

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions, and Orders

IN THE MATTER OF

THE MAY DEPARTMENT STORES COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE TRUTH IN LENDING ACT, REGULATION Z AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3676. Complaint, July 9, 1996--Decision, July 9, 1996

This consent order requires, among other things, a Missouri-based company to cease unwarranted collection activity on certain acquired credit card accounts, to correct the inaccurate or obsolete credit data it sent to credit reporting agencies concerning these accounts, and to take steps to ensure that the information maintained and reported with respect to the acquired accounts is accurate. In addition, the consent order prohibits the respondent from sending credit cards to consumers, except: in response to an oral or written request or application for the credit card; or as a renewal of, or substitute for, an accepted credit card.

Appearances

For the Commission: *Christopher W. Keller* and *David Medine*.

For the respondent: *John M. Manos*, in-house counsel, St. Louis, MO.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 ("FTC Act"), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The May Department Stores Company, a corporation, hereinafter sometimes referred to as respondent or May, has violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667, its implementing Regulation Z, 12 CFR 226, and the FTC Act, 15 U.S.C. 41-58, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, and alleges as follows:

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DEFINITIONS

For the purpose of this complaint, the following definitions apply:

The terms "*open end credit plan*" and "*credit card*" are defined as set forth in Sections 103(i) and (k), respectively, of the Truth in Lending Act, 15 U.S.C. 1602(i) and 1602(k).

The terms "*card issuer*," "*consumer*," "*consumer credit*," and "*credit*" are defined as set forth in Sections 226.2(a)(7), (11), (12), and (14), respectively, of Regulation Z, 12 CFR 226.2(a)(7), 226.2(a)(11), 226.2(a)(12), and 226.2(a)(14).

The term "*consumer reporting agency*" is defined as set forth in Section 603(f) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681a(f).

PARAGRAPH 1. Respondent The May Department Stores Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondent's office and principal place of business is located at 611 Olive Street, St. Louis, Missouri.

PAR. 2. Respondent has been and is now engaged in the business of offering consumer credit to the public and is a creditor and card issuer as those terms are defined in the TILA and Regulation Z.

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

COUNT I

PAR. 4. Paragraphs one through three are incorporated herein by reference.

PAR. 5. Respondent, from time to time in the normal course of its business, acquires other retail sellers of consumer goods or services, including the existing open end credit plan accounts of those businesses.

PAR. 6. Respondent, in the course of obtaining and converting the open end credit plan accounts of acquired businesses to its own open end credit plan accounts, including the conversion of Thalhimer's accounts to Hecht Co. accounts, performs various conversion functions. In this process, respondent, among other acts

and practices, engages in the acts and practices alleged in paragraphs seven through twelve, inclusive, to wit.

PAR. 7. Respondent creates a new open end credit plan account and issues a new account number in the name of each consumer having an open end credit plan account in good standing with the retail company acquired by respondent.

PAR. 8. Respondent, in the normal course of its business, furnishes account information concerning its open end credit plan accounts to consumer reporting agencies.

PAR. 9. In the course of converting open end credit accounts of acquired retail companies, respondent incorporates items of information from the acquired account file into the new account file in such a fashion that some entries in the new account file inaccurately reflect the status of the account. Such items of information include but are not limited to (1) derogatory information pertaining exclusively to activity that occurred on the acquired account, and (2) derogatory information pertaining to events antedating the period of obsolescence reflected in Section 605 of the FCRA.

PAR. 10. Respondent fails to record discrete entries within individual open end credit plan accounts in such a fashion that the entries accurately reflect the status of the account, including but not limited to (1) indicating certain identical items of derogatory information more than once, and (2) showing relevant dates on items of information in such a fashion that those items are reported by consumer reporting agencies for periods beyond those permitted by Section 605(a) of the FCRA, thus stating or implying, for example, that accounts were charged to profit and loss more recently than the actual date of charge off.

PAR. 11. Respondent otherwise fails to convert acquired open end credit plan account records accurately to reflect the status of individual accounts.

PAR. 12. Respondent fails to maintain reasonable procedures to monitor, measure, or test its open end credit plan account acquisition, conversion, and maintenance systems to assure the accuracy of the account information it conveys to consumer reporting agencies.

PAR. 13. Despite the fact that respondent knew or should have known that open end credit plan account information that it transmitted to consumer reporting agencies is not accurate, respondent failed promptly to correct its computer system or

implement procedures adequate to reduce the occurrence or reoccurrence of inaccuracies.

PAR. 14. Respondent on some occasions initiates collection activity on purported delinquencies, created in error when respondent creates a second account, as alleged in paragraphs six and seven, without the knowledge or authorization of consumers, and subsequently posts payments and other credits to the incorrect account.

PAR. 15. By and through the acts and practices alleged in paragraphs nine through fourteen, and others not specifically set forth herein, respondent has caused substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers.

PAR. 16. Therefore, the acts and practices alleged in paragraphs nine through fourteen constitute unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT II

PAR. 17. Paragraphs one through three are incorporated herein by reference.

PAR. 18. Respondent, in connection with telephone marketing of offers of pre-approved open end credit plan accounts, in some cases establishes open end credit accounts for consumers who have not received or approved the offer or who have specifically declined the offer.

PAR. 19. Pursuant to Section 132 of the TILA and Section 226.12(a)(2) of Regulation Z, no credit card shall be issued to any person except: (1) in response to an oral or written request or application for the card; or (2) as a renewal of, or substitute for, an accepted credit card.

PAR. 20. By and through the acts and practices alleged in paragraph eighteen and others not specifically set forth herein, respondent has issued, or caused to be issued, unsolicited credit cards to consumers.

PAR. 21. Therefore, the acts and practices alleged in paragraphs eighteen and twenty violate Section 132 of the TILA, 15 U.S.C. 1643, and Section 226.12(a) of Regulation Z, 12 CFR 226.12(a).

Commissioner Starek recused.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondent with violations of Section 5(a) of the Federal Trade Commission Act and Section 132 of the Truth in Lending 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 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 Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, 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. Proposed respondent May is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondent's office and principal place of business is located at 611 Olive Street, St. Louis, Missouri.

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 the purpose of this order the following definitions apply:

The terms "*open end credit plan*," "*credit card*," and "*cardholder*" are defined as set forth in Sections 103(i), (k), and (m), respectively, of the Truth in Lending Act ("TILA"), 15 U.S.C. 1602(i), 1602(k), and 1602(m).

The term "*consumer reporting agency*" is defined as set forth in Sections 603(f) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681a(f).

"*Fair Credit Billing Act*" refers to Chapter 4, Credit Billing, 15 U.S.C. 1666 *et seq.*, of the Consumer Credit Protection Act.

I.

It is hereby ordered, That respondent, The May Department Stores Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate subsidiary, division, or other device, do forthwith cease and desist from failing to follow reasonable procedures to assure the accuracy of the information that respondent maintains with respect to cardholder accounts that respondent has acquired or acquires from other retail sellers of consumer goods or services and that respondent provides to consumer reporting agencies, including but not limited to the accuracy of dates of relevant actions.

II.

It is further ordered, That, to the extent not already accomplished, within ninety (90) days of service of this order, respondent, its successors and assigns, shall identify current cardholders on whom, since January 1, 1992, respondent has reported incorrectly to any consumer reporting agency derogatory information related solely to the cardholder's open end credit plan account with an acquired creditor. Respondent shall instruct each such consumer reporting agency, in writing, to remove or correct any such derogatory information.

III.

It is further ordered, That respondent, its successors and assigns, shall, after written notice from a consumer to its Bill Adjustment Department in accordance with the Fair Credit Billing Act of a failure by respondent accurately to ascribe charges, credits, payments, or other activity to the correct account, cease collection activity as to the disputed amount, either directly or through any third party, on any outstanding balance that is due, in whole or in part, to respondent's failure accurately to ascribe charges, credits, payments, or other activity to the correct account.

IV.

It is further ordered, That respondent, its successors and assigns, in order to give effect to paragraph III of this order, shall institute reasonable procedures to train respondent's collection personnel in the obligations of the Fair Credit Billing Act, and to further train respondent's collection personnel to inform consumers who assert billing errors of the correct address of respondent's Bill Adjustment Department.

V.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate subsidiary, division, or other device, in connection with any open end credit plan, do forthwith cease and desist from violating Section 132 of the Truth in Lending Act, 15 U.S.C. 1642, and Section 226.12 of Regulation Z, 12 CFR 226.12, by issuing a credit card to any person except (1) in response to an oral or written request or application for the card; or (2) as a renewal of, or substitute for, an accepted credit card.

VI.

It is further ordered, That respondent, its successors and assigns, shall maintain for five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of this order.

VII.

It is further ordered, That respondent, its successors and assigns, shall deliver for five (5) years a copy of this order to all present and future personnel, agents, or representatives having responsibilities with respect to the subject matter of this order.

VIII.

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

IX.

This order will terminate on July 9, 2016, or twenty 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 paragraph in this order that terminates in less than twenty 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 paragraph.

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 paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline

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for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

X.

It is further ordered, That respondent, its successors and assigns, shall, within one hundred and eighty (180) days of the date of service of this order, file with the Federal Trade Commission, Division of Enforcement, a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Starek recused.

IN THE MATTER OF

THE LOEWEN GROUP INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3677. Complaint, July 29, 1996--Decision, July 29, 1996

This consent order requires, among other things, a Kentucky-based company to divest, within 12 months, one of its three funeral homes in Brownsville, Texas, and either a large funeral home in San Benito, Texas, or two smaller funeral homes in Harlingen, Texas, to Commission-approved acquirers. If the transactions are not completed as required, the Commission may appoint a trustee to divest the properties.

Appearances

For the Commission: *Thomas B. Carter, Gary D. Kennedy and William Baer.*

For the respondents: *Deborah Feinstein, Arnold & Porter, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that The Loewen Group Inc., a corporation, and Loewen Group International, Inc., a corporation, hereinafter sometimes referred to as respondents, have acquired Garza Memorial Funeral Home, Inc., a corporation, and Thomae-Garza Funeral Directors, Inc., a corporation, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 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:

I. DEFINITION

1. For the purposes of this complaint, the following definition shall apply:

"Funeral" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony of the life of the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

II. THE RESPONDENTS

2. Respondent The Loewen Group Inc. ("Loewen Group") is a corporation organized, existing and doing business under and by virtue of the laws of the province of British Columbia, Canada, with its office and principal place of business located at 4126 Norland Avenue, Burnaby, British Columbia, Canada V5G 3S8.

3. Respondent Loewen Group International, Inc. ("Loewen Group International") 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 50 East River Center Boulevard, Covington, Kentucky. Respondent Loewen Group International is a wholly-owned subsidiary of respondent Loewen Group.

4. At the time of the acquisition, Garza Memorial Funeral Home, Inc. ("Garza Memorial") was a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1025 East Jackson Street, Brownsville, Texas.

5. At the time of the acquisition, Thomae-Garza Funeral Directors, Inc. ("Thomae-Garza") was a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 395 South Houston, San Benito, Texas.

6. Loewen Group, Loewen Group International, Garza Memorial, and Thomae-Garza are, and at all times relevant herein have been,

engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITIONS

7. On or about October 28, 1991, Loewen Group through its wholly-owned subsidiary Loewen Group International acquired 100% of the voting securities of Garza Memorial.

8. On or about July 17, 1992, Loewen Group through its wholly-owned subsidiary Loewen Group International acquired 100% of the voting securities of Thomae-Garza.

IV. THE RELEVANT MARKETS

9. For purposes of this complaint, the relevant line of commerce in which to analyze the effects of the acquisitions of Garza Memorial and Thomae-Garza is the provision of funerals.

10. For purposes of this complaint, the relevant section of the country in which to analyze the effects of the acquisition of Garza Memorial is Brownsville, Texas, and its immediate environs; and the relevant section of the country in which to analyze the effects of the acquisition of Thomae-Garza is Harlingen/San Benito, Texas, and its immediate environs.

11. The relevant markets set forth in paragraphs nine and ten are concentrated, whether measured by the Herfindahl-Hirschmann Index or by two-firm and four-firm concentration ratios.

12. Entry into the relevant markets set forth in paragraphs nine and ten is difficult.

13. In the relevant markets, Loewen Group International and Garza Memorial were actual competitors in the provision of funerals, and Loewen Group International and Thomae-Garza were actual competitors in the provision of funerals.

V. EFFECT OF THE ACQUISITIONS

14. The effect of the acquisitions has been to substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating actual competition between Loewen Group International and Garza Memorial, and between Loewen Group International and Thomae-Garza;

b. By increasing the likelihood of collusion in the relevant markets; and

c. By increasing the likelihood that Loewen Group International will unilaterally exercise market power in Brownsville, Texas, and its immediate environs.

VI. VIOLATIONS CHARGED

15. The acquisitions described in paragraphs seven and eight constitute violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

Chairman Pitofsky recused.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Dallas Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated said Acts, 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 The Loewen Group Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the province of British Columbia, Canada, with its office and principal place of business located at 4126 Norland Avenue, Burnaby, British Columbia, Canada V5G 3S8.

2. Respondent Loewen Group International, 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 50 East River Center Boulevard, Covington, Kentucky. Proposed respondent Loewen Group International, Inc. is a wholly-owned subsidiary of The Loewen Group Inc.

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

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Loewen*" means The Loewen Group Inc. and Loewen Group International, Inc., their directors, officers, employees, agents and representatives, predecessors, successors and assigns, their subsidiaries, divisions, groups and affiliates controlled by Loewen, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. "*Funeral*" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony of the life of the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

C. "*Funeral establishment*" means any facility that provides funerals.

D. "*Properties to be divested*" means all of the assets, properties, business and goodwill, tangible and intangible, utilized by: (a) either Thomae-Garza Funeral Directors, Inc. or both Pitts, Kriedler-Ashcraft Funeral Directors, Inc. and Garza-Elizondo Funeral Directors in Cameron County, Texas; and (b) either Garza Memorial Funeral Home, Inc., Paragon Trevino Funeral Home, Inc., or Darling-Mouser Funeral Home, Inc. in Cameron County, Texas; including, but not limited to:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;

3. All right, title and interest in the trade name of any funeral establishment;

4. All right, title and interest in the books, records and files pertinent to the properties to be divested;

5. Vendor lists, management information systems, software, catalogs, sales promotion literature, and advertising materials; and

6. All right, title, and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bids and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees.

II.

It is further ordered, That:

A. Within twelve (12) months after the date this order becomes final, Loewen shall divest, absolutely and in good faith, the properties to be divested. The properties to be divested are to be divested only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestitures required by this order is to ensure the continued use of the properties to be divested as ongoing viable enterprises providing funerals and to remedy the lessening of competition alleged in the Commission's complaint.

B. Pending divestiture of the properties to be divested, Loewen shall maintain the viability and marketability of the properties to be divested and shall not cause or permit the destruction, removal, or impairment of any assets or business of the properties to be divested, except in the ordinary course of business and except for ordinary wear and tear.

III.

It is further ordered, That:

A. If Loewen has not divested, absolutely and in good faith and with the Commission's prior approval, the properties to be divested as required by paragraph II of this order within twelve (12) months after the date this order becomes final, the Commission may appoint a trustee to divest the properties to be divested. In the event the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Loewen shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Loewen to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, Loewen shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Loewen, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Loewen has not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Loewen of the identity of any proposed trustee, Loewen shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the properties to be divested.

