that ICAPTA members engaged in direct salary arrangements with physicians be disciplined by the chapter and could be subject to dismissal from ICAPTA. ICAPTA disseminated this resolution widely among physical therapists in Iowa.

C. In 1986, ICAPTA adopted several resolutions that communicated to members the idea that employment by a physician who referred patients to the physical therapist would constitute an unethical

employment arrangement, and would subject the physical therapist to possible disciplinary action. ICAPTA disseminated this resolution widely among physical therapists in Iowa.

PAR. 7. The purposes or effects of the combination or conspiracy and acts or practices of respondents as described above have been and are to restrain competition unreasonably and to injure consumers in one or more of the following ways, among others:

A. Competition among physical therapists, and between physician-owned physical therapy services and other physical therapy services, is impeded;

B. Physical therapists in Iowa are deterred from accepting employment by physicians and offering their services in conjunction with physicians' services;

C. The development of efficient forms of practice that may reduce costs by offering the combination of physician diagnosis, physical therapy treatment, and physician-physical therapist consultation at one location is hindered; and

D. Consumers are deprived of choice of provider and convenience of obtaining physician services and physical therapy services at the same location.

PAR. 8. The combination or conspiracy described above constitutes an unfair method of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as amended. Such combination or conspiracy, or the effects thereof, is continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Iowa Chapter of the American Physical Therapy Association ("ICAPTA" or "respondent"), 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 had 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. ICAPTA is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal business address located at 1454 30th Street, Suite 201, West Des Moines, Iowa.

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

ORDER

I.

It is ordered, That for purposes of this order:

A. "*Respondent*" means the Iowa Chapter of the American Physical Therapy Association ("ICAPTA"), and its board of directors, officers, councils, committees, representatives, agents, employees, successors, and assigns.

B. "*Employment or other contractual arrangement*" means an employment or other contractual arrangement, written or unwritten, that is permitted under Iowa and federal law.

C. "*Physical therapist*" means any person licensed as a physical therapist by the State of Iowa.

II.

It is ordered, That respondent shall cease and desist, directly or

through any corporate or other device, from restricting, impeding, regulating, declaring unethical or illegal, interfering with, or advising against any physical therapist:

A. Accepting or continuing any employment or other contractual arrangement with any physician, or other health care provider because such physician or health care provider employs or seeks to employ, or has a contractual arrangement with, or seeks to enter into a contractual arrangement with any physical therapist; or

B. Referring patients to, or accepting referrals from, any physician or other health care provider because that physician or health care provider employs or seeks to employ, or has a contractual arrangement with, a physical therapist.

III.

It is further ordered, That respondent shall cease and desist, directly or through any corporate or other device, from making, directly or by implication, any representation concerning the legality or illegality of any aspect of physical therapy practice unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for such representation.

IV.

It is further ordered, That this order shall not prohibit respondent from, in good faith, petitioning any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or participating in any federal or state administrative or judicial proceeding.

V.

It is further ordered, That respondent shall within sixty (60) days after this order becomes final:

A. Rescind all resolutions, and remove from any existing ICAPTA policy statements or guidelines, any provision, interpretation or policy statement which is inconsistent with the provisions of Part II of this order; and

B. Publish a copy of this order in the *ICAPTA Recap* or any successor publication, and for a period of three (3) years thereafter,

annually publish a copy of the Notice attached hereto in the *ICAPTA Recap* or any successor publication.

VI.

It is further ordered, That respondent shall:

A. Within ninety (90) days after this order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this order; and

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

VII.

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

NOTICE

The Iowa Chapter of the American Physical Therapy Association ("ICAPTA") has entered into a consent agreement with the Federal Trade Commission. Under the terms of the agreement, ICAPTA is required to inform you that it is not unethical or illegal for a physical therapist to accept or continue employment with a physician or physician-owned physical therapy service.

Among other things, the consent agreement forbids any action by ICAPTA that would restrict physical therapists from:

- accepting or continuing any lawful employment or contractual arrangement with a physician; or
- making referrals to, or accepting referrals from a physician or other health care provider because that provider employs a physical therapist.

It would also prohibit ICAPTA from making representations about the legality or illegality of any aspect of physical therapy practice without having a reasonable basis for such statements.

