

Complaint

126 F.T.C.

IN THE MATTER OF

HONEYWELL INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3823. Complaint, Aug. 17, 1998—Decision, Aug. 17, 1998*

This consent order, among other things, prohibits the Minnesota-based manufacturer of air purifiers from making certain claims regarding the benefits, performance, or efficacy of its air purifiers, filters, or any other air cleaning product which is normally used for personal, family, or household purposes, unless at the time of making the claims it possesses and relies upon competent and reliable scientific evidence.

Participants

For the Commission: *Linda Badger, Kerry O'Brien, Jeffrey Klurfeld, and Carolyn Cox.*

For the respondent: *Pamela Deese, Robins, Kaplan, Miller & Ciresi, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Honeywell Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Honeywell Inc. is a Delaware corporation with its principal office or place of business at Honeywell Plaza, Minneapolis, MN.
2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed air treatment products to the public, including "Honeywell Air Purifiers" and the "enviracaire® True HEPA filter" used in its air purifiers. These "HEPA" (high-efficiency particulate air) filters have a particle removal efficiency rating of 99.97 percent for particles of 0.3 micron diameter. Honeywell Air Purifiers and enviracaire® True HEPA filters are "devices," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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

4. Respondent has disseminated or has caused to be disseminated advertisements for Honeywell Air Purifiers, including but not necessarily limited to the attached Exhibits A through I. These advertisements contain the following statements and depictions:

A. "There are some places a wash cloth just can't clean.

Even squeaky clean on the outside, your kids are still exposed to mold spores, dust mite allergens - even bacteria and viruses. They're in the air inside your home. But you can help protect your children with a Honeywell Air Purifier. Our exclusive enviraicare® True HEPA filter can remove 99.97% of these impurities And while you're keeping their ears clean, we'll help do the same for their lungs." (Exhibit A).

B. "Don't your children's lungs deserve as much care?"

Think of all you do to keep their clothes clean. Now consider this. No matter how good a housekeeper you are, your children are exposed to mold spores, dust mite allergens - even bacteria and viruses. They're in the air inside your home. But you can help protect your children with a Honeywell Air Purifier. Our exclusive enviraicare® True HEPA filter can remove 99.97% of these impurities And while you're washing their clothes, we'll be washing their air." (Exhibit B).

C. "There are some places a washcloth just can't reach. Like her lungs. The filter in a Honeywell Air Purifier removes nearly all impurities from the air."

[A super "99.97%" appears on the screen and dissipates like dust]

"Honeywell. A home's not clean without it."

[Super: "Honeywell. A Home's Not Clean Without It."] (Exhibit C).

D. "While you're busy cleaning everything in sight, we could be taking care of what you can't see. The filter in a Honeywell Air Purifier removes nearly all impurities from the air."

[A super "99.97%" appears on the screen and dissipates like dust]

"Honeywell. A home's not clean without it."

[Super: "Honeywell. A Home's Not Clean Without It."] (Exhibit D).

E. "You do the laundry, we'll clean the really tough spot. The filter in a Honeywell Air Purifier removes nearly all impurities from the air."

[A super "99.97%" appears on the screen and dissipates like dust]

"Honeywell. A home's not clean without it."

[Super: "Honeywell. A Home's Not Clean Without It."] (Exhibit E).

F. "Hard as you try, there's some dirt you just can't shake. To remove nearly all impurities from the air,

[A super "99.97%" appears on the screen and dissipates like dust] you need the filter in a Honeywell Air Purifier. Honeywell. A home's not clean without it."

[Super: "Honeywell. A Home's Not Clean Without It."] (Exhibit F).

G. "Ideal for allergy and asthma sufferers. **Exclusive Patented 360 degree Airflow**. Efficiently scrubs the room free of air pollutants." (Exhibit G).

H. "*How to Select the Right Size enviraicare® Portable Air Cleaner*

....

6 to 7 ACH: Changing the air in a room six to seven times per hour will yield a 70 percent reduction in contaminant levels, resulting in noticeable relief from many allergy symptoms and seasonal respiratory problems. Expect excellent air quality improvement.

8-Plus ACH: Changing the air in a room eight or more times per hour yields a dramatic 85 percent reduction in contaminant levels, resulting in noticeable symptom relief from severe allergies, asthma and other chronic respiratory problems. Expect superior air quality improvement.

....

How can you tell that it's working?