3. The trustee shall have the power and authority to abrogate any contract or agreement between Loewen and any individual which restricts, limits or otherwise impairs the ability of such individual to purchase the properties to be divested or to become a director, officer, employee, agent or representative of any acquirer of the properties to be divested.

4. Within ten (10) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Loewen shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this order.

5. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.B.4 to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; provided, however, that the Commission may extend the divestiture period only two (2) times.

6. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the properties to be divested, or any other relevant information, as the trustee may

request. Loewen shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Loewen shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Loewen shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or for a court-appointed trustee, the court.

7. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Loewen's absolute and unconditional obligation to divest at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in paragraph II of this order; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Loewen from among those approved by the Commission.

8. The trustee shall serve, without bond or other security, at the cost and expense of Loewen, on such reasonable and customary terms and conditions as the Commission or the court may set. The trustee shall have authority to employ, at the cost and expense of Loewen, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Loewen and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the properties to be divested.

9. Loewen shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from

misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

10. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

11. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this order.

12. The trustee shall have no obligation or authority to operate or maintain the properties to be divested.

13. The trustee shall report in writing to Loewen and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Loewen shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged at the time of such acquisition, or within the two years preceding such acquisition, in the provision of funerals in Cameron County, Texas or within fifteen (15) miles of the Cameron County, Texas line; or

B. Acquire any assets used for or used in the previous two years for (and still suitable for use for) funeral establishments in Cameron County, Texas or within fifteen (15) miles of the Cameron County, Texas line.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Office of the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is

required only of Loewen and not of any other party to the transaction. Loewen shall provide the Notification to the Commission at least thirty (30) days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, Loewen shall not consummate the acquisition until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Commission's Bureau of Competition.

Provided, however, that prior notification shall not be required by this paragraph IV of this order for:

1. The construction or development by Loewen of a new funeral establishment; or
2. Any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

V.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Loewen has fully complied with the provisions of paragraphs II or III of this order, Loewen shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II and III of this order. Loewen shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Loewen shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require,

Loewen shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with paragraph IV of this order. Such reports shall include, but not be limited to, a listing by name and location of all acquisitions of funeral establishments in the United States located within forty (40) miles of a funeral establishment owned by Loewen at the time of the acquisition, including but not limited to acquisitions due to default, foreclosure proceedings or purchases in foreclosure, made by Loewen during the twelve (12) months preceding the date of the report.

VI.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Loewen shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of this order.

VII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to Loewen made to its principal offices, Loewen shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of Loewen and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Loewen relating to any matters contained in this order; and

B. Upon five (5) days' notice to Loewen and without restraint or interference therefrom, to interview officers or employees of Loewen, who may have counsel present, regarding such matters.

Chairman Pitofsky recused.

IN THE MATTER OF

THE LOEWEN GROUP INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3678. Complaint, July 29, 1996--Decision, July 29, 1996

This consent order requires, among other things, a Kentucky-based company to divest, within nine months, a funeral home in Castlewood, Virginia to a Commission-approved acquirer. If the transaction is not completed as required, the Commission may appoint a trustee to divest the property.

Appearances

For the Commission: *Gary D. Kennedy* and *James R. Golden*.

For the respondents: *Deborah Feinstein, Arnold & Porter*,
Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that The Loewen Group Inc., a corporation, and Loewen Group International, Inc., a corporation, hereinafter sometimes referred to as respondents, have entered into an agreement with Heritage Family Funeral Services, Inc., a corporation, that violates said Act; that through the agreement respondents have agreed to acquire Heritage Family Funeral Services, Inc. and that such acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the FTC 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:

I. DEFINITION

1. For the purposes of this complaint, the following definition shall apply:

"Funeral" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony of the life of the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

II. THE RESPONDENTS

2. Respondent The Loewen Group Inc. ("Loewen Group") is a corporation organized, existing and doing business under and by virtue of the laws of the province of British Columbia, Canada, with its office and principal place of business located at 4126 Norland Avenue, Burnaby, British Columbia, Canada V5G 3S8.

3. Respondent Loewen Group International, Inc. ("Loewen Group International"), 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 50 East River Center Boulevard, Covington, Kentucky. Respondent Loewen Group International is a wholly-owned subsidiary of Respondent Loewen Group.

4. Loewen Group and Loewen Group International are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. ACQUIRED COMPANY

5. Heritage Family Funeral Services, Inc. ("Heritage"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 300 Broad Street, Citizens Plaza, Suite 300 Elizabethton, Tennessee.

6. Heritage is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business

is in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

IV. THE PROPOSED ACQUISITION

7. On or about January 26, 1993, Loewen Group through its wholly-owned subsidiary Loewen Group International entered into an agreement with Heritage to acquire 100% of the voting securities of Heritage.

V. THE RELEVANT MARKET

8. The relevant line of commerce in which to analyze the proposed acquisition of Heritage is the provision of funerals.

9. The relevant section of the country in which to analyze the proposed acquisition is Castlewood, Virginia, and its immediate environs ("Castlewood area").

10. The relevant market set forth in paragraphs eight and nine is concentrated, whether measured by the Herfindahl-Hirschmann Index or by two-firm concentration ratios.

11. Entry into the market is difficult.

12. In the relevant market, both Loewen Group International and Heritage own funeral establishments and are actual competitors in the provision of funerals. Heritage is the largest firm, and Loewen Group International is the only other firm providing funerals in the Castlewood area.

VI. EFFECT OF THE ACQUISITION

13. The effect of the acquisition may be substantially to lessen competition in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating actual competition between Loewen Group International and Heritage; and
- b. By creating a monopoly in the relevant market.

VII. VIOLATION CHARGED

14. The agreement described above in paragraph seven constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the acquisition described above, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

Chairman Pitofsky recused.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Dallas Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated said Acts, 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 The Loewen Group Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the province of British Columbia, Canada, with its office and principal place of business located at 4126 Norland Avenue, Burnaby, British Columbia, Canada V5G 3S8.

2. Respondent Loewen Group International, 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 50 East River Center Boulevard, Covington, Kentucky. Proposed respondent Loewen Group International, Inc. is a wholly-owned subsidiary of The Loewen Group Inc.

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

ORDER

I.

It is ordered, That as used in this order, the following definitions shall apply:

A. "*Loewen*" means The Loewen Group Inc. and Loewen Group International, Inc., their directors, officers, employees, agents and representatives, predecessors, successors and assigns, their subsidiaries, divisions, groups and affiliates controlled by Loewen, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. "*Funeral*" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony of the life of the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

C. "*Funeral establishment*" means any facility that provides funerals.

D. "*Property to be divested*" means all of the assets, properties, business and goodwill, tangible and intangible, utilized by the

Castlewood Funeral Home located on Highway 58 in Castlewood, Virginia, including, but not limited to:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;
2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;
3. All right, title and interest in the trade name of any funeral establishment, provided that the trade name "Heritage" need not be divested;
4. All right, title and interest in the books, records and files pertinent to the property to be divested;
5. Vendor lists, management information systems, software, catalogs, sales promotion literature, and advertising materials; and
6. All right, title, and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bids and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees.

II.

It is further ordered, That:

A. Within nine (9) months after Loewen acquires the property to be divested, Loewen shall divest, absolutely and in good faith, the property to be divested. The property to be divested is to be divested only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture required by this order is to ensure the continued use of the property to be divested as an ongoing viable enterprise providing funerals and to remedy the lessening of competition alleged in the Commission's complaint.

B. Pending divestiture of the property to be divested, Loewen shall maintain the viability and marketability of the property to be divested and shall not cause or permit the destruction, removal, or impairment of any assets or business of the property to be divested, except in the ordinary course of business and except for ordinary wear and tear.

C. Loewen shall comply with the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said agreement shall continue in effect until Loewen has divested the property to be divested or until such other time as the Agreement to Hold Separate provides.

III.

It is further ordered, That:

A. If Loewen has not divested, absolutely and in good faith and with the Commission's prior approval, the property to be divested as required by paragraph II of this order within nine (9) months after Loewen has acquired the property to be divested, the Commission may appoint a trustee to divest the property to be divested. In the event the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Loewen shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Loewen to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, Loewen shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Loewen, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Loewen has not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Loewen of the identity of any proposed trustee, Loewen shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the property to be divested.

3. The trustee shall have the power and authority to abrogate any contract or agreement between Loewen and any individual which restricts, limits or otherwise impairs the ability of such individual to purchase the property to be divested or to become a director, officer, employee, agent or representative of any acquirer of the property to be divested.

4. Within ten (10) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Loewen shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

5. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.B.4 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; provided, however, that the Commission may extend the divestiture period only two (2) times.

6. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the property to be divested, or any other relevant information, as the trustee may request. Loewen shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Loewen shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Loewen shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or for a court-appointed trustee, the court.

7. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Loewen's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in paragraph II of this order; provided, however, if the trustee receives

bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Loewen from among those approved by the Commission.

8. The trustee shall serve, without bond or other security, at the cost and expense of Loewen, on such reasonable and customary terms and conditions as the Commission or the court may set. The trustee shall have authority to employ, at the cost and expense of Loewen, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Loewen and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the property to be divested.

9. Loewen shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

10. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

11. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

12. The trustee shall have no obligation or authority to operate or maintain the property to be divested.

13. The trustee shall report in writing to Loewen and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Loewen shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged at the time of such acquisition, or within the two years preceding such acquisition, in the provision of funerals in Russell County, Virginia or within fifteen (15) miles of the Russell County, Virginia line; or

B. Acquire any assets used for or used in the previous two years for (and still suitable for use for) funeral establishments in Russell County, Virginia or within fifteen (15) miles of the Russell County, Virginia line.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Office of the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Loewen and not of any other party to the transaction. Loewen shall provide the Notification to the Commission at least thirty (30) days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, Loewen shall not consummate the acquisition until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Commission's Bureau of Competition.

Provided, however, that prior notification shall not be required by this paragraph IV of this order for:

1. The construction or development by Loewen of a new funeral establishment; or
2. Any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

V.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Loewen has fully complied with the provisions of paragraphs II or III of this order, Loewen shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II and III of this order. Loewen shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Loewen shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, Loewen shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with paragraph IV of this order. Such reports shall include, but not be limited to, a listing by name and location of all acquisitions of funeral establishments in the United States located within forty (40) miles of a funeral establishment owned by Loewen at the time of the acquisition, including but not limited to acquisitions due to default, foreclosure proceedings or purchases in foreclosure, made by Loewen during the twelve (12) months preceding the date of the report.

VI.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Loewen shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this order.

VII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to Loewen made to its principal offices, Loewen shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of Loewen and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Loewen relating to any matters contained in this order; and

B. Upon five (5) days' notice to Loewen and without restraint or interference therefrom, to interview officers or employees of Loewen, who may have counsel present, regarding such matters.

Chairman Pitofsky recused.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate (the "Agreement") is by and between The Loewen Group Inc. ("Loewen Group"), a corporation organized and existing under the laws of the province of British Columbia, Canada, with its office and principal place of business located at 4126 Norland Avenue, Burnaby, British Columbia, Canada V5G 3S8; Loewen Group International, Inc. ("Loewen Group International"), a wholly-owned subsidiary of Loewen Group, which is a corporation organized and existing under the laws of the State of

Delaware, with its office and principal place of business located at 50 East River Center Boulevard, Covington, Kentucky; and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, as amended, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

PREMISES

Whereas, on or about January 26, 1993, Loewen Group through its wholly-owned subsidiary Loewen Group International entered into an Agreement with Heritage Family Funeral Services, Inc. ("Heritage"), in which Loewen Group International agreed to acquire Heritage (the "Acquisition"); and

Whereas, both Heritage and Loewen Group International own funeral establishments that provide funerals to consumers; and

Whereas, the Commission is now investigating the Acquisition to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (the "Loewen/Heritage Consent Agreement"), the Commission must place the Loewen/Heritage Consent Agreement on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the *status quo ante* and holding separate the assets and business of the property to be divested pursuant to paragraph II (hereinafter "Hold Separate Assets") of the Loewen/Heritage Consent Agreement and the order, once it is final ("Consent Order") until the divestiture contemplated by the Consent Order has been made, divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be less than an effective remedy; and

Whereas, the purposes of this Agreement, the Loewen/Heritage Consent Agreement, and the Consent Order are to:

- (1) Preserve the Hold Separate Assets as a viable independent business pending the divestiture described in the Loewen/Heritage Consent Agreement and Consent Order;

- (2) Preserve the Commission's ability to require the divestiture of the funeral establishment required by the Consent Order; and
- (3) Remedy any anticompetitive aspects of the Acquisition; and

Whereas, Loewen Group's and Loewen Group International's entering into this Agreement shall in no way be construed as an admission by Loewen Group and Loewen Group International that the Acquisition is illegal; and

Whereas, Loewen Group and Loewen Group International understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Order for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Loewen Group and Loewen Group International agree to execute and be bound by the attached Loewen/Heritage Consent Agreement.

2. Loewen Group and Loewen Group International shall hold the Hold Separate Assets separate and apart from the date this Agreement is accepted until the first to occur of:

- a. Three (3) business days after the Commission withdraws its acceptance of the Loewen/Heritage Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

- b. The day after the divestiture required by the consent order is accomplished.

3. Loewen Group's and Loewen Group International's obligation to hold the Hold Separate Assets separate and apart shall be on the following terms and conditions:

- a. The Hold Separate Assets, as they are presently constituted, shall be held separate and apart and shall be operated independently of Loewen Group and Loewen Group International except to the

extent that Loewen Group and Loewen Group International must exercise direction and control over the Hold Separate Assets to assure compliance with this Agreement, the Loewen/Heritage Consent Agreement, or the Consent Order.

b. Except as provided herein and as is necessary to assure compliance with this Agreement, the Loewen/Heritage Consent Agreement, and the Consent Order, Loewen Group and Loewen Group International shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or business.

c. Loewen Group and Loewen Group International shall cause the Hold Separate Assets to continue using their present name and trade name, and shall maintain and preserve the viability and marketability of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

d. Loewen Group and Loewen Group International shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.

e. Loewen Group and Loewen Group International shall not change the composition of the management of the Hold Separate Assets, except that Loewen Group and Loewen Group International shall have the power to fill vacancies and remove management for cause.

f. Loewen Group and Loewen Group International shall maintain separate financial and operating records and shall prepare separate quarterly and annual financial statements for the Hold Separate Assets and shall provide the Commission with such statements for the funeral establishment within ten days of their availability.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, Loewen Group and Loewen Group International shall not receive or have access to, or the use of, any of the Hold Separate Assets' "material confidential information" not in the public domain, except as such information would be available to Loewen Group and Loewen Group International in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material

confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Loewen Group and Loewen Group International from sources other than Heritage, and includes but is not limited to pre-need customer lists, prices quoted by suppliers, or trade secrets.)

h. All earnings and profits of the Hold Separate Assets shall be held separately. If necessary, Loewen Group and Loewen Group International shall provide the Hold Separate Assets with sufficient working capital to operate at their current rate of operation.

i. Loewen Group and Loewen Group International shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property, or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell or otherwise dispose of merchandise in the ordinary course of business.