In entering into this consent agreement, ICAPTA has not admitted any liability, or agreed that any law has been violated.

You may obtain a copy of the consent agreement and of the complaint of the Federal Trade Commission from ICAPTA or from the Federal Trade Commission.

Complaint

111 F.T.C.

IN THE MATTER OF

REMOVATRON INTERNATIONAL CORPORATION, ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 & 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9200. Complaint, Sept. 30, 1985—Final Order, Nov. 4, 1988*

This Final Order prohibits, among other things, the Boston, Mass. sellers of an electronic device called "Removatron", from making unsubstantiated claims about the product and requires clinical testing as substantiation for future permanency claims.

Appearances

For the Commission: *David Keniry* and *David Fitzgerald*.

For the respondents: *David Lipton* and *David H. Erickson*, *Lipton & Pemstein*, Boston, Ma. *Judith Ashton*, *Davis, Malm & D'Agostine*, Boston, Ma.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Removatron International Corporation, a corporation, and Frederick E. Goodman, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Removatron International Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 215 A Street, Boston, MA.

Frederick E. Goodman is an individual and an officer of Removatron International Corporation. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

PAR. 2. Respondents are now and have been engaged in the advertising, offering for sale, and sale of a high frequency tweezer-type epilator (hair removal device employing radio frequency energy) called Removatron to beauty salon owners and others who in turn advertise and sell Removatron treatments to consumers. The Removatron epilator is a "device" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 3. Respondents maintain, and have maintained a substantial course of trade in or affecting commerce, including the acts and practices hereafter set forth, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents disseminated and caused the dissemination of advertisements or promotional materials concerning the Removatron device through the United States mails by various means in or affecting commerce for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of the Removatron device or Removatron treatments. The advertisements or promotional materials were and are disseminated to potential buyers of the Removatron device and through such buyers to the ultimate consumers of Removatron treatments.

PAR. 5. Through the use of the advertisements and promotional materials referred to in paragraph four, respondents have made, and in some instances are still making, the following statements concerning the Removatron device, method or treatments:

1. "Permanent hair removal."
2. "Removatron. It lets you say good-bye to temporary solutions like messy creams."
3. "The method is fully ... effective ... All hairs can be treated successfully ... Removatron ... is more effective than any electrolysis machine on the market."
4. "Unwanted hair is no longer a Problem, with a series of treatments, it can be Removatroned forever!"
5. "[T]he Removatron method uses modern electronic tweezers to EFFECTIVELY remove unwanted hair ... " (Emphasis in original.)
6. "alternative to electrolysis"

PAR. 6. through the use of these and other statements in the advertisements and promotional materials referred to in paragraphs four and five, and others not specifically set forth herein, respondents have represented, and in some instances are still representing, directly or by implication, that:

1. The Removatron device permanently removes hair.
2. The Removatron device is effective in removing hair on a long-term, not temporary, basis.

PAR. 7. Through the use of the representations referred to in paragraph six respondents have represented, and are still representing, directly or by implication, that, at the time of making the representations set forth in paragraph six, they possessed and relied upon a reasonable basis for those representations.

PAR. 8. In truth and in fact, at such times respondents have not possessed or relied upon a reasonable basis for those representations. Therefore the representation referred to in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the advertisements and promotional materials referred to in paragraph four, respondents have made, and are still making, the following statement concerning the Removatron device, method or treatments: "Removatron hair removal is government F.C.C. approved."

PAR. 10. Through the use of this and other statements in the advertisements and promotional materials referred to in paragraphs four and nine, and others not specifically set forth herein, respondents have represented, and are still representing, directly or by implication, that the Federal Communication Commission has approved the Removatron hair removal method.

PAR. 11. In truth and in fact, the Federal Communications Commission has not approved Removatron hair removal. It has merely approved the operation of the Removatron device at a certain frequency to ensure noninterference with radio broadcasting.

Therefore, the representation referred to in paragraph ten was, and is, false and misleading.

PAR. 12. The aforesaid acts and practices of respondents constitute unfair and deceptive acts or practices in or affecting commerce and false advertisements in violation of Sections 5 and 12 of the Federal Trade Commission Act.