Allergy sufferers should notice a decrease in symptoms such as coughing, sneezing and wheezing, and should be able to sleep better." (Exhibit H).

I. "Honeywell air cleaners provide proven relief of allergy symptoms." (Exhibit I).

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that:

A. The filter in a Honeywell Air Purifier removes 99.97% of mold spores, dust mite allergens, bacteria and viruses from the air that people breathe under household living conditions.

B. The filter in a Honeywell Air Purifier removes nearly all or 99.97% of impurities from the air that people breathe under household living conditions.

C. Consumers who use a Honeywell Air Purifier that changes the air in a room six or more times per hour will experience noticeable symptom relief from allergies and other respiratory problems.

D. Honeywell Air Purifiers provide proven relief from allergy symptoms.

6. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made. The 99.97% figure refers to the filter's expected efficiency in removing

particles that actually pass through the filter. While the filter's efficiency is a factor in assessing the effectiveness of an air purifier in particulate removal, this figure overstates the actual effectiveness of the air purifier in removing pollutants from the air in a user's environment. The actual effectiveness of an air purifier depends on a variety of factors including, the amount of air that the air purifier processes, the nature of the pollutant, and the rate at which the pollutant is being introduced into the environment.

Additionally, there is no guarantee that an individual who suffers from allergies or other respiratory problems will derive a discernible reduction in symptoms through the use of these or other air purifiers. Whether individuals will derive such relief depends on many variables, including the source and severity of their allergies, whether the allergens at issue tend to remain airborne, the rate at which the allergens are emitted into their homes or offices, and other environmental factors.

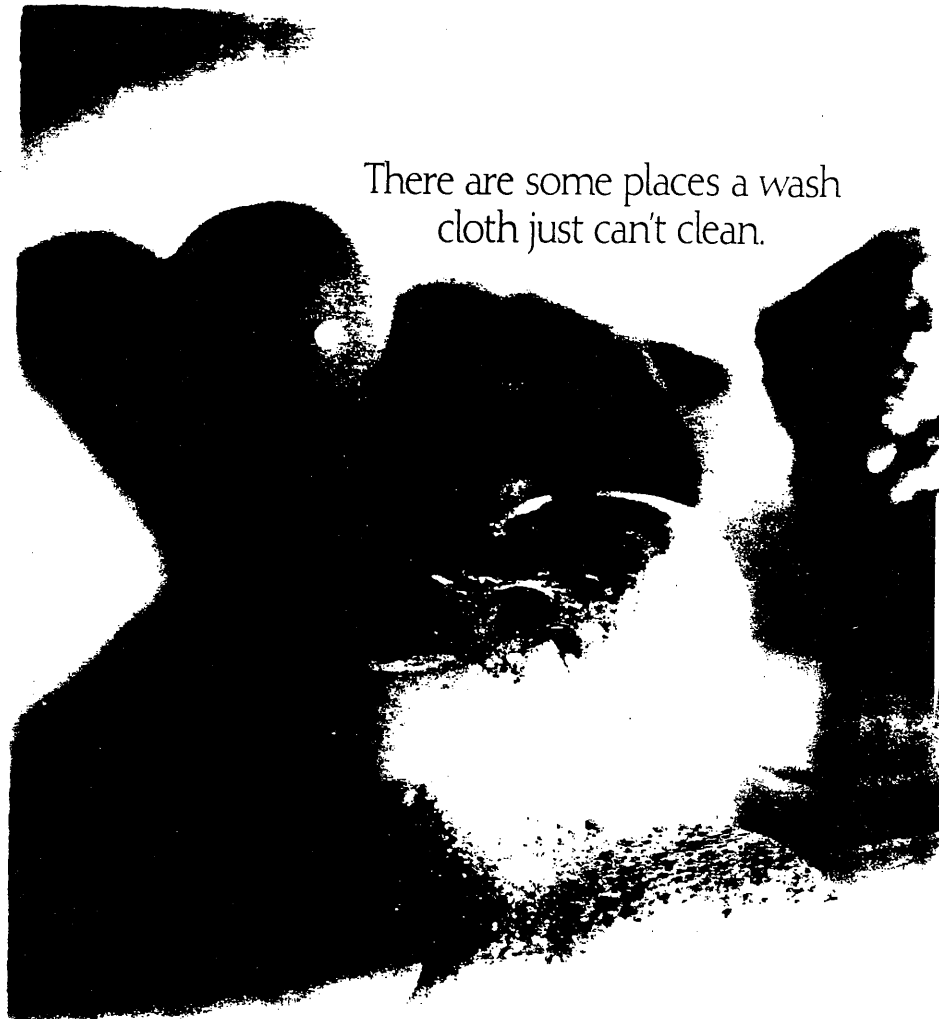
Therefore, the representation set forth in paragraph six was, and is, false or misleading.

8. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

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EXHIBIT A



There are some places a wash
cloth just can't clean.

Even squeaky clean on the outside, your kids are still exposed to mold spores, dust mite allergens – even bacteria and viruses. They're in the air inside your home. But you can help protect your children with a Honeywell Air Purifier. Our exclusive enviraicare® True HEPA filter can remove 99.97% of these impurities – something vacuum cleaners and furnace filters can't do. So call 1-800-332-1110 for more information and a store near you. And while you're keeping their ears clean, we'll help do the same for their lungs.

Honeywell

AMERICAN LUNG ASSOCIATION

Partners in indoor air quality education.

© 1998 Honeywell Environmental Air Controls Inc.

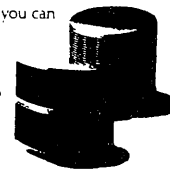
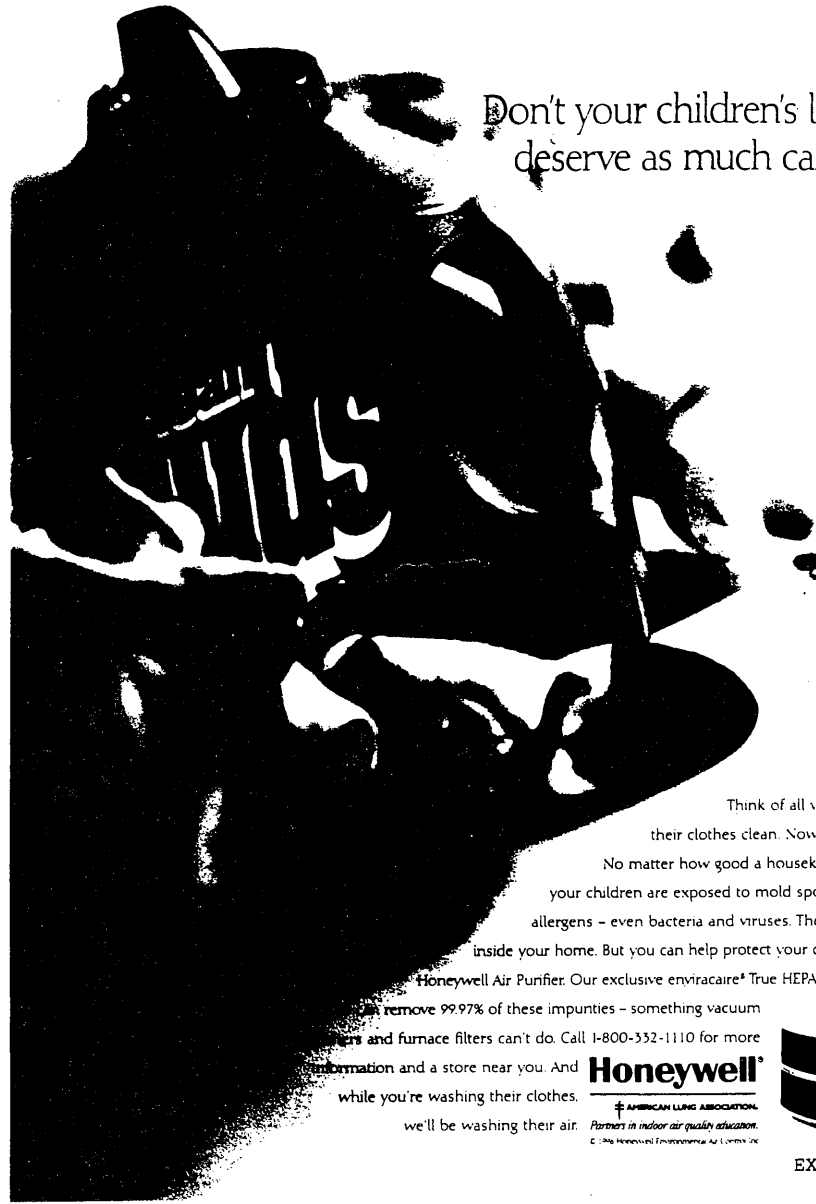


EXHIBIT A

EXHIBIT B



Don't your children's lungs
deserve as much care?