4. Should the Federal Trade Commission seek in any proceeding to compel Loewen Group and Loewen Group International to divest themselves of the shares of Heritage stock that they may acquire, or to compel Loewen Group and Loewen Group International to divest any assets or businesses of Heritage that they may hold, or to seek any other injunctive or equitable relief, Loewen Group and Loewen Group International shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Loewen Group and Loewen Group International also waive all rights to contest the validity of this Agreement.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Loewen Group and Loewen Group International made to their principal offices, Loewen Group and Loewen Group International shall make available to any duly-authorized representative or representatives of the Commission:

a. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Loewen Group and Loewen Group International, for inspection and copying during office hours and in the presence of counsel; and

b. Upon five (5) days' notice to Loewen Group and Loewen Group International and without restraint or interference from Loewen Group or Loewen Group International, officers or employees of Loewen Group and Loewen Group International, who may have counsel present, for interviews regarding any such matters.

6. This agreement shall not be binding until approved by the Commission.

IN THE MATTER OF

RUSTEVADER CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE MAGNUSON-MOSS WARRANTY ACT AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket 9274. Complaint, Aug. 30, 1995--Decision, Aug. 15, 1996

This final order adopts the initial decision and order which prohibits, among other things, the Pennsylvania-based corporation from representing, in any manner, that the electronic corrosion control device is effective in preventing or substantially reducing corrosion in motor vehicle bodies, or from making any representations concerning the performance, efficacy or attributes of such products, unless the respondent possesses, at the time of such representations, competent and reliable evidence to substantiate the claims.

Appearances

For the Commission: *Michael Milgrom, Brinley H. Williams and Dana C. Barragate.*

For the respondents: *Keith E. Whann, Whann & Associates, Dublin, OH. and Jerry W. Cox, Eckert, Seamans, Cherin & Mellott, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that RustEvader Corporation, and David F. McCready, individually and as an officer of RustEvader Corporation (referred to collectively herein as "respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent RustEvader Corporation a/k/a Rust Evader Corporation, sometimes d/b/a REC Technologies ("REC") is a Pennsylvania corporation with its office and principal place of business located at 1513 Eleventh Avenue, Altoona, Pennsylvania.

At times material to the allegations of this complaint, respondent David F. McCready ("McCready") has been the president and an owner and director of REC. His business address is the same as that

of REC. Individually, or in concert with others, McCreedy has directed, formulated and controlled the acts and practices of REC, including the acts and practices alleged in this complaint.

PAR. 2. Respondents manufacture, label, advertise, offer for sale, sell, and distribute an electronic corrosion control device for use on automobiles, trucks and vans (hereinafter "motor vehicles") under the names Rust Evader, Rust Buster, Electro-Image, Eco-Guard and others (referred to collectively herein as "Rust Evader").

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

PAR. 4. Respondents have disseminated, or have caused to be disseminated, advertisements and promotional materials for the Rust Evader including, but not necessarily limited to, the attached Exhibits A through E. These advertisements and promotional materials contain the following statements:

(a) Rust Buster Electronic Corrosion Control

This is the original multi-patented Electronic Corrosion Control for automobiles. Over a decade of test market experience and Consumer satisfaction guarantees our product as the best in today's hi-tech market.

MOST COMMONLY ASKED QUESTIONS

What can I expect from this product? Corrosion rate is reduced and auto body life is extended.

....

The Rust Buster C.D.O.I. interferes with the rusting process. Since the rusting process is gradual, the amount of energy consumed is very small. Rust Buster C.D.O.I. effectively reduces corrosion rate.

....

Rust Buster C.D.O.I. provides a source of free electrons that interfere with coupling of ferrous metal electrons with oxygen -- reducing the corrosion rate.

....

... complete interference in the rusting process cannot be expected, but rust retardation is dramatically demonstrated.

....

You want your car to look good while you're driving it, when you are ready to sell or trade it and particularly if you decide to give the car a major overhaul. If you lease a car, you are responsible to maintain a certain cosmetic standard or pay a penalty. Rust Buster C.D.O.I. wants your car to last and maintain its maximum value.

....

Over a decade of proven effectiveness.

Thousands of satisfied customers.

Inside-out & outside-in corrosion reduction (Exhibit A)

(b) The invisible shield of protection for your vehicle!

The invisible shield of protection used worldwide!

Protect your car, truck or van 24 hours a day -- rain or shine -- with the world leader in electronic automotive rust control! The RustEvader* system retards rust and corrosion, and protects your vehicle with a lifetime guarantee. Common nicks, scratches and abrasions won't deteriorate into rust-through damage from the outside in -- or inside out. The RustEvader* system safeguards your investment. . .

....

- helps increase your car's value at trade-in time
- protection against rust-through damage as result of stone chips, abrasions, salt, snow, sleet and sea-spray
- the original multi-patented electronic corrosion control device
- over 10 years of consumer satisfaction

....

Your best investment in your vehicle's future value!

*See printed warranty for exact description of warranty coverage and exclusions! (Exhibit B)

(c) Rust Evader

ELECTRONIC CORROSION CONTROL

The RustEvader interferes with rusting process. Electro-chemists have made great progress in understanding corrosion. RustEvader Corp. has applied the results of this progress in developing the RustEvader Automotive Corrosion Control System and since the rusting process is gradual, the amount of energy consumed is very small -- RustEvader reduces the corrosion rate.

RustEvader Electronic Corrosion Control gives you unmatched protection from salt, snow, sleet and sea spray corrosion. Rust perforation (rust-through) from either side of the sheet metal is warranted not to occur on your vehicle.

....

THE INTELLIGENT APPROACH TO PRESERVING AUTOMOTIVE APPEARANCE

....

- * Established track record in reducing corrosion -- documented by users.
- * Recapture your investment at trade-in time . . . for New and Used cars. (Exhibit C)

(d) NOW!! ELECTRONIC CORROSION CONTROL

Rust Evader Automotive Corrosion Control

....

The RustEvader interferes with the rusting process. . . . Environmental conditions that promote rusting also prompt a counter response from the RustEvader system. Energy for the electron bath is provided by the car's battery and since the rusting process is gradual, the amount of energy consumed is very small -- RustEvader reduces the corrosion rate. "The Logical Choice for Controlling Rust" (Exhibit D, reduced copy of dealer display board)

(e) The Rust Buster System Beats Rust!

The Rust Buster System keeps your car, truck or van beautiful for years! Common nicks, scratches and road salt won't deteriorate into rust-through damage, so you'll save on costly autobody repairs and preserve your investment!

The Rust Buster system also offers unmatched protection! Unlike traditional undercoating, it protects hard-to reach, corrosively vulnerable areas by impressing

electrons throughout the metal body panels of the vehicle and interfering [sic] with oxygen's natural ability to couple with these ferrous metals. (Exhibit E, reduced copy of dealer display board)

PAR. 5. Through the use of the trade names "Rust Evader" and "Rust Buster" and the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the promotional materials attached as Exhibits A-E, respondents have represented, directly or by implication, that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies.

PAR. 6. In truth and in fact, the Rust Evader is not effective in substantially reducing corrosion in motor vehicle bodies. Therefore, respondents' representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the trade names "Rust Evader" and "Rust Buster" and the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the promotional materials attached as Exhibits A-E, respondents have represented, directly or by implication, that at the time they made the representation set forth in paragraph five, respondents possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 8. In truth and in fact, at the time they made the representation set forth in paragraph five, respondents did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. In connection with the promotion and sale of the Rust Evader, respondents have disseminated or caused to be disseminated to distributors and dealers materials to conduct a demonstration of the efficacy of the Rust Evader. Respondents have also disseminated depictions of the same demonstration, of which Exhibit G, attached hereto, is an example. The demonstration places two pieces of metal in a transparent tank containing salt water. One piece of metal is connected to a Rust Evader and the other is not. In connection with this demonstration, respondents make, and instruct the distributors and dealers to make the following (or similar) statements:

This Laboratory Test provides the "worst case scenario" to test RustEvader Technology. Two (2) identical pieces of sheet steel are suspended in salt bath. The RustEvader protects Sample "A" while Sample "B" rusts severely. (Exhibit G)

PAR. 10. Through the use of the depictions, materials and statements set forth in paragraph nine, respondents have represented, directly or by implication, that the demonstration described in paragraph nine accurately represents how the Rust Evader protects motor vehicle bodies from corrosion.

PAR. 11. In truth and in fact, the demonstration described in paragraph nine does not accurately represent how the Rust Evader protects a motor vehicle body from corrosion. The process utilized in the demonstration -- impressed current cathodic protection -- is much more effective under water than under conditions that a motor vehicle would normally encounter. Therefore, respondents' representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. In connection with the promotion and sale of Rust Evader, respondents have disseminated or have caused to be disseminated, to distributors and dealers, reports of laboratory and other tests performed on the Rust Evader. Some of these reports represent, directly or by implication, that the reported test constitutes scientific proof that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies. In addition, respondents have represented orally, directly or by implication, that these tests constitute scientific proof that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies.

PAR. 13. In truth and in fact, such tests do not constitute, scientific proof that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies. Therefore, respondents' representation set forth in paragraph twelve was, and is, false and misleading.

PAR. 14. In connection with the sale of the Rust Evader, respondents have provided purchasers with a limited warranty in the form attached hereto as Exhibit F. That warranty contains the following provision:

INSPECTIONS REQUIRED: The vehicle must be inspected every 24 months within 30 days of anniversary of installation date, by an authorized Rust Evader Dealer who may charge his current labor rate up to one hour for the inspection. FAILURE TO HAVE VEHICLE INSPECTED AS REQUIRED VOIDS THE WARRANTY.

PAR. 15. The warranty provision described in paragraph fourteen is in violation of Section 102(c) of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (15 U.S.C. 2302(c)) because it conditions a warranty pertaining to a consumer product actually costing the consumer more than \$5 on the consumer's use of a service (other than a service provided without charge) which is identified by brand, trade, or corporate name.

PAR. 16. In providing advertisements, promotional materials and product demonstrations, such as those referred to in paragraphs four through thirteen, to their distributors and dealers, respondents have furnished the means and instrumentalities to those distributors and dealers to engage in the acts and practices alleged in paragraphs five through thirteen.

PAR. 17. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

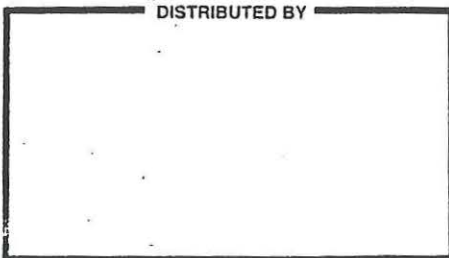
THE INTELLIGENT APPROACH TO
PRESERVING AUTOMOTIVE APPEARANCE

Technology That Works.
Benefits You'll Appreciate.

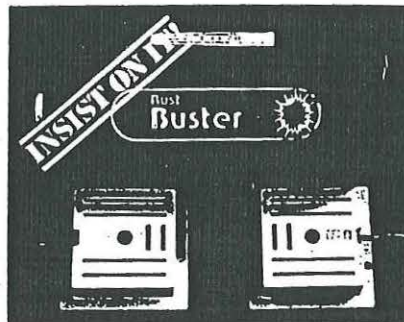
- Over a decade of proven effectiveness.
- Thousands of satisfied customers.
- Inside-out & outside-in corrosion reduction
- Transferrable to a second automobile.
- No interference with your vehicle's manufacturer warranty.
- Uses less power than the car's clock.
- No holes drilled - autobody integrity is preserved.
- Safe - no hazardous chemicals.
- Liability Warranties: A comprehensive \$1 million dollar product liability policy is underwritten by major insurance companies.
- Sold around the world.

EASY INSTALLATION - INSTALLS UNDER THE
HOOD IN JUST 20 MINUTES.

DISTRIBUTED BY



"Rust Buster" is a Registered Trademark of
Rust Evader Corp., Altoona, PA.
Entire contents Copyright © 1993, Rust Evader Corp., Altoona, PA.
All Rights Reserved
"Rust Buster" system U.S. Patents #4,647,353, #4,828,665,
#4,915,808, #4,921,588, #4,950,372, and #5,102,514.
Foreign Patents Pending



This is the original multi-patented Electronic Corrosion Control for automobiles. Over a decade of test market experience and Consumer satisfaction guarantees our product as the best in today's hi-tech market.

MOST COMMONLY ASKED QUESTIONS

- What can I expect from this product? *Corrosion rate is reduced and auto body life is extended.*
- Will this product effect any other electrical component in my vehicle? *If properly installed, No!*
- If my car has been chemically rustproofed, is this product compatible with Rust Buster? *Yes.*
- Since this product consumes a small amount of electrical energy, how long would it take to drain my battery below starting power? *Up to 30 days.*
- How long is this product guaranteed? *It is guaranteed for as long as you own it. Replacement - Free of charge.*
- What kind of vehicles can benefit from this product? *automobile manufactured after 1980, and most light trucks and vans.*
- Is it transferrable from vehicle to vehicle? *Yes, however the purchase of a reinstallation kit is necessary.*
- Do you have customer assistance available? *Yes, through a nationwide WATTS number, 1-800-458-3474.*

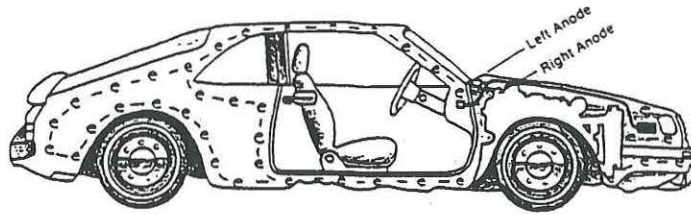
OUR PRIDE IS CUSTOMER SATISFACTION

000069

Complaint

122 F.T.C.

EXHIBIT A



The Rust Buster® C.D.O.I. interferes with the rusting process. Since the rusting process is gradual, the amount of energy consumed is very small. Rust Buster® C.D.O.I. effectively reduces corrosion rate.

The most common way of preventing automotive corrosion is to apply a barrier between oxygen and the metal. This is why we paint automobiles. The paint is a suitable barrier. When the metal loses paint or is incompletely painted, corrosion begins and continues until all of the metal is converted to an oxide or rust. Extra barriers have been developed such as undercoatings, rustproofing and paint sealants; but they are effective only as long as they insulate the metal from oxygen. Paint, rustproofing and sealants are known as di-electrics (not permitting electron transfer). As long as these di-electrics are in place without any small breaks, cracks, or crevices, nicks, scratches or stone chips, the automotive body has a fair chance of surviving the environment. However, in the real world, a constant attack is underway to break down these barriers. Once broken, the barriers permit the migration of electrons from iron to oxygen – the result is rust and corrosion. Rust Buster® C.D.O.I. provides a source of free electrons that interfere with coupling of ferrous metal electrons with oxygen – reducing the corrosion rate.

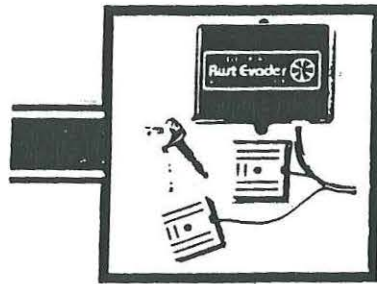
Capacitive Discharge Oxidation Interference "CDOI"

Since automobiles are produced essentially totally coated with a di-electric barrier of paint and rustproofing, the need to protect breaks in these barriers is of significant importance. The Rust Buster® C.D.O.I. forces electrons to escape or exit at the very site where the barrier has broken down or worn away "CDOI" effect. Compromises had to be considered in the Rust Buster® C.D.O.I. design. Therefore, complete interference in the rusting process cannot be expected, but rust retardation is dramatically demonstrated.