INITIAL DECISION BY

MONTGOMERY K. HYUN, ADMINISTRATIVE LAW JUDGE

JULY 15, 1987

PRELIMINARY STATEMENT

On September 30, 1985, the Federal Trade Commission ("Commission") issued an administrative complaint charging Removatron International Corporation ("Removatron International") and Frederick E. Goodman, individually and as an officer of Removatron International, with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended (15 U.S.C. 45 and 52), in connection with certain advertisements and promotional materials for Removatron, a radio frequency energy ("RFE") epilation device. On November 22, 1985, respondents filed their answer which in effect denied that they violated the Federal Trade Commission Act as charged. The answer also advanced affirmative defenses that the purchasers of Removatron are not deceived or misled by respondents' advertising and that this proceeding was discriminatory enforcement of the Federal Trade Commission Act. By an order of February 20, 1986, the administrative law judge granted complaint counsel's motion to strike the affirmative defenses from respondents' answer to the complaint.

The parties were allowed extensive pretrial discovery and ample time to prepare for trial. Evidentiary hearings were held in November and December of 1986 and January of 1987 in Washington, D.C., and Boston, Massachusetts. Complaint counsel offered some 180 documents and 5 witnesses, including a dermatologist. Respondents offered some 80 documents and called 17 witnesses. The transcripts of hearing comprise some 2450 pages. The record was closed on March 19, 1987.¹

Based on the complaint and answer and other pleadings of record, the following issues are the principal issues to be determined in this proceeding:

1. Whether respondents represented, directly or by implication, in certain advertisements and promotional materials, that:

¹ By order dated May 8, 1987, the time for filing this Initial Decision was extended to and including July 20, 1987.

(a) Removatron permanently removes hair or is effective in removing hair on a long-term, not temporary, basis.

(b) The Federal Communications Commission has approved the Removatron hair removal method. [3]

(c) Respondents had a reasonable basis for these claims.

2. Whether respondents possessed and relied on reasonable and adequate substantiation for the efficacy claims described in 1(a) when these claims were made.

3. Whether the fact that Removatron does remove hair permanently or it does not is a material fact for Removatron purchasers and their hair removal treatment customers.

4. Whether the Federal Communications Commission in fact approved the Removatron hair removal method as claimed.

5. Whether the issuance of a cease and desist order in this proceeding is in the public interest.

The proposed findings, conclusions and orders submitted by the parties and their arguments in support thereof have been given careful consideration by me and to the extent not adopted by this Initial Decision, in the form proposed or in substance, are rejected as not supported by the evidence or as immaterial. Any motion appearing on the record not heretofore or hereby specifically ruled upon either directly or by the necessary effect of the conclusions in this Initial Decision are hereby denied.

Upon consideration of the entire record in this proceeding and having considered the demeanor of the witnesses, I make the following findings of fact and conclusions of law and order based on the record considered as a whole: ² [4]

I. RESPONDENTS, THEIR BUSINESS AND JURISDICTION

1. Removatron International Corporation ("Removatron International"), the corporate respondent herein, is a corporation organized, existing and doing business under and by virtue of the laws of the

² For the purposes of this Initial Decision, the following abbreviations were used:

F.	- Finding of Fact in this Decision
CPF	- Complaint Counsel's Proposed Findings
RPF	- Respondents' Proposed Findings
CRB	- Complaint Counsel's Reply
RRB	- Respondents' Reply
Tr.	- Transcript of hearings, sometimes preceded by the name of the witness
CX	- Complaint Counsel's exhibit
RX	- Respondents' exhibit
Comp.	- Complaint
Ans.	- Answer

Commonwealth of Massachusetts, with its office and principal place of business located at 215 A Street, Boston, Massachusetts. (Ans., at 1.)

2. Removatron International was incorporated in 1978 and is the continuation of a predecessor corporation, Skin-Sation Unlimited, which did business from 1976 to 1978. (CX 721-6.) Removatron International describes itself as “[t]he leading manufacturer of facial care equipment, hair removal equipment and private label cosmetics.” (CX 709.)

3. Frederick E. Goodman, the individual respondent herein, is an officer of Removatron International (Ans., at 1) and formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. *See, e.g.*, CX 721-5 (president), 721-30 to 721-32.