Think of all you do to keep their clothes clean. Now consider this: No matter how good a housekeeper you are, your children are exposed to mold spores, dust mite allergens - even bacteria and viruses. They're in the air inside your home. But you can help protect your children with a

Honeywell Air Purifier. Our exclusive enviraicare® True HEPA

filters can remove 99.97% of these impurities - something vacuum

suckers and furnace filters can't do. Call 1-800-332-1110 for more

information and a store near you. And

while you're washing their clothes,

we'll be washing their air.

Honeywell®

AMERICAN LUNG ASSOCIATION
Partners in indoor air quality education.
© 1994 Honeywell Environmental Air Control Inc.

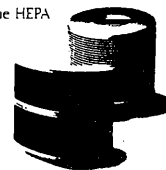


EXHIBIT B

EXHIBIT C

Television Advertisement: "Bath"

There are some places a washcloth just can't reach. Like her lungs. The filter in a Honeywell air Purifier removes nearly all impurities from the air.

[SUPER: 99.97%]

Honeywell. A home's not clean without it.

[SUPER: Honeywell. A Home's Not Clean Without It.]

EXHIBIT D

Television Advertisement: "Vacuum"

While you're busy cleaning everything in sight, we could be taking care of what you can't see. The filter in a Honeywell Air Purifier removes nearly all impurities from the air.

[SUPER: 99.97%]

Honeywell. A home's not clean without it.

[SUPER: Honeywell. A Home's Not Clean Without It.]

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EXHIBIT E

Television Advertisement: "Washing Machine"

You do the laundry, we'll clean the really tough spot. The filter in a Honeywell Air Purifier removes nearly all impurities from the air.

[SUPER: 99.97%]

Honeywell. A home's not clean without it.

[SUPER: Honeywell. A Home's Not Clean Without It.]

EXHIBIT F

Television Advertisement: "Shaking Rug"

Hard as you try, there's some dirt you just can't shake. To remove nearly all impurities from the air,

[SUPER: 99.97%]

you need the filter in a Honeywell Air Purifier. Honeywell. A home's not clean without it.

[SUPER: Honeywell. A Home's Not Clean Without It.]

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EXHIBIT G

Honeywell

enviraire®
Portable air cleaners

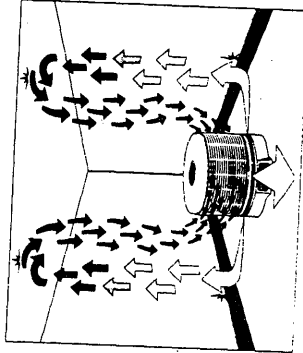
TRUE
HEPA 99.97%
FILTER EFFICIENT

CLASS II MEDICAL DEVICE
(Registration No. K872359)

The Air Cleaner most recommended by physicians*
Ideal for allergy and asthma sufferers.

**Exclusive,
Patented 360°
Airflow**

Efficiently scrubs
the room free of
air pollutants.



*Milwaukee & Wilkins Survey, October 1963

EXHIBIT G

CONFIDENTIAL
H001139

100011

EXHIBIT H



All enviroaire® Portable Air Cleaners Feature

- True HEPA filters that remove 99.97 percent of the most common allergens and pollutants.
- High speed, low-noise, low-voltage fans.
- Ultra-fine, non-combustible design.
- 100% safety and remote face eye return.
- 100% satisfaction.

Model 10500

- 2-Speed: 100% efficiency, 120 volts, 120 watts AC.
- Cleans 100 cubic feet of air in a 2 1/2' by 12' room six times an hour.
- Filtration Rate: up to 10000 cubic feet per hour at high speed.
- Portable and lightweight at just 11.5 lbs.
- Measures 11" high by 11 1/2" in diameter.
- Power requirements: 120 volts, 120 watts AC.
- Two year limited warranty.

Model 11520

- 2-Speed: 100% efficiency, 120 volts, 120 watts AC.
- Cleans 110 cubic feet of air in a 12' by 14' room six times an hour.
- Filtration Rate: up to 10000 cubic feet per hour at high speed.
- Portable and lightweight at just 11.5 lbs.
- Measures 11" high by 11 1/2" in diameter.
- Power requirements: 120 volts, 120 watts AC.
- Two year limited warranty.