You want your car to look good while you're driving it, when you are ready to sell or trade it and particularly if you decide to give the car a major overhaul. If you lease a car, you are responsible to maintain a certain cosmetic standard or pay a penalty. Rust Buster® C.D.O.I. wants your car to last and maintain its maximum value.

Exhibit A

EXHIBIT B



Distributed By:



World Headquarters:

RustEvader Corporation

1513 11th Ave., Altoona, PA 16601, USA

800/458-3474 • 814/944-8700 • fax: 814/943-3752



A large, vertical graphic for Rust Evader. It features a dark background with a large, stylized lightning bolt. At the top, the letters 'ET' are prominently displayed in a bold, blocky font, with the words 'electronic technology' written in a smaller font below them. To the right of the lightning bolt, the text 'from RustEvader' is written. Below this, the text 'The invisible shield of protection for your vehicle!' is written in a serif font. At the bottom, there is a silhouette of a car. The entire graphic is framed by a thick, dark border.

EXHIBIT B

The invisible shield of protection used worldwide!

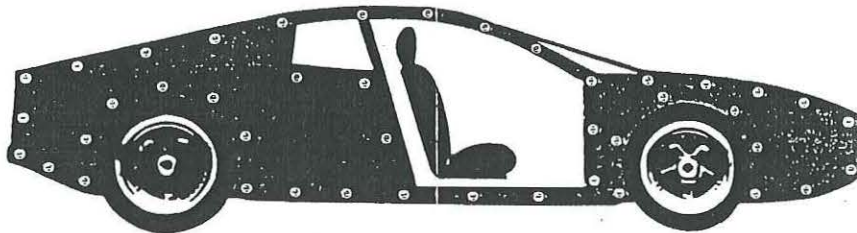
Protect your car, truck or van 24 hours a day — rain or shine — with the world leader in electronic automotive rust control! The RustEvader[®]* system retards rust and corrosion, and protects your vehicle with a lifetime guarantee. Common nicks, scratches and abrasions won't deteriorate into rust-through damage from the outside in — or inside out. The RustEvader[®]* system safeguards your investment — and helps preserve the environment!

ET
electronic technology
by **RustEvader[®]***

*The environmentally intelligent
approach to protecting your
automotive investment!*

- helps increase your car's value at trade-in time
- protection against rust-through damage as a result of stone chips, abrasions, salt, snow, sleet and sea-spray
- the original multi-patented electronic corrosion-control device
- over 10 years of consumer satisfaction
- nearly one million installed worldwide
- limited transferable lifetime new vehicle warranty* and used vehicle warranties* available
- insured by major international underwriters
- won't invalidate your vehicle's warranties
- won't interfere with vehicle electrical systems
- made in the USA!

*Your best investment in your
vehicle's future value!*



*See printed warranty for exact description of warranty coverage and exclusions!
© 1992 • "RustEvader" is patented and trademarked by RustEvader Corporation, Altoona, PA.

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Complaint

EXHIBIT C

RUSTEVADER® ET "EXTENDED TECHNOLOGY"



Specifications:
 Input Voltage: 12 Volt DC
 Ground: (-) Negative
 Current Draw: 23.4 ma

Anode Composition "Carbosil™ Capsules" non sacrificial
 Command Module Size: 3 1/4" x 3" x 1 1/4"
 Anode: 2" x 2" (2)
 Weight: 8 oz.

RustEvader® Wants Your Car To Last

RustEvader® products were designed for people who care about their car and understand the value of careful maintenance and effect on their pocketbook. RustEvader® wants your car to last and maintain it's maximum value.



Ask your dealer about RustEvader®

- Paint Protector
- Radiator Protector
- Fabric Protector
- Engine Oil Additive

DISCLAIMER

The warranty discussed in this brochure is for informational purposes only. Your warranty application provides the details of the warranty. Please read it thoroughly.

RustEvader Corp. 1513 11th Avenue P.O. Box 351
 Altoona, PA 16603 814-944-8700
 1-800-458-3474

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 "RustEvader" "AEL" "Power Powder" are registered trademarks of RustEvader Corp.
 Altoona, PA.
 RustEvader® System U.S. Patent #4,921,588 & 4,950,372, Power Powder® additive U.S. Patent
 #4,886,122
 Foreign Patents Pending

The Original Patented
Rust Evader
 ELECTRONIC
 RUST CONTROL 1988

Made in the U.S.A.

The World's Leading Electronic
 Rust Control System

U.S. Patents 4,921,588
 4,950,372

EXHIBIT
 6(a)

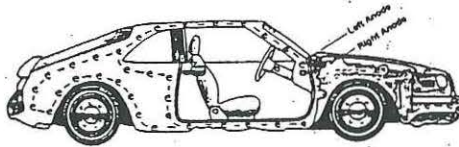
Complaint

122 F.T.C.

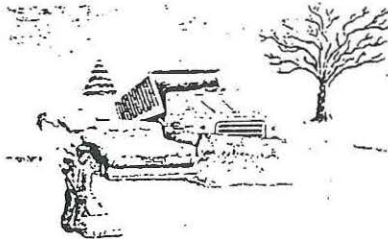
EXHIBIT C

Rust Evader®

ELECTRONIC CORROSION CONTROL

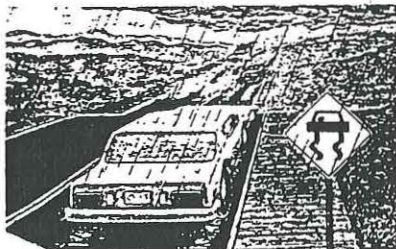


The "RustEvader" interferes with rusting process. Electro-chemists have made great progress in understanding corrosion. RustEvader® Corp. has applied the results of this progress in developing the RustEvader® Automotive Corrosion Control System and since the rusting process is gradual, the amount of energy consumed is very small—RustEvader® reduces the corrosion rate.



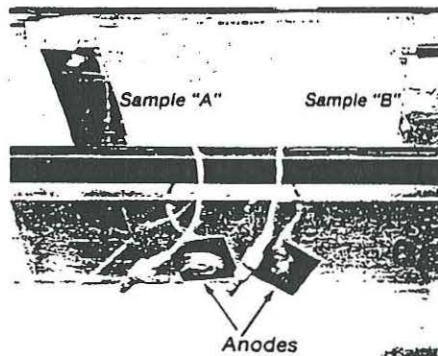
RustEvader® Electronic Corrosion Control gives you unmatched protection from salt, snow, sleet and sea spray corrosion. Rust perforation (rust-through) from either side of the sheet metal is warranted not to occur on your vehicle. (see actual warranty for details).

This is the original multi-patented Electronic Corrosion Control for automobiles. Over 10 years of consumer satisfaction and test market experience guarantees your dealing with the best and with the respect of the marketplace.



THE INTELLIGENT APPROACH TO PRESERVING AUTOMOTIVE APPEARANCE

- ★ RustEvader® emphasizes customer satisfaction, thousands in service worldwide.
- ★ Established track record in reducing corrosion — documented by users.
- ★ Recapture your investment at trade-in time...for New Used cars.
- ★ Used car warranty available depending upon age of ve and mileage.
- ★ Limited lifetime new car warranty, transferable to a se owner.
- ★ RustEvader® warrants that should the sheet metal of vehicle be perforated with/by rust, we will fix the ho
- ★ Consult RustEvader® Warranty Application for e description of coverage and exclusions.
- ★ Insured by major insurance companies.
- ★ RustEvader® is transferable from car to car.
- ★ Limited lifetime new car warranty available in the and Canada.
- ★ Optional 10 year limited new car warranty avai worldwide.



This Laboratory Test® provides the "worst case scenar to test RustEvader® Technology. Two (2) identi pieces of sheet steel are suspended in salt bath. T RustEvader® protects Sample "A" while Sample " rusts severely.

EXHIBIT D

ELECTRONIC CORROSION CONTROL

RustEvader® AUTOMOTIVE CORROSION CONTROL



**THE INTELLIGENT APPROACH TO
PRESERVING AUTOMOTIVE APPEARANCE**

The RustEvader® interferes with the rusting process. Electrochemists have made great progress in understanding corrosion. RustEvader® Corp. has applied the results of this progress in developing the RustEvader® Automotive Corrosion Control System. The RustEvader® impresses an electron bath on the vehicle's surface that interferes with oxygen's ability to couple with ferrous metals. Environmental conditions that promote rusting also prompt a counter response from the RustEvader® system. Energy for the electron bath is provided by the car's battery and since the rusting process is gradual, the amount of energy consumed is very small — RustEvader® reduces the corrosion rate.

"The Logical Choice for Controlling Rust"

- Recapture your investment at trade-in time for New and Used cars.
- RustEvader® emphasizes customer satisfaction thousands in service worldwide.
- Limited lifetime new car warranty, transferable to a second owner.
- Used car warranty available depending upon age of vehicle and mileage.
- Insured by a major insurance company.
- RustEvader® the original patented protection.
- Protection you can keep and take with you when you sell your car.

Exhibit D

Complaint

122 F.T.C.

EXHIBIT E

NOW!

THE ORIGINAL PATENTED
Rust Buster®

**WORLD'S LEADING AUTOMOTIVE
ELECTRONIC RUST CONTROL SYSTEM**

Left Anode
Right Anode
Command Module

The Rust Buster® System Beats Rust!

The Rust Buster® system keeps your car, truck or van beautiful for years! Common nicks, scratches and road salt won't deteriorate into rust-through damage, so you'll save on costly body repairs and preserve your investment!

The Rust Buster® system also offers unmatched protection! Unlike traditional undercoatings, it protects hard-to-reach, corrosively vulnerable areas by impressing throughout the metal body panels of the vehicle and interfering with oxygen's natural ability to couple with these ferrous metals.

- * eliminates the need for other costly rustproofing methods
- * uses less battery power than your car's clock
- * won't invalidate your vehicle's warranties
- * transferable to a second vehicle
- * protects rain or shine
- * installs in 30 minutes
- * small & compact device
- * no chemical mess or smell
- * year-after-year protection
- * for 1977 and newer models
- * environmentally safe

Exhibit E

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Complaint

EXHIBIT F

RUST EVADER[®]
 Electronic Corrosion Control
 LIMITED WARRANTY

 RUST EVADER[®]
 Electronic Corrosion Control
 LIMITED WARRANTY

(Plastic Card)

EXHIBIT

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RUST EVADER DEALER		EFFECTIVE DATE	RUST EVADER [®] SERIAL NO.
OWNER'S LAST NAME		FIRST NAME	TELEPHONE NUMBER
ADDRESS		CITY	STATE ZIP
INSTALLATION DATE		MILEAGE	DATE OF MANUFACTURE
VEHICLE - YEAR	MAKE	MODEL	VIN

NEW VEHICLES <input type="checkbox"/> LIFETIME LIMITED WARRANTY	USED VEHICLES <input type="checkbox"/> 1 YEAR OLD OR LESS - 8 YRS. LIMITED WARRANTY <input type="checkbox"/> 1 YR. TO 2 YRS. OLD - 5 YRS. LIMITED WARRANTY <input type="checkbox"/> 2 YRS. TO 3 YRS. OLD - 3 YRS. LIMITED WARRANTY
---	--

TERMS AND CONDITIONS Rust Evader Corp. warrants that the Rust Evader Electronic Corrosion Control when installed by an authorized Rust Evader Dealer on a new vehicle or a used vehicle as herein defined, will protect the vehicle from rust-thru (metal perforation by rust) during the term of this limited warranty. ("Warranty" as used hereafter means "limited warranty".)

ELECTRONIC CORROSION CONTROL UNIT Rust Evader Corp. warrants that the Rust Evader Electronic Corrosion Control Unit when installed on a new or qualified used vehicle as described above is free from defects in material and workmanship and if necessary will be repaired without charge by Rust Evader Corp.

NEW VEHICLE DEFINITION A new vehicle is one which was manufactured within 15 months of the date of this warranty and has 500 miles or fewer original miles and is registered to the original owner for 15 or fewer days. Such vehicle may be warranted for its lifetime.

USED VEHICLE DEFINITION A used vehicle is one manufactured within 3 years of the date of this warranty and has 150,000 miles or fewer original miles, and otherwise not classified as new. If such a vehicle is one year old or less it may be warranted for 6 years; if over one year to two years old, it may be warranted for 5 years; if over two years to three years old it may be warranted for 3 years.

WHAT'S COVERED UNDER THIS WARRANTY The new or used vehicle described herein is warranted not to rust-thru (rust damage that perforates the metal) any of the following designated areas of the vehicle: roof, front windshield support, rear window housing, rain gutters, vent window frame, door handle mounting, exterior mirror mounting, locking mechanism mounting, outer door panels, inner door panels, crimped and flanged edges of all doors, rear hatch assembly complete, rear deck lid assembly complete including inner panels, rear lighting assembly components, hood outer sheet metal, hood inner sheet metal, front fender outer sheet metal, headlight housing and mounting assemblies, all other forward lighting assemblies supplied as original equipment, inner front fender sheet metal and passenger compartment interior passenger compartment roof and door assemblies including center door posts and all complete latching and hinge mechanisms support, rear fender outer sheet metal, rear fender inner sheet metal, complete inner and outer trunk areas including rear lighting support mountings, inner front grill supports and sheet metal including "radio" housing support and front splash pan sheet metal, all rocker panels, lower exterior body finishing panels and passenger compartment assembly.

EXCLUSIONS 1. All areas not listed as designated areas including but not limited to engine power drive train, heat exchangers, electrical system, exhaust system, suspension and brake system, bumpers and energy absorbing beam or crumple zones. 2. Any damage within the designated areas which has resulted because of: a) collision, accident, penetration other than rust whether deliberate or accidentally, or experimental work or testing; b) battery acid damage; c) Commercial-type vehicle use; and d) passenger compartment roof areas.

ADDITIONAL EXCLUSION This warranty is secondary to any existing vehicle manufacturer's warranty. Coverage is limited to the aggregate total cost of repair to the warranty period but not in excess of the current NADA suggested book value of the vehicle.

INSPECTIONS REQUIRED The vehicle must be inspected every 24 months within 30 days of anniversary of installation date, by an authorized Rust Evader Dealer who may charge the current dealer rate up to one hour for the inspection. FAILURE TO HAVE VEHICLE INSPECTED AS REQUIRED VOIDS THE WARRANTY.

RUST-THRU CLAIM PROCEDURE If another rust thru warranty (vehicle manufacturer or other) was in effect at time this Rust Evader warranty is issued, owner may elect to keep the one existing warranty for claim service if said warranty is still in effect. If no such other warranty exists or is in effect, and any rust-thru should occur during the term of this warranty, owner must return vehicle along with this warranty document to an authorized Rust Evader Dealer within 30 days of first notice of rust-thru, permitting better repair and prevention of additional damage. Where possible, owner should return vehicle to dealer named under "Rust Evader Dealer" above. No claim will be valid under this warranty if the extent of the rust-thru is substantially larger than could have reasonably occurred within 30 days after rust-thru first became apparent. In any event, the last day of the term of this warranty is the last day any claim may be filed providing it too falls within the 30-day period above.