4. Respondents are now and have been engaged in the advertising, offering for sale, and sale of a high frequency energy (“RFE”) tweezer-type hair removal device or epilator called “Removatron” (hereafter sometimes referred to as “device” or “Removatron device”) to beauty salon owners and others, who in turn advertise and sell Removatron hair removal treatments to consumer-clients. (Ans., at 1.)

II. REMOVATRON AND MARKETING OF REMOVATRON

5. The Removatron device is an electric epilator which generates radio frequency energy (“RFE”) at about 27.012 megahertz and transmits the RFE along a wire to a pair of tweezers attached to the end of the wire. (CX 721-44.) It is claimed that when a hair is held by the tweezers, the RFE is transmitted to the papilla and facilitates removal of the hair by heating and destroying the papilla and certain surrounding tissues, and that a series of such treatments will end the hairgrowing capability of the hair follicle containing the treated hair. (CX 712-2.)

6. Removatron is thus designed, and marketed, as a device which will destroy the tissues at the hair roots and retard and eventually stop regrowth of the treated hair, thus affecting both the structure and the function of the human body. *E.g.*, CX 712-2, 734-14, 738-2; F. 35, 86, *infra*. Respondents also expressly likened Removatron to “today’s most modern medical equipment.” (CX 148-4.) Therefore, Removatron is a “device” within the meaning of Section 12 of the Federal Trade Commission Act. [5]

7. Respondents’ belated argument (RPF and RRB) that Removatron is a mere cosmetic device and as such is not a “device” within the meaning of Section 12 is contrary to the evidence and the law.

8. Respondents cause Removatron to be transported from its place of business to purchasers located in various other States of the United States and the District of Columbia, Canada, Japan and Europe. (CX 721-343, 805; Tr. 140.) Respondents maintain, and at all times relevant to this proceeding have maintained, a substantial course of trade in the Removatron device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. (CX 805; Tr. 140.) The volume of such business has been well over \$500,000 annually. (CX 719.)

9. In the course and conduct of their business, respondents disseminated and caused the dissemination of advertisements or promotional materials concerning the Removatron device (Ans., at 2) through the United States mails by various means in or affecting commerce for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of the Removatron device. The advertisements or promotional materials were and are disseminated to potential buyers of the Removatron device (Ans., at 2) and through such buyers to the ultimate consumers of Removatron treatments. *See, e.g.*, Removatron Sample Consultation, CX 141-62; Training Videotape, CX 251; and local advertisements, CX 177.

10. Respondents sell Removatron to owners/operators of beauty salons, skin care establishments, and hair removal businesses (CX 149-4) and to individuals for self-treatment of their unwanted hair problems. (CX 721-22.)

11. Consumers of Removatron hair removal treatments are generally women who have unwanted hair on abnormal locations or in abnormal quantities on their bodies, most often the face. Unwanted hair is regarded as a serious problem, constituting disfigurement by consumers. (Van Scott, Tr. 948.)

12. In Removatron hair removal treatment, an individual hair is grasped with the tweezer, sending RFE to the tweezer tip for a period of time, and then removing the hair with the tweezers. (CX 148-13, 148-18.) It is recommended that treatment be preceded by cleansing and moisturizing the area to be treated. *Id.* Consumers are advised to return at regular intervals in order to ensure early treatment of new or regrown hair. (CX 1-8.) It is not uncommon for some consumers to return for periodical treatments over a period of several years. *See, e.g.*, Dyal, Tr. 1280-1293; Callison, Tr. 479-480. [6]