Model 12520

- 2-Speed: 100% efficiency, 120 volts, 120 watts AC.
- Cleans 120 cubic feet of air in a 14' by 20' room six times an hour.
- Filtration Rate: up to 10000 cubic feet per hour at high speed.
- Portable and lightweight at just 11.5 lbs.
- Measures 12" high by 16" in diameter.
- Power requirements: 120 volts, 120 watts AC.
- Two year limited warranty.

Model 13620

- 2-Speed: 100% efficiency, 120 volts, 120 watts AC.
- Cleans 130 cubic feet of air in a 16' by 20' room six times an hour.
- Filtration Rate: up to 10000 cubic feet per hour at high speed.
- Portable and lightweight at just 11.5 lbs.
- Measures 11" high by 16" in diameter.
- Power requirements: 120 volts, 120 watts AC.
- Two year limited warranty.

Questions & Answers

What is a HEPA filter?

True HEPA (High Efficiency Particulate Air) filters are any "extended surface", dry-type filters having a minimum particle capture efficiency of 99.97 percent for all particle sizes. They are recognized as the most efficient media for removing sub-micron size particles from the air.

What is a HEPA filter made of?

The filtering material, or media, is made of very thin glass fibers. The glass fibers are made into paper, much the same way cellulose or wood fibers are used to make paper. In this thickness and texture, the HEPA media is very similar to blotter paper. Air cannot get through the dense glass paper very easily, so a very large area of paper must be used to filter a small volume of air. To get a large area of media into the filter, a complex, extended surface is used. For example, an enviroaire® True HEPA Filter measuring 2 feet by 2 feet can contain as much as 132 square feet of filter media for maximum cleaning efficiency.

How does a HEPA filter work?

Usually, as particles pass through the densely packed glass fibers, they are filtered out. If they are not, they are trapped on the fibers and stuck to it by natural adhesion. If it would be like trying to blow a grain of sand through a stack of hay.

What are "HEPA type" filters?

"HEPA type" filters may look like True HEPA filters and be used in the same way. However, the paper media is made of the same glass fibers, but the density of the fibers is reduced so that more allergens and pollutants pass through. "HEPA type" filters are available in many different efficiencies, the best being only about 95 percent effective. This is below the minimum efficiency required to be a True HEPA filter.

How can you tell that it's working?

Allergy sufferers should notice a decrease in symptoms such as coughing, sneezing and wheezing, and should be able to sleep better. Even the nonallergic person should see a reduction in minor respiratory and eye problems.

After a period of use, trapped pollutants should be observable in the air filter. Note: A True HEPA filter requires no cleaning or maintenance to maintain its efficiency (three to five years).

What happens to bacteria and viruses caught in the filter?

As living things, bacteria and viruses cannot survive without water. Most that are captured when airborne have been riding on a particle containing some moisture. Once caught in the filter, this moisture quickly evaporates and they die.

Honeywell

enviroaire®

Honeywell Environmental Air Control Inc.
1 800 332 1110

Honeywell

enviroaire

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HO01111
HONEYWELL ASSOCIATION

EXHIBIT I

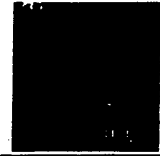
How Air Cleaners Can Help: Product Pictures - Allergy Relief

<http://www.honeywell.ca/perfect-climate/allergy4a.htm>

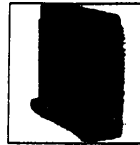
Honeywell

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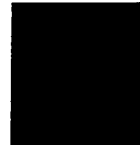
Allergy Relief
Honeywell Air Cleaners



◀ BACK FORWARD ▶



Electronic Air Cleaner



Portable Room Air Cleaner

Allergy Relief ▶

- [Introduction](#) ▶
- [What Causes Allergies?](#) ▶
- [How Can you Treat Allergies?](#) ▶
- [How Air Cleaners can Help](#) ▶
- [Honeywell Air Cleaners: Product Pictures](#) ▶
- [How to Choose the Right Air Cleaner](#) ▶

Honeywell air cleaners provide proven relief of allergy symptoms. We offer a complete line of air cleaners, designed to meet your needs and budget. Talk to your local Perfect Climate® dealer to find out how Honeywell air cleaners can help you breathe easier.

◀ BACK FORWARD ▶

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DECISION AND ORDER

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

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

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

1. Respondent Honeywell Inc., 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 Honeywell Plaza, in the City of Minneapolis, State of Minnesota.