REPAIRS - CLAIMS All claims are subject to prior inspection of the vehicle and approval by Rust Evader Corp. Rust Evader Corp. is not responsible for matching the color of the repaired areas to the paint color on the rest of the vehicle. Each perforation will be repaired one only during the warranty period and is subject to a deduct of \$25.00 (to be paid by vehicle owner) for each valid claim made.

TRANSFER OF WARRANTY Upon change of ownership of the vehicle, the balance of the term of the warranty may be transferred to the new owner provided an authorized Rust Evader Dealer inspects the vehicle just prior to transfer and a copy of the attached transfer application is forwarded to Rust Evader Corp.

INSURANCE An insurance policy is in force for payments of claims at all times; however, should be made as set forth in "RUST-THRU CLAIM PROCEDURE" above.

LIMITATIONS ON COVERAGES THIS WARRANTY COVERS ONLY THE DESIGNATED AREAS LISTED UNDER "WHAT'S COVERED UNDER THIS WARRANTY" ABOVE. THIS WARRANTY DOES NOT COVER LOSS OF USE OF THE VEHICLE OR RENTAL, CAR EXPENSES OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES. IMPLIED WARRANTIES UNDER STATE LAW ARE LIMITED IN DURATION TO THE PERIOD OF TIME COVERED BY THE WARRANTY FROM THE DATE OF INSTALLATION. SOME STATES MAY NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON INCIDENTAL OR IMPLIED WARRANTY CONSEQUENTIAL DAMAGES OR LIMITATIONS ON HOW LONG THE WARRANTY LASTS. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY HAVE OTHER LEGAL RIGHTS WHICH VARY FROM STATE TO STATE.

RUST EVADER CORP. WARRANTY TRANSFER APPLICATION This application must be completed in full and given to the Rust Evader Dealer. The warranty for the balance of the term will be issued to the new owner.

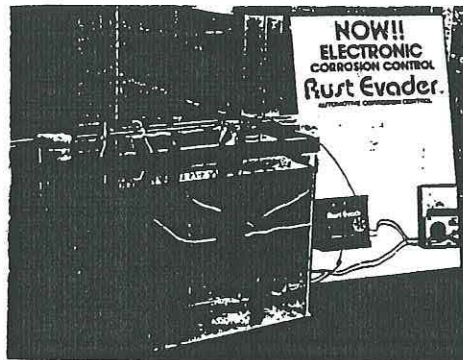
TRANSFER DATE	
BUYER'S NAME	DATE
ADDRESS	CITY/STATE/ZIP
SIGNATURE	

Complaint

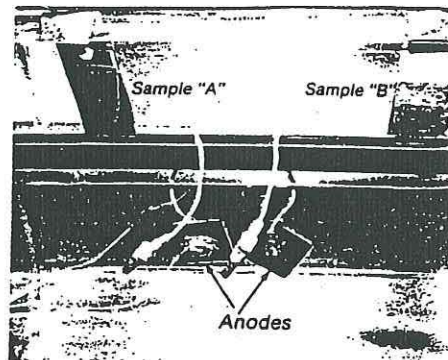
122 F.T.C.

EXHIBIT G

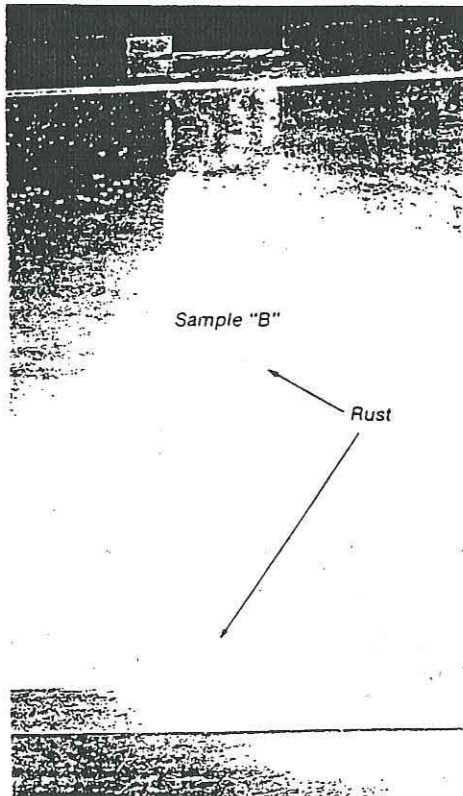
This Laboratory Test provides the "worst case scenario" to test RustEvader Technology. Two(2) identical pieces of sheet steel are suspended in salt bath. The RustEvader protects Sample "A" while Sample "B" rusts severely.



4½ gallons of 10% NaCl Solution. 70° F



Sample "A" is made cathodic (-) No Rust



Sample "B" after 240 hours

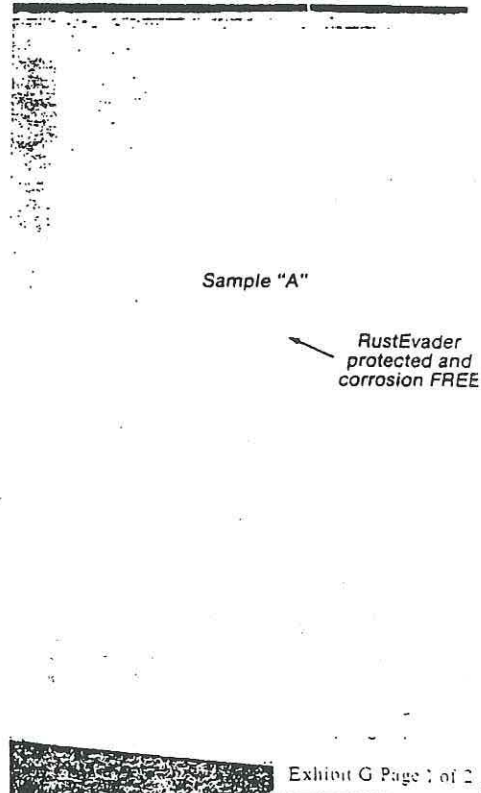


Exhibit G Page 1 of 2

EXHIBIT G

For Your Information!

How do you judge an automotive value? Ask those in the industry and they will tell you that condition and appearance are paramount in the evaluation. If you are purchasing a new car, its value several years down the road is important, so condition and appearance dictate the value of the car at any point beyond the day it was manufactured. A RustEvader and good maintenance will pay off by increasing the projected value of your car by reducing the rate of corrosion and retard rusting. The RustEvader was designed specifically to retard cosmetic corrosion. The normal imperfections in the paint along with small scratches, nicks and scars are less susceptible to cancerous body corrosion, or that ugly, scabby appearance. It is hard to imagine that your new car is so vulnerable but just look at any car that is two or three years old and you can see the devastation that has already begun.

It is easy to understand how hidden corners, bends and shapes of sheet metal body parts are consumed by a hostile environment. Abrasions from sand, stone and salt and freezing and thawing of water activate microscopic corrosion sites and pores in the paint that rapidly advance into body panel failure. Even galvanized sections that have been welded or bent in the factory-forming process are open to attack.

Rust and corrosion occur when the three essential ingredients interact: oxygen, metal and moisture, (H_2O). The metal provides the electrons to satisfy oxygen's craving for electrons. Moisture is needed to provide the pathway of electron transfer from iron to oxygen. The most common way of preventing automotive corrosion is to apply a barrier between oxygen and the metal. This is why we paint automobiles. The paint is a suitable barrier. When the metal loses paint or is completely painted corrosion begins and continues until all of the metal is converted to an oxide or rust. Extra barriers have been developed such as undercoatings, rustproofing and paint sealants; but they are effective only as long as they insulate the metal from oxygen and water. Paint, rustproofing and sealants are known as di-electrics (not permitting electron transfer). As long as these di-electrics are in place without any small breaks, cracks or crevices, nicks, scratches or stone chips, the automotive body has a fair chance of surviving the environment. However, in the real world, a constant attack is underway to break down these barriers. Once broken, the barriers permit the migration of electrons from iron over a moist pathway to oxygen — the result is rust and corrosion. RustEvader provides a source of free electrons that interferes with the migration and coupling of ferrous metal electrons with oxygen — reducing the corrosion rate.

Capacitive Discharge Oxidation Interference "CDOI"

Since automobiles are produced essentially totally coated with di-electric barrier of paint and rustproofing, the need to detect breaks in these barriers is of significant importance. The RustEvader forces the impressed electrons to escape or exit at

the very site where the barrier has broken down or worn away "CDOI" effect. RustEvader only works where and when needed. This is accomplished by pumping excess electrons to the car body creating a condenser effect (when the electric is essentially intact) between the car body and RustEvader anodes. Electrons repel each other resulting in their desire to return to a more positive home (anodes in atmosphere). In their escape from the automotive body through breaks or pores in the di-electric coatings, these impressed electrons interfere with the rusting process and retard rusting at local corrosion sites. There are variables that effect this interfering process: the composition of the metal, the type and concentration of the electrolyte, temperature and humidity. Generally speaking, increases in humidity and moisture increases the rate and quantity of electron escape. However, even when the relative humidity is very low electrons will free escape into the atmosphere. The impressed electrons escape in two ways: by displacing other electrons and by direct individual movement. If a continuous electrolyte exists (such as complete submersion in salt water) between the breaks in the coating on the car body and anodes, displacing electrons will move from the negative car body to the positive anode. In this condition the greatest rust retardation effect will exist. RustEvader works best where and when it is needed most, under mild conditions. Compromises had to be considered in the RustEvader design. Therefore, complete interference in the rusting process cannot be expected but rust retardation dramatically demonstrated.

Unibody construction and modern autobody panel design extremely vulnerable to corrosion: therefore, they are naturally presented to the consumer for use in a totally coated (paint) form. RustEvader has been designed to assist in the care maintenance program by retarding corrosion at breaks in the coating. The smaller the break, the more concentrated the RustEvader effect. Most of the protection is provided at the perimeter (interface) of the paint and the abrasion. Therefore components such as exhaust systems and suspension components, which are normally not coated, are not protected. Body panel abrasions are not normally neglected by the owners and are repainted (coated) soon after abraded. Therefore, the RustEvader was designed to assist the owner who is conscious of careful maintenance.

You want your car to look good while you're driving it, when you are ready to sell or trade it and particularly if you decide to give the car a major overhaul. If you lease a car, you are responsible to maintain a certain cosmetic standard or pay a penalty.

RustEvader was designed for people who care about their car and understand the value of careful maintenance and effort on their pocketbook. RustEvader wants your car to last a maintain its maximum value.

Rust Evader®

CDOI™ RustEvader Corp.
1513 11th Avenue P.O. Box 351
Allentown, PA 16603
800-458-3333 In PA 814-944-8700
©1987 RustEvader Corp.

Initial Decision

122 F.T.C.

INITIAL DECISION

BY JAMES P. TIMONY, ADMINISTRATIVE LAW JUDGE

MAY 24, 1996

INTRODUCTION

On August 30, 1995, the Commission issued its complaint in this matter, charging RustEvader Corporation ("REC") and David F. McCready with violations of Section 5(a) of the Federal Trade Commission Act in connection with the promotion and sale of the Rust Evader electronic corrosion control device. The complaint charged that respondents represented, falsely and without substantiation, that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies. The complaint also alleged that respondents had used a deceptive product demonstration and had misrepresented the validity of tests of the efficacy of the Rust Evader. Finally, the complaint charged that respondents had violated the Magnuson-Moss Warranty -- Federal Trade Commission Improvement Act, 102(c), 15 U.S.C. 2302(c), by using a warranty conditioned on periodic inspections of the Rust Evader unit by an authorized dealer who could charge a fee for the inspections.

On October 6, 1995, respondents filed a joint answer, denying the substantive allegations of the complaint and alleging that the Rust Evader "substantially" reduces corrosion. A discovery schedule was set up by order dated October 17, 1995, with trial scheduled to begin on May 13, 1996. Both sides filed non-binding statements.

On January 23, 1996, complaint counsel moved for sanctions citing respondents' failure to respond to discovery requests. These included *subpoenas duces tecum* issued on October 26, 1995, and interrogatories issued on November 9, 1995. Respondents had also failed to serve complaint counsel with preliminary exhibit and witness lists by January 5, 1996, as required by the pre-trial order. After a telephone conference with all counsel, I granted complaint counsel's motion on February 1, 1996. The order directed respondents to comply with the subpoenas, respond to the interrogatories and serve their preliminary witness and exhibit lists by February 23, 1996. The order specifically warned respondents that, if they failed to comply, they faced sanctions under the Commission's rules, including the possibility of default.

On April 8, 1996, complaint counsel and respondent McCready, having reached a tentative settlement, filed a joint motion to withdraw this matter from litigation with respect to Mr. McCready. That motion was forwarded to the Secretary on April 9 and the matter was withdrawn from litigation with respect to Mr. McCready on April 11, 1996, by order of the Secretary. The settlement is now before the Commission.

On April 11, 1996, complaint counsel filed a renewed motion for sanctions against REC, stating that REC had failed to comply with the order of February 1 in all respects. Complaint counsel further argued that, since REC's failure to respond to discovery was general and went to all aspects of the litigation, the appropriate response was to strike the answer as permitted by Rule 3.38(b)(5). Because REC had filed a bankruptcy petition complaint counsel's motion was served both on counsel of record for REC and, separately, on the bankruptcy trustee. In view of complaint counsel's motion, I suspended the trial schedule on April 12, 1996. REC did not respond to this motion.

On May 3, 1996, I granted complaint counsel's renewed motion for sanctions, striking REC's answer. On May 22, 1996, complaint counsel filed proposed findings of fact, conclusions of law and a proposed order.

Rule 3.12(c) provides that, where a party has failed to answer the complaint, the Administrative Law Judge is authorized, without further notice to respondents, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and the appropriate order. Rule 3.38(b), which authorizes sanctions for failure to make discovery, permits the Administrative Law Judge to strike all or part of a pleading, render a decision in the proceeding against the party that has been sanctioned, or both. Thus, entry of the following findings, conclusions and order is appropriate under both Rule 3.12(c) and Rule 3.38(b)(5). Under the provisions of Rule 3.12(c) and Rule 3.38(b)(5), for the reasons stated in complaint counsel's Motion for Sanctions and Renewed Motion for Sanctions, I hereby grant default judgment against REC.

FINDINGS OF FACT

1. Respondent RustEvader Corporation a/k/a Rust Evader Corporation, sometimes d/b/a REC Technologies (hereinafter "respondent") is a Pennsylvania corporation with its office and

principal place of business located at 1513 Eleventh Avenue, Altoona, Pennsylvania.

2. Respondent has manufactured, labeled, advertised, offered for sale, sold, and distributed an electronic corrosion control device for use on automobiles, trucks and vans (hereinafter "motor vehicles") under the names Rust Evader, Rust Buster, Electro-Image, Eco-Guard and others (referred to collectively hereinafter as "Rust Evader").

3. The acts and practices of respondent alleged in the 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 and promotional materials for the Rust Evader including Exhibits A through E attached to the complaint herein. These advertisements and promotional materials contain the following statements:

(a) Rust Buster Electronic Corrosion Control

This is the original multi-patented Electronic Corrosion Control for automobiles. Over a decade of test market experience and Consumer satisfaction guarantees our product as the best in today's hi-tech market.