13. Removatron is advertised mainly in trade magazines aimed at the owners and operators of beauty salons and epilation treatment

establishments. In *Modern Salon*, a magazine with nationwide circulation of more than 100,000 (CX 735), Removatron International advertised in March 1979 (CX 743), June 1980 (CX 815), June 1981 (CX 1-24), September 1982 (CX 1-6), July 1985 (CX 706), August 1985 (CX 139(a)), November 1985 (CX 744), December 1985 (CX 710), February 1986 (CX 709), July 1986 (CX 710) and October 1986 (CX 802, 803, and 804.) In *American Salon*, a magazine with nationwide circulation of more than 100,000 (CX 735), Removatron International advertised at least twice during 1984. (CX 1-10, 1-26.) In *Aesthetics World*, Removatron International advertised in May 1981. (CX 704, 704(a)), November 1981 (CX 39), April 1982 (CX 40, 40(b)), June 1982 (CX 52, 52(a)) and October 1982 (CX 1-9, 58.) In *National Beauty School Journal*, Removatron International advertised in October, November and December 1982, and in May and June 1983. (CX 34, 35, 36, 37, 38 and 38(a).) In *Dermascope*, Removatron International advertised four times in 1985 (CX 113, 113(a), 114, 116, and 117) and nine times in 1982-1984. (CX 121, 122, 124, 125, 127, 128, 129, 131, 132, and 132(a).) In *American Hair Dressers Salon Owners*, Removatron International advertised in January 1983. (CX 1-25.) Removatron International also advertised in the classified advertising sections in newspapers published in Chicago, Illinois, Miami, Florida, Charlotte, North Carolina, Boston, Massachusetts, Providence, Rhode Island, Hartford, Connecticut, Burlington, Vermont, Manchester, New Hampshire, and Bangor, Maine, during 1982 and 1983. (CX 727.)

14. Removatron International also regularly participated in beauty industry trade shows in various parts of the country, where it demonstrated the Removatron device and treatment. It also promoted the device with written materials handed out at the Removatron booth and with oral and video presentations. (CX 721-35 to 721-45.)

15. Removatron International distributed promotional materials to prospective device purchasers. Such materials were handed out at trade shows and were mailed to persons who read Removatron ads and contacted Removatron International offices about the device. (CX 721-35, 721-36; Tr. 1770.) Examples of such promotional materials are CX 1-11 to 1-22, 143, 149, 168, 176, 287, 290, 298, 717, 733, 737, 738 and 756.

16. Removatron International sales staff made oral representations about Removatron during telephone conversations with prospective purchasers. (Bassett, Tr. 1494-1499; Evan Goodman, Tr. 1694-1699.)

17. Removatron International continued to make representations to device purchasers after sale of the device, in written and audio materials supplied along with the product, in [7] an in-person training presentation, and in written and video materials and oral presentations made during the months and years following device purchase. Materials supplied along with the product include CX 141, 143, 148, 150, 284, 298, 717, 734, 737, 772 and 773. (CX 1-14.) Representations made during the training of the device purchaser are set forth in CX 170, 171, 172 and 251. Removatron International continued to make representations in newsletters sent periodically to device purchasers. (CX 179, 180, 181 and 718.)

18. During a typical telephone conversation, the individual respondent, Frederick E. Goodman, told Doris Callison, a Removatron owner, that the Removatron method did work and that it was a permanent method of hair removal. (Tr. 469.)

19. The representations made by Removatron International to device purchasers were passed on by purchasers to prospective epililation treatment consumers. Removatron International also supplied Removatron purchasers advertising "slicks" for placement in local print media. (CX 146, 147, 174(a), 169, 289 and 730; *see also* CX 732, which offers "advertising materials that will get you clients," and CX 721-230.) Respondents encouraged Removatron purchasers to advertise hair removal treatments using Removatron (CX 141-76), and Removatron purchasers did advertise Removatron services in local print media and through written promotional materials. (CX 177, 708, 740, 742, 749, 750, 752, 753, 761, 765, 766, 767 and 768.) Removatron International also prepared "Questions and Answers About Your Unwanted Hair" (CX 143, 298, 717 and 737), a promotional brochure, designed specifically for prospective consumers of Removatron services and directed device purchasers to give this brochure to each client in order to ensure that each reads it. (CX 721-160, 251-102 to 251-103.)

20. The individual respondent, Frederick Goodman, created, or reviewed and approved, all Removatron advertising and promotional materials (CX 721-83, 721-176 and 721-247) and directly supervised the Removatron International employees who made oral claims. (Evan Goodman, Tr. 1710; Patricia Collins, Tr. 278.) Therefore, he is responsible for all of the representations contained in the advertisements, promotional literature and audio or video tapes as well as oral representations made by Removatron International employees to customers regarding the device.