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

ORDER

DEFINITIONS

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

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

2. "*Air cleaning product*" shall mean any product, equipment or appliance designed or advertised to remove, treat, or reduce the level of any contaminant(s) in the air.

3. "*Indoor air contaminant(s)*" or "*contaminant(s)*" shall mean one or more of the following: mold spores, dust mite allergens, bacteria, viruses, or any other gaseous or particulate matter found in indoor air.

4. Unless otherwise specified, "*respondent*" shall mean Honeywell Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees.

5. "*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, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Honeywell Air Purifiers, enviraicare® True HEPA filters, or any other air cleaning product which is normally used for personal, family, or household purposes in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

A. About such product's ability to eliminate, remove, clear, or clean any quantity of indoor air contaminants under household living conditions,

B. That such product will perform under any set of conditions, including household living conditions,

unless at the time of making the representation(s) respondent possesses and relies upon competent and reliable scientific evidence that substantiates such representation(s) either by being related to those conditions or by having been extrapolated to those conditions by generally accepted procedures.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any air cleaning product which is normally used for personal, family, or household purposes in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the performance, health or other benefits, or efficacy of such product, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

III.

It is further ordered, That respondent Honeywell Inc. 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.

IV.

It is further ordered, That respondent Honeywell Inc. and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having 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 shall deliver this order to current personnel within forty-five (45) days after the date of service of this order, and to future personnel within forty-five (45) days after the person assumes such position or responsibilities.

V.

It is further ordered, That respondent Honeywell Inc. 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. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VI.

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

VII.

This order will terminate on August 17, 2018, 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.

IN THE MATTER OF

M.D. PHYSICIANS OF SOUTHWEST LOUISIANA, INC.

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

Docket C-3824. Complaint, Aug. 31, 1998—Decision, Aug. 31, 1998

This consent order prohibits, among other things, a group of Louisiana physicians from engaging in collective negotiations on behalf of its members or fixing prices in the future.

Participants

For the Commission: *Rendell Davis, David Pender, Robert Leibenluft, William Baer, Seth Sacher, and Jonathan Baker.*

For the respondent: *Frank Massengale, Massengale & DeBruhe, New Orleans, LA.*

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 ("Commission"), having reason to believe that M.D. Physicians of Southwest Louisiana, Inc. ("respondent MDP") 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 MDP is a business corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal place of business in Lake Charles, Louisiana, the parish seat of Calcasieu Parish, Louisiana. Respondent MDP's address is P.O. Box 1832, Lake Charles, Louisiana.

PAR. 2. All of the members of respondent MDP are physicians practicing in and around Calcasieu Parish, Louisiana. Much of the population of Calcasieu Parish resides in Lake Charles, Louisiana, and surrounding communities, which include Sulphur, Moss Bluff, and Westlake, Louisiana ("Lake Charles area"). The population of the Lake Charles area is approximately 150,000. Most of the members of

respondent MDP, as well as most of the physicians practicing in Calcasieu Parish, practice in the Lake Charles area.

PAR. 3. During most of the time period during which the acts and practices described in paragraphs ten through fifteen below took place ("the relevant time period"), the members of respondent MDP constituted a majority of all physicians practicing in Calcasieu Parish, Louisiana. In certain physician specialties, the members of respondent MDP constituted all or most of the physician specialists practicing in Calcasieu Parish. More than 200 physicians have been members of respondent MDP since it was formed in 1987. During the relevant time period, respondent MDP has had as many as 165 members at one time.

PAR. 4. Respondent MDP exists in substantial part for the pecuniary benefit of its members. By virtue of its purposes and activities, respondent MDP is a "corporation" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

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

PAR. 6. Except to the extent that competition has been restrained as alleged herein, some or all of the members of respondent MDP have been, and are now, in competition among themselves and with other providers of physician services in Calcasieu Parish, Louisiana.

PAR. 7. Physicians often contract with health insurance firms and other third-party payers. Such contracts typically establish the terms and conditions under which the physicians will render services to the subscribers of the third-party payers, including terms and conditions of physician compensation and of cost containment. In many cases, physicians entering into such contracts agree to reductions in their compensation and to various cost containment procedures, including procedures for reviewing the utilization of medical resources by physicians and for dealing with physicians who have overutilized such resources. By lowering their costs in this manner, third-party payers are able to reduce the cost of medical care for their subscribers. The extensive use of such methods of lowering costs can be described as "managed care."