MOST COMMONLY ASKED QUESTIONS

What can I expect from this product? Corrosion rate is reduced and auto body life is extended.

....
The Rust Buster C.D.O.I. interferes with the rusting process. Since the rusting process is gradual, the amount of energy consumed is very small. Rust Buster C.D.O.I. effectively reduces corrosion rate.

....
Rust Buster C.D.O.I. provides a source of free electrons that interfere with coupling of ferrous metal electrons with oxygen -- reducing the corrosion rate.

... complete interference in the rusting process cannot be expected, but rust retardation is dramatically demonstrated.

....
You want your car to look good while you're driving it, when you are ready to sell or trade it and particularly if you decide to give the car a major overhaul. If you lease a car, you are responsible to maintain a certain cosmetic standard or pay a penalty. Rust Buster C.D.O.I. wants your car to last and maintain its maximum value.

....
Over a decade of proven effectiveness.

Thousands of satisfied customers.

Inside-out & outside-in corrosion reduction (Exhibit A)

(b) The invisible shield of protection for your vehicle!
The invisible shield of protection used worldwide!

Protect your car, truck or van 24 hours a day -- rain or shine -- with the world leader in electronic automotive rust control! The RustEvader* system retards rust and corrosion, and protects your vehicle with a lifetime guarantee. Common nicks, scratches and abrasions won't deteriorate into rust-through damage from the outside in -- or inside out. The RustEvader* system safeguards your investment...

....

- helps increase your car's value at trade-in time
- protection against rust-through damage as result of stone chips, abrasions, salt, snow, sleet and sea-spray
- the original multi-patented electronic corrosion control device
- over 10 years of consumer satisfaction

....

Your best investment in your vehicle's future value!

*See printed warranty for exact description of warranty coverage and exclusions! (Exhibit B)

(c) Rust Evader

ELECTRONIC CORROSION CONTROL

The RustEvader interferes with rusting process. Electro-chemists have made great progress in understanding corrosion. RustEvader Corp. has applied the results of this progress in developing the RustEvader Automotive Corrosion Control System and since the rusting process is gradual, the amount of energy consumed is very small -- RustEvader reduces the corrosion rate.

RustEvader Electronic Corrosion Control gives you unmatched protection from salt, snow, sleet and sea spray corrosion. Rust perforation (rust-through) from either side of the sheet metal is warranted not to occur on your vehicle.

....

THE INTELLIGENT APPROACH TO PRESERVING AUTOMOTIVE APPEARANCE

....

- * Established track record in reducing corrosion -- documented by users.
- * Recapture your investment at trade-in time...for New and Used cars. (Exhibit C)

(d) NOW!! ELECTRONIC CORROSION CONTROL

Rust Evader

Automotive Corrosion Control

....

The RustEvader interferes with the rusting process. . . . Environmental conditions that promote rusting also prompt a counter response from the RustEvader system. Energy for the electron bath is provided by the car's battery and since the rusting process is gradual, the amount of energy consumed is very small -- RustEvader reduces the corrosion rate.

"The Logical Choice for Controlling Rust"

(Exhibit D, reduced copy of dealer display board)

(e) The Rust Buster System Beats Rust!

The Rust Buster system keeps your car, truck or van beautiful for years! Common nicks, scratches and road salt won't deteriorate into rust-through damage, so you'll save on costly autobody repairs and preserve your investment!

The Rust Buster system also offers unmatched protection! Unlike traditional undercoatings, it protects hard-to-reach, corrosively vulnerable areas by impressing electrons throughout the metal body panels of the vehicle and interfering [sic] with

oxygen's natural ability to couple with these ferrous metals. (Exhibit E, reduced copy of dealer display board)

5. Through the use of the trade names "Rust Evader" and "Rust Buster" and the statements and depictions contained in Exhibits A-E as well as other advertisements and promotional materials, respondent has represented, directly or by implication, that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies.

6. In truth and in fact, the Rust Evader is not effective in substantially reducing corrosion in motor vehicle bodies. Therefore, respondent's representation set forth in the previous finding was, and is, false and misleading.

7. Through the use of the trade names "Rust Evader" and "Rust Buster" and the statements contained in the advertisements and promotional materials referred to in Finding 4, including but not necessarily limited to the promotional materials attached to the complaint as Exhibits A-E, respondent has represented, directly or by implication, that at the time it made the representation set forth in Finding 5, respondent possessed and relied upon a reasonable basis that substantiated such representation.

8. In truth and in fact, at the time it made the representation set forth in Finding 5, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in Finding 7 was, and is, false and misleading.

9. In connection with the promotion and sale of the Rust Evader, respondent has disseminated or caused to be disseminated to distributors and dealers materials to conduct a demonstration of the efficacy of the Rust Evader. Respondent has also disseminated depictions of the same demonstration, of which Exhibit G, attached to the complaint herein, is an example. The demonstration places two pieces of metal in a transparent tank containing salt water. One piece of metal is connected to a Rust Evader and the other is not. In connection with this demonstration, respondent makes, and instructs the distributors and dealers to make the following (or similar) statements:

This Laboratory Test provides the "worst case scenario" to test RustEvader Technology. Two (2) identical pieces of sheet steel are suspended in salt bath. The RustEvader protects Sample "A" while Sample "B" rusts severely. (Exhibit G to the complaint)

10. Through the use of the depictions, materials and statements set forth in Finding 9, respondent has represented, directly or by implication, that the demonstration set forth in Finding 9 accurately represents how the Rust Evader protects motor vehicle bodies from corrosion.

11. In fact, the demonstration set forth in Finding 9 does not accurately represent how the Rust Evader protects a motor vehicle body from corrosion. The process utilized in the demonstration -- impressed current cathodic protection -- is much more effective under water than under conditions that a motor vehicle would normally encounter. Therefore, respondent's representation set forth in Finding 10 was, and is, false and misleading.

12. In connection with the promotion and sale of the Rust Evader, respondent has disseminated or has caused to be disseminated, to distributors and dealers, reports of laboratory and other tests performed on the Rust Evader. Some of these reports represent, directly or by implication, that the reported test constitutes scientific proof that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies. In addition, respondent has represented orally, directly or by implication, that these tests constitute scientific proof that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies.

13. In truth and in fact, such tests do not constitute scientific proof that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies. Therefore, respondent's representation set forth in Finding 12 was, and is, false and misleading.

14. In connection with the sale of the Rust Evader, respondent has provided purchasers with a limited warranty in the form attached to the complaint as Exhibit F. That warranty contains the following provision:

INSPECTIONS REQUIRED: The vehicle must be inspected every 24 months within 30 days of anniversary of installation date, by an authorized Rust Evader Dealer who may charge his current labor rate up to one hour for the inspection. FAILURE TO HAVE VEHICLE INSPECTED AS REQUIRED VOIDS THE WARRANTY.

15. The warranty provision described in Finding 14 is in violation of Section 102(c) of the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act (15 U.S.C. 2302(c)) because it conditions a warranty pertaining to a consumer product actually costing the consumer more than \$5 on the consumer's use of a service

(other than a service provided without charge) which is identified by brand, trade, or corporate name.

16. In providing advertisements, promotional materials and product demonstrations, such as those described in Findings 4 through 13, to its distributors and dealers, respondent has furnished the means and instrumentalities to those distributors and dealers to engage in the acts and practices found in Findings 5 through 13.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

2. The acts and practices of respondent as described in Findings 1 through 16 above constitute unfair or deceptive practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

3. The accompanying order, is necessary and appropriate under applicable legal precedent and the facts of this case.

ORDER

DEFINITIONS

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

A. "*Electronic corrosion control device*" shall mean any device or mechanism that is intended, through the use of electricity, static or current, to control, retard, inhibit or reduce corrosion in motor vehicles.

B. "*Rust Evader*" shall mean the electronic corrosion control device sold under the trade names Rust Evader, Rust Buster, Electro-Image, Eco-Guard, and any other substantially similar product sold under any trade name.

C. "*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.

I.

It is ordered, That respondent RustEvader Corporation, 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 manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of the Rust Evader, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product is effective in preventing or substantially reducing corrosion in motor vehicle bodies.

II.

It is further ordered, That respondent RustEvader Corporation, 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 manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, concerning the performance, efficacy or attributes of such product unless such representation is true and, at the time such 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 RustEvader Corporation, 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 manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from

misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, interpretations or purpose of any test, study, or survey.

IV:

It is further ordered, That respondent RustEvader Corporation, 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 manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that any demonstration, picture, experiment or test proves, demonstrates or confirms any material quality, feature or merit of such product.

V.

It is further ordered, That respondent RustEvader Corporation, 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 manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of the Rust Evader in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from employing the terms Rust Evader or Rust Buster in conjunction with or as part of the name for such product or the product logo.

VI.

It is further ordered, That:

A. Respondent RustEvader Corporation, 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 manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any consumer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act and actually costing

the consumer more than \$5, do forthwith cease and desist from conditioning any written or implied warranty of such product on the consumer's purchase or use, in connection with such product, of any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; and

B. Within sixty (60) days after the date of service of this order, respondent shall notify, by first class mail, all Rust Evader dealers and distributors and all other Rust Evader purchasers, that

1) The warranty provision requiring purchasers to pay for semi-annual inspections of their Rust Evader is null and void; and

2) No such warranty will be voided for failure to have an inspection required by the warranty, except for required inspections provided without charge after receipt of the notification provided under this order.

VII.

It is further ordered, That respondent RustEvader Corporation, its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, send by first class certified mail, return receipt requested, to each purchaser for resale of Rust Evader with which respondent has done business, a letter informing them of the provisions of the Commission's complaint and order in this matter and requesting that they cease engaging in practices prohibited by the order. The mailing shall not include any other documents. For purposes of this order, "purchaser for resale" shall mean any purchaser or other transferee of any Rust Evader who acquires or has acquired, with or without valuable consideration, said Rust Evader and resells or has resold the Rust Evader to other purchasers or to consumers;

B. In the event that respondent receives any information that, subsequent to its receipt of the letter sent pursuant to subparagraph A of this part, any purchaser for resale is using or disseminating any advertisement or promotional material that contains any representation prohibited by this order, respondent shall immediately notify the purchaser for resale that respondent will terminate the use of said purchaser for resale if it continues to use such advertisements or promotional materials; and

C. Terminate the use of any purchaser for resale about whom respondent receives any information that such purchaser for resale has continued to use advertisements or promotional materials that contain any representation prohibited by this order after receipt of the notice required by subparagraph B of this part.

VIII.

It is further ordered, That respondent RustEvader Corporation, its successors and assigns, shall, within thirty (30) days after the date of service of this order, provide a copy of this order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order.

IX.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

X.

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

XI.

It is further ordered, That respondent RustEvader Corporation, its successors and assigns shall, for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Copies of all notification letters sent to purchasers for resale pursuant to subparagraph A of part VII of this order; and

B. Copies of all communications with purchasers for resale pursuant to subparagraphs B and C of part VII of this order.

XII.

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

XIII.

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

A. Any paragraph 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 paragraph.

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 paragraph as though the complaint was never 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.

FINAL ORDER

The Administrative Law Judge filed his Initial Decision in this matter on May 24, 1996, finding that the respondent RustEvader Corporation ("REC") engaged in unfair or deceptive practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45, and granting a default judgment against REC.¹ An appropriate order against REC to remedy the violations was appended to the Initial Decision.

Service of the Initial Decision was completed on June 19, 1996. Neither respondent nor complaint counsel filed an appeal.

As support for entering the default judgment, the Administrative Law Judge relied on both Sections 3.12(c) and 3.38(b)(5) of the Commission's Rules of Practice, 16 CFR 3.12(c), 3.38(b)(5) (1996). The Commission has determined that Rule 3.38(b)(5) provides ample authority for the entry of a default judgment in this case and that it is unnecessary to rely on Rule 3.12(c).

Accordingly, the Initial Decision and the order therein shall become effective as provided in Section 3.51(a) and Section 3.56(a) of the Commission's Rules of Practice, 16 CFR 3.51(a), 3.56(a) (1996), subject to the following modifications to the paragraph on page 2 [*see* page 57] that begins with "Rule 3.12(c).":

- (1) Delete the first sentence of the paragraph.
- (2) Delete the words "both Rule 3.12(c) and" in the third sentence of the paragraph.
- (3) Delete the words "Rule 3.12(c) and" in the final sentence of the paragraph.

It is ordered, That the Initial Decision (except as noted above), and the order therein, shall become the Final Order and Opinion of the Commission on the date of issuance of this order.

¹ On April 11, 1996, in response to the joint motion required by Section 3.25(c) of the Commission Rules of Practice, 16 CFR 3.25(c)(1996), the Secretary withdrew this matter from adjudication with respect to respondent David F. McCready for the consideration of a proposed consent agreement. The Commission has now accepted that consent agreement for public comment.

IN THE MATTER OF

FORD MOTOR COMPANY

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

Docket C-3679. Complaint, August 22, 1996--Decision, August 22, 1996

This consent order prohibits, among other things, a Michigan-based automobile manufacturer from making any representation about the efficacy of any automotive cabin air filter in the reduction or removal of pollutants, unless such representations are true and the respondent possesses reliable and competent scientific evidence to substantiate such representations.

Appearances

For the Commission: *Linda Badger and Jeffrey Klurfeld.*

For the respondent: *Gerald Durcharme*, in-house counsel,
Dearborn, MI.

COMPLAINT

The Federal Trade Commission, having reason to believe that Ford Motor Company ("respondent"), a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Ford Motor Company is a Delaware corporation, with its offices and principal place of business located at The American Road, Dearborn, Michigan.

PAR. 2. Respondent has manufactured, advertised, offered for sale, sold, and distributed automobiles, automotive parts, and other products to consumers. Certain models of Ford automobiles, such as the Mercury Mystique and Lincoln Continental, include an automotive cabin air filter called the "MicronAir Filtration System."

PAR. 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.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for the MicronAir Filtration System,

including but not necessarily limited to the attached Exhibits A-C. These advertisements contain the following statements:

A. "Eat No One's Dust.

All-New Mercury Mystique With Exclusive MicronAir Filter.

Here, quite literally, is a breath of fresh air in automotive design. The new Mercury Mystique. The only car in its class with a MicronAir filter that removes virtually all dust, pollen and other impurities from the interior." (Exhibit A: print ad).

B. "MicronAir Filtration System screens out virtually all pollen, road dust and potentially harmful air pollutants before they enter the car. This means allergy sufferers, and anyone concerned with air pollution, can breathe easier." (Exhibit B: promotional material).

C. "Dear Mr. Sample,

Do you like clean air? Mystique's standard MicronAir Filtration System removes virtually all pollen, road dust and other pollutants from air entering the car. It's an especially nice feature if you happen to be bothered by allergies." (Exhibit C: promotional material).

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-C, respondent has represented, directly or by implication, that the MicronAir Filtration System removes virtually all pollutants likely to be encountered by a driver.

PAR. 6. In truth and in fact, the MicronAir Filtration System does not remove virtually all pollutants likely to be encountered by a driver. For example, the MicronAir Filtration System has no effect on gaseous pollutants, such as hydrocarbons, carbon monoxide, and nitrogen oxides. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-C, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 8. In truth and in fact, at the time it made the representation set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

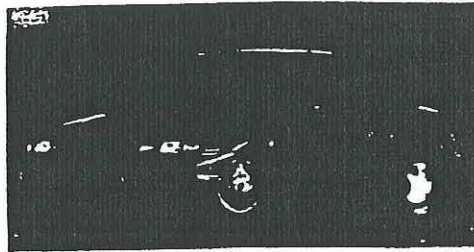
PAR. 9. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

122 F.T.C.

EXHIBIT A

Eat No One's Dust.




All-New Mercury Mystique With Exclusive MicronAir Filter

Here, quite literally, is a breath of fresh air in automotive design. The new Mercury Mystique. The only car in its class with a Micron Air filter that removes virtually all dust, pollen and other impurities from the interior.

The Micron Air filter is particularly useful should you ever find yourself following another car on a dusty road. Then again, given the performance of Mystique's available 24-valve Duratec V-6, such occasions could be rare. And with Duratec, Mystique is the only car in its class that goes 100,000 miles between scheduled tune-ups.

The Duratec V-6 and Micron Air filter are just two of Mystique's 21 first-in-class innovations. You'll also find things like all-speed traction control, solar tint glass and a remote locking system.

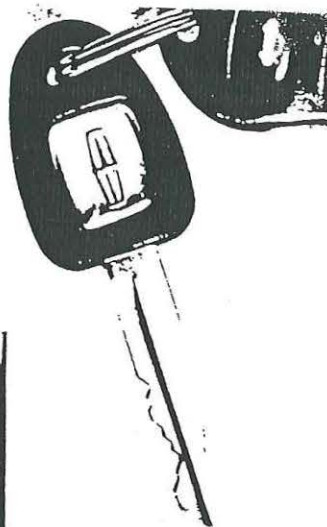
Drive the new Mystique and you'll see why we feel it's more than just a new car. It's a whole new Mercury. For more information, call 1 800 446-8888.  **MERCURY**

EXHIBIT

Complaint

EXHIBIT B

69



At-speed traction control helps provide safe, confident acceleration from a stop and greater handling and steering control at higher speeds. The available safety feature regulates the spin of either or both front wheels and helps maintain driver control and traction on slippery road surfaces.

Over-the-hill, inflexible ribs and handling let you control the suspension and steering with just a touch of your finger. Choose from three levels of steering effort and three degrees of suspension firmness to match the road at your driving mood.

Over the horizon, automatically, all those when Lincoln's trademark is placed in reverse. This gives you a better view of rear clearance when backing up.

Exceptional sound system delivers outstanding clarity and quality. Its large, ergonomically designed controls and electrochromatic tint lighting also make the sophisticated system easy to use and enjoy.



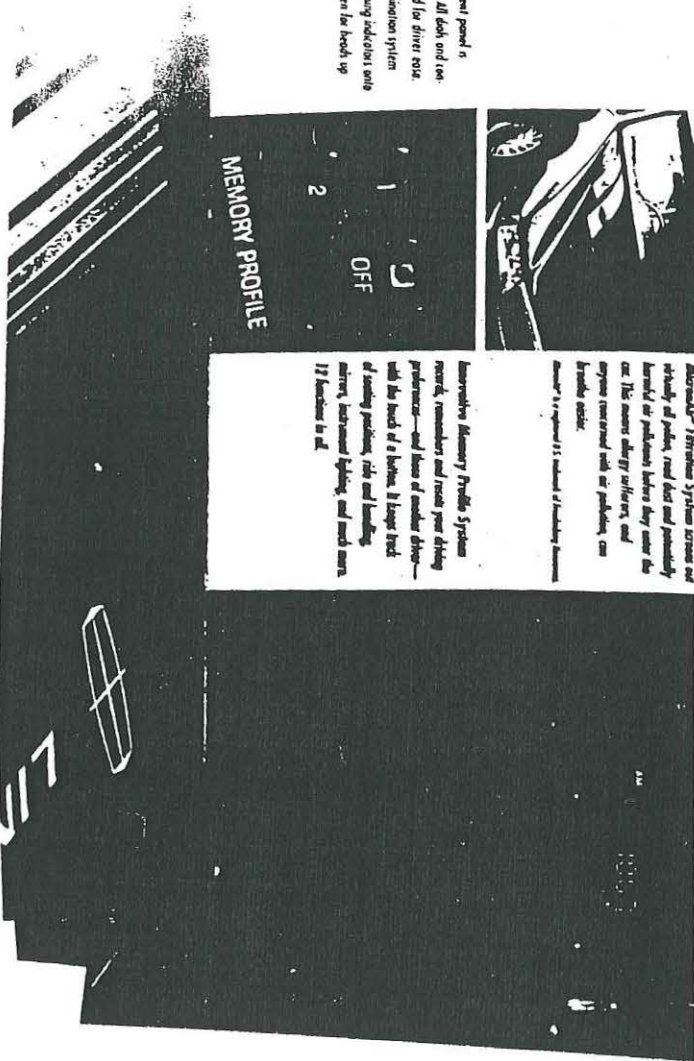
Microdial® Electronic System increases the stability of parking, road feel and generally handles all problems before they enter the car. The more energy vehicles and anyone concerned with air pollution, can handle better.

Lincoln® is a registered U.S. trademark of Ford Motor Company.

Intuitive Memory Profile System records, remembers and recalls your driving preferences—and those of another driver—with the touch of a button. It keeps track of steering position, ride and handling, active, instrument lighting, and much more. 12 functions in all.



Flow-through instrument panel is designed for versatility. All dash and seat back are shaped and sized for driver size. A 3-D vertical image illumination system projects gauges and warning indicators onto a specially designed screen for hands up driving.



MEMORY PROFILE

1
2
OFF

Complaint

122 F.T.C.

EXHIBIT C

0001/0001

Mr. John A. Sample
123 Main Street
Anytown, US 12345-6789

Dear Mr. Sample,

Every now and then an automobile like the all-new Mercury Mystique comes along that is so different, so comfortable and so much fun to drive, you just can't wait for the next excuse to get behind the wheel.

Right now, test drive a Mercury mystique and you'll receive a \$50 U.S. Savings Bond! How's that for an excuse to drive? A \$50 U.S. Savings Bond *and* the chance to put this terrific new sedan through its paces.

We think you'll find a lot to like as you drive Mystique. It has 21 unique features never before offered by its major competitors.

Do you like clean air? Mystique's standard MicronAir Filtration System removes virtually all pollen, road dust and other pollutants from air entering the car. It's an especially nice feature if you happen to be bothered by allergies.

Speaking of being bothered, taking a car in for service probably isn't one of your top ten favorite things to do. That's why we've designed the standard Zetec DOHC 4-cylinder engine to go 60,000 miles before its first scheduled tune-up. Still too soon? The optional Duratec DOHC V-6 isn't scheduled for its first tune-up until 100,000 miles.

We even wanted to make driving in rain or snow more enjoyable. That's why Mystique is available with an Anti-lock Brake System (ABS) and All-Speed Traction Control which helps you keep from spinning your wheels on slippery surfaces.

Mystique has a few features we hope you'll never use. Like dual air bags and high-tensile, boron-steel door beams which help Mystique meet all 1997 federal safety standards, today.

So get behind the wheel of Mercury Mystique and see what all the excitement is about. Remember to bring the certificate below to the dealership named when you take your test drive and you'll receive a \$50 United States Savings Bond. One drive in Mystique and you'll understand -- it's a whole new Mercury.

Sincerely,

Keith C. Magee
Vice President, General Manager
Lincoln-Mercury Division
Ford Motor Company

P.S. A \$50 U.S. Savings Bond is yours when you test drive a 1995 Mercury ystique, but only if you act soon. Offer expires January 31, 1995.

- Always wear your safety belt. MicronAir is a registered U.S. trademark of Freudenberg Nonwovens.

01100231

DECISION AND ORDER

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

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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, and having duly considered the comment filed thereafter by an interested person pursuant to Section 2.34 of its Rules, 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 Ford Motor Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at The American Road, in the City of Dearborn, 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

I.

It is ordered, That respondent, Ford Motor Company, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labelling, advertising, promotion, offering for sale, sale or distribution of the "MicronAir Filtration System" as configured in the 1995 Lincoln Continental or 1995 Mercury Mystique or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, that such product removes virtually all pollutants. For the purposes of this order, "substantially similar product" shall mean any automotive cabin air filter which is an electrostatic filter, consisting of layers of non-woven fabric, with at least one layer that has been electrically charged.

II.

It is further ordered, That respondent, Ford Motor Company, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of any automotive cabin air filter, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the efficacy of any such product in reducing or removing pollutants, unless such representation is true, and at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence, that substantiates such representation. For purposes of this order, "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.

III.

It is further ordered, That for three (3) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including written complaints from consumers.

IV.

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

V.

It is further ordered, That respondent shall, within ten (10) days from the date of service of this order upon it, distribute a copy of this order to each of its officers, agents, representatives or employees engaged in the preparation, review or placement of advertising or other materials covered by this order.

VI.

It is further ordered, That this order will terminate on August 22, 2016, or twenty 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 paragraph in this order that terminates in less than twenty 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 paragraph.

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 paragraph as though the complaint was never 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.

VII.

It is further ordered, That respondent shall, within sixty (60) days from the date of service of this order upon it, and at such other times as the 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.

IN THE MATTER OF
YOUNG & RUBICAM INC.

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

Docket C-3680. Complaint, August 22, 1996--Decision, August 22, 1996

This consent order prohibits, among other things, a New York-based advertising agency from making any pollution-removal claims for Ford Motor Company's MicronAir Filtration System or any similar cabin air filtration system, unless such representations are true and the respondent possesses reliable and competent scientific evidence to substantiate such representations.

Appearances

For the Commission: *Linda Badger and Jeffrey Klurfeld.*

For the respondent: *Carlos Peña*, in-house counsel, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Young & Rubicam Inc., a corporation ("Young & Rubicam" or "respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Young & Rubicam is a New York corporation, with its principal office or place of business located at 285 Madison Avenue, New York, New York.

PAR. 2. Young & Rubicam is now, and at all times relevant to this complaint has been an advertising agency for Ford Motor Company ("Ford") and the Lincoln-Mercury Dealers Associations ("LMDAs"). Young & Rubicam has prepared and disseminated advertising materials to promote the sale of Ford's Mercury Mystique and Lincoln Continental automobiles. These advertisements have included claims regarding the efficacy of the MicronAir Filtration System, a cabin air filter installed in Mercury Mystique and Lincoln Continental automobiles.

PAR. 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.

PAR. 4. Young & Rubicam has prepared and disseminated or has caused to be disseminated advertisements for the MicronAir Filtration System, including but not necessarily limited to the attached Exhibits A-H. These advertisements contain the following statements:

A. "Eat No One's Dust.

All-New Mercury Mystique With Exclusive MicronAir Filter.

Here, quite literally, is a breath of fresh air in automotive design. The new Mercury Mystique. The only car in its class with a MicronAir filter that removes virtually all dust, pollen and other impurities from the interior." (Exhibit A: print ad).

B. "MicronAir Filtration System screens out virtually all pollen, road dust and potentially harmful air pollutants before they enter the car. This means allergy sufferers, and anyone concerned with air pollution, can breathe easier." (Exhibit B: promotional material).

C. "Dear Mr. Sample,

Do you like clean air? Mystique's standard MicronAir Filtration System removes virtually all pollen, road dust and other pollutants from air entering the car. It's an especially nice feature if you happen to be bothered by allergies." (Exhibit C: promotional material).

D. "ANNCR: Introducing, the all-new Mercury Mystique. A car that can help bar pollutants and pollen from your environment. With an air filtration system ordinarily found in cars costing thousands more." (Exhibit D: television commercial).

E. "MALE ANNCR: How about the all-new Mercury Mystique...It's loaded with features unique to its class.

FEMALE ANNCR: (SARCASTICALLY) Magical features?

MALE ANNCR: Well Mystique's air filter does remove dust, pollen and harmful pollutants from the air before they reach the car's interior.

FEMALE ANNCR: Pretty impressive!" (Exhibit E: radio commercial).

F. "And you can breathe easy thanks to the MicronAir Filtration System that removes all pollen and other pollutants...a decided advantage when you're driving in dusty desert air...and an advantage you can't get from either Accord or Altima." (Exhibit F: print ad).

G. "*MicronAir Filtration System

Removes virtually all pollutants from the cabin." (Exhibit G: print ad).

H. "A MicronAir Filtration System to keep the passenger compartment virtually air-pollutant and pollen free." (Exhibit H: print ad).

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-H, respondent has represented, directly or by implication, that the

MicronAir Filtration System removes virtually all pollutants likely to be encountered by a driver.

PAR. 6. In truth and in fact, the MicronAir Filtration System does not remove virtually all pollutants likely to be encountered by a driver. For example, the MicronAir Filtration System has no effect on gaseous pollutants, such as hydrocarbons, carbon monoxide, and nitrogen oxides. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-H, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 8. In truth and in fact, at the time it made the representation set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Respondent knew or should have known that the representations set forth in paragraphs five and seven were, and are, false and misleading.

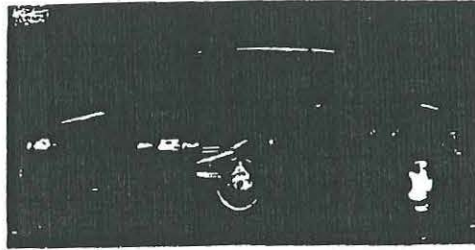
PAR. 10. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

122 F.T.C.

EXHIBIT A

Eat No One's Dust.



All-New Mercury Mystique With Exclusive MicronAir Filter

Here, quite literally, is a breath of fresh air in automotive design. The new Mercury Mystique. The only car in its class with a MicronAir filter that removes virtually all dust, pollen and other impurities from the interior.

The MicronAir filter is particularly useful should you ever find yourself following another car on a dusty road. Then again, given the performance of Mystique's available 24-valve Duratec V-6, such occasions could be rare. And with Duratec, Mystique is the only car in its class that goes 100,000 miles between scheduled tune-ups.

The Duratec V-6 and MicronAir filter are just two of Mystique's 21 first-in-class innovations. You'll also find things like all-speed traction control, solar tint glass and a remote locking system.

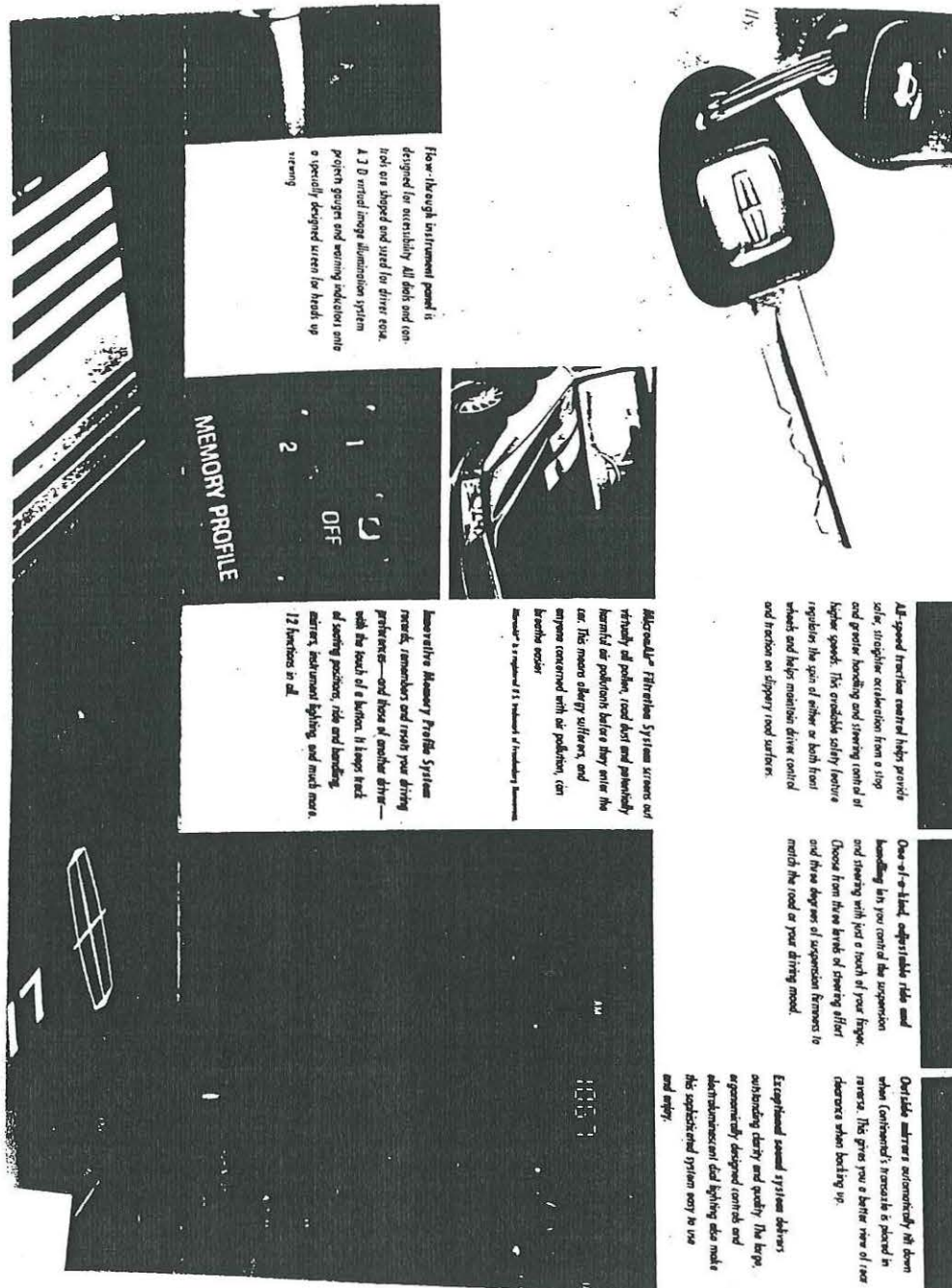
Drive the new Mystique and you'll see why we feel it's more than just a new car. It's a whole new way of driving. For more information, call 1 800 446-8

MERCURY

Complaint

EXHIBIT B

79



Flow-through instrument panel is designed for excellent visibility. All dials and controls are shaped and sized for driver ease. A 3-D optical image illumination system projects gauges and warning indicators onto a specially designed screen for heads-up viewing.

Microcell® Filtration System screens out virtually all pollen, road dust and potentially harmful air pollutants before they enter the car. The means allergy sufferers, and anyone concerned with air pollution, can breathe easier.

Memory Profile System recalls, remembers and resets your driving preferences—and those of another driver—with the touch of a button. It keeps track of seating position, ride and handling, mirror, instrument lighting, and much more. 12 functions in all.

One-of-a-kind adjustable ride and handling lets you control the suspension and steering with just a touch of your finger. Choose from five levels of steering effort and three degrees of suspension firmness to match the road or your driving mood.

On-side mirror mirrors automatically tilt down when Continental's sensor is placed in reverse. This gives you a better view of rear clearance when backing up.

Exceptional sound system delivers outstanding clarity and quality. The large, ergonomically designed controls and electronically controlled lighting also make the sophisticated system easy to use and enjoy.

Complaint

122 F.T.C.

EXHIBIT C

0001/0001

Mr. John A. Sample
123 Main Street
Anytown, US 12345-6789

Dear Mr. Sample,

Every now and then an automobile like the all-new Mercury Mystique comes along that is so different, so comfortable and so much fun to drive, you just can't wait for the next excuse to get behind the wheel.

Right now, test drive a Mercury mystique and you'll receive a \$50 U.S. Savings Bond! How's that for an excuse to drive? A \$50 U.S. Savings Bond *and* the chance to put this terrific new sedan through its paces.

We think you'll find a lot to like as you drive Mystique. It has 21 unique features never before offered by its major competitors.

Do you like clean air? Mystique's standard MicronAir Filtration System removes virtually all pollen, road dust and other pollutants from air entering the car. It's an especially nice feature if you happen to be bothered by allergies.

Speaking of being bothered, taking a car in for service probably isn't one of your top ten favorite things to do. That's why we've designed the standard Zetec DOHC 4-cylinder engine to go 60,000 miles before its first scheduled tune-up. Still too soon? The optional Duratec DOHC V-6 isn't scheduled for its first tune-up until 100,000 miles.

We even wanted to make driving in rain or snow more enjoyable. That's why Mystique is available with an Anti-lock Brake System (ABS) and All-Speed Traction Control which helps you keep from spinning your wheels on slippery surfaces.

Mystique has a few features we hope you'll never use. Like dual air bags and high-tensile, boron-steel door beams which help Mystique meet all 1997 federal safety standards, today.

So get behind the wheel of Mercury Mystique and see what all the excitement is about. Remember to bring the certificate below to the dealership named when you take your test drive and you'll receive a \$50 United States Savings Bond. One drive in Mystique and you'll understand -- it's a whole new Mercury.

Sincerely,

Keith C. Magee
Vice President, General Manager
Lincoln-Mercury Division
Ford Motor Company

P.S. A \$50 U.S. Savings Bond is yours when you test drive a 1995 Mercury Mystique, but only if you act soon. Offer expires January 31, 1995.

- Always wear your safety belt. MicronAir is a registered U.S. trademark of Freudenberg Nonwovens.

01100231

79

Complaint

EXHIBIT D

YOUNG & RUBICAM DETROIT

200 Renaissance Center, Suite 1000 • Detroit, Michigan 48243 • (313) 446-8600

ILENAME: TSR.

DATE: 4/10/95

JOB #: DOA VAR J 51085

TITLE: Mys Ani Rd 229

LENGTH: :27:03 TV

CLIENT: Western LMDA

PRODUCT: Mercury Mystique

BY: SR/

NUMBER: As Recorded

MASTER: M 41985

NEW COMM'L #: LM56-0892

ORIGINAL COMM'L #: LM56-0451

RECORD DATE/PLACE: Ron Rose Productions 4/6/95

EDIT DATE/PLACE: GTN 4/10/95

VO TALENT: Steve Cassidy

OC TALENT: Kate Jackson

MUSIC:

PRODUCER: Michael Julien

VIDEO:

SUPER: The All New Mercury Mystique

SUPER: \$229 mo./24 mos.

First Month's Payment \$229

Refundable Security Deposit \$250

Down Payment (Net of RCL Cash) \$1,500

Cash Due at Signing \$1,979

'95 Mercury Mystique GS with PEP 371A

MSRP excluding title, taxes, licens fee. Lease

payment based on average capitalized cost of

96.00% of MSRP for 24-mo. closed-end Ford

Credit Red Carpet Leases purchased in the

Western Region through _____. Some

payments higher, some lower. See dealer for

payment/terms. Lessee may have option to

buy vehicle at lease end wear/tear and

mileage over 30,000 at \$.11/mile. Credit

approval/insurability determined by Ford

Credit. Take new retail delivery from dealer

stock by 5/14/95. Total amount of monthly

payments is \$5,496. For special lease terms

and \$700 RCL cash, take new retail delivery

stock by 5/14/95.

Brand Sign (NEW)

SUPER: See Your Lincoln-Mercury Dealer.

AUDIO:

- 1 MUSIC: UNDER
- 2 ANNCR: Introducing, the all-new Mercury Mystique. A car that can
- 3 help bar pollutants and pollen
- 4 from your environment.
- 5 With an air filtration system ordinarily found in cars costing
- 6 thousands more.
- 7 It also has an available V-6, Duratec engine that goes 100,000
- 8 miles between scheduled tune-ups. Mercury Mystique. It won't be
- 9 spending much time in any garages--including your own
- 10
- 11
- 12 Lease a Mystique now for just \$229 a month
- 13 Hurry. Offer ends May 14th.
- 14 See your Lincoln-Mercury dealer.
- 15
- 16
- 17
- 18
- 19
- 20

LM56-0892

000050

Complaint

122 F.T.C.

EXHIBIT E

YOUNG & RUBICAM DETROIT

200 Renaissance Center, Suite 1000 • Detroit, Michigan 48243 • (313) 446-8600

FILENAME: RFH

DATE: 3/1/95

JOB #: LDVARR50776

TITLE: a5 Less Than Accord & Altima Prod.

LENGTH: : 60 Radio

CLIENT: SE/JAX

PRODUCT: Mystique

BY: DMH

NUMBER: As Recorded

MASTER: RR#38500

NEW COMM'L #:

ORIGINAL COMM'L: LMR56-276

RECORD DATE/PLACE: Ron Rose Productions 3/1/95

EDIT DATE/PLACE: Ron Rose Productions 3/1/95

VO TALENT: Steve Cassidy

VO TALENT: Lynne Woodison

MUSIC: "Put Me In A Mercury"--Sing RR#38500

PRODUCER: Tom Hillebrand

AUDIO:

MUSIC UP FULL
AT BEGINNING
THEN UNDER
TO END

1 SINGERS: Put me in a Mercury now.

2 MALE ANNCR: It's March Magic at your Mercury dealer...

3 FEMALE ANNCR: (Interrupting) Magic? Gonna pull something out of a
4 hat?5 MALE ANNCR: How about the all-new Mercury Mystique...It's loaded with
6 features unique to its class.

7 FEMALE ANNCR: (SARCASTICALLY) Magical features?

8 MALE ANNCR: Well Mystique's air filter does remove dust, pollen and
9 harmful pollutants from the air before they reach the car's interior.

10 FEMALE ANNCR: Pretty impressive!

11 MALE ANNCR: Car and Driver thought so, too. It judged Mystique to be
12 one of its ten best for '95.

13 FEMALE ANNCR: Must be magical to get on that list.

14 MALE ANNCR: It is! Plus, Mystique is priced more than 15 hundred
15 dollars less than Nissan Altima. And over \$2,300 less than Honda Accord.
16 Yet Mystique has more standard features than either of them.

17 FEMALE ANNCR: Wow! So how long does this magic last?

18 MALE ANNCR: March Magic ends April 3. MSRP comparison of
19 comparably equipped Mystique GS with PEP 371A and Nissan Altima GXE
20 with value option package and Honda Accord LX. Better hurry to your
nearest Mercury dealer today... and say (SNAPS FINGERS)

SINGERS: Put me in a Mercury now.

sclaimer:

356-276

00004-

79

Complaint

EXHIBIT F

TEST DRIVE THE NEW MERCURY MYSTIQUE AND GET A PHONE CARD GOOD FOR 30 MINUTES OF FREE LONG-DISTANCE PHONE TIME.

FREE PHONE TIME

Sound like a dream come true? Well, pinch yourself. It's true. But Lincoln-Mercury dealers are old hands at making dreams come true. Even free phone time.

HOW IT WORKS

Simply stop in to your Lincoln-Mercury dealer and test drive the new Mercury Mystique. Not only will you have the automotive experience of your life, your dealer will give you a calling card, good for 30 minutes of free phone calls anywhere in the continental United States, compliments of Lincoln-Mercury.

THE EXPERIENCE

All Mystique. But no mystery. Just another sure thing: a real winner. *Car and Driver* put Mystique on its Ten Best list. *Automobile Magazine* chose Mystique to be one of its All-Stars. Mystique, with

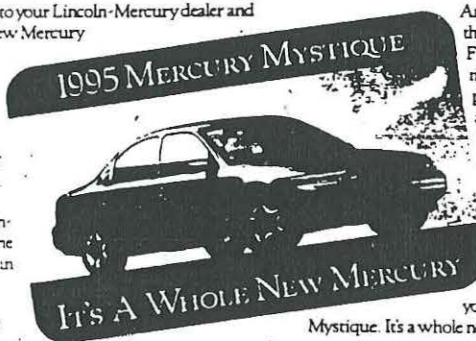
style, stamina and inspirational moves. You'll understand what we mean about "style" as soon as you walk around Mystique, examining its clean, crisp lines. Stamina? The available 170-horsepower 24-valve Duratec V-6 DOHC engine won't need its first scheduled tune-up until the 100,000-mile mark...an offer the competition can't match.

And you can breathe easy thanks to the Micron Air® Filtration System that removes all pollen and other pollutants...a decided advantage when you're driving in dusty desert air...and an advantage you can't get from either Accord or Altima. Why inspirational? Because this Mercury Mystique not only gets you where you want to go, it gets you there in a special way.

Mystique. It's a whole new Mercury.

DON'T WAIT. DON'T WONDER.

Test drive the new Mystique right now and walk away with 30 free minutes of telephone time. It's exciting...and profitable...and you'll find out in the best way why the competition isn't even close to matching this Mercury Mystique. But hurry! This offer ends March 31st.



Micron Air is a registered US trademark of Procter & Gamble.

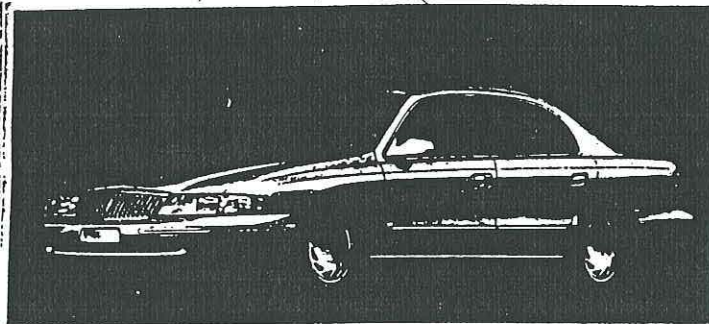
000037

Complaint

122 F.T.C.

EXHIBIT G

Introducing The All-New Lincoln Continental.



The Perfect Balance Of Luxury And Technology.

| Front-wheel drive | 32-valve V-8 InTech™ system

Goes 100,000 miles between scheduled tune-ups

| 12-function Memory Profile Adjusts twelve func-

tions, from radio stations to seat positions, for two

drivers. | MicronAir® Filtration System Removes vir-

tually all pollutants from the cabin | Dual air bags¹

| Anti-lock brakes | Power lumbar support

**LINCOLN**

What A Luxury Car Should Be

Landmark Lincoln-Mercury
Lakewood, CO
238-0551

Emich Lincoln-Mercury
Aurora, CO
360-8000

Kumpf Lincoln-Mercury
Englewood, CO
701-1560

Always wear your safety belt.

Complaint

EXHIBIT H

1995 Is Going To Be A V

The All-New Lincoln Continental

Introducing the all new Lincoln Continental for 1995. A new look, a new feel, a new way to drive. The new Lincoln Continental is a new kind of car. A smooth, a wealth of standard features including a remote keyless entry system. ABS and driver and front passenger air bags. Seating surfaces of plush leather. A Navigation System to keep the passenger compartment virtually air pollution and pollen free. An optional anti-theft alarm system and an available

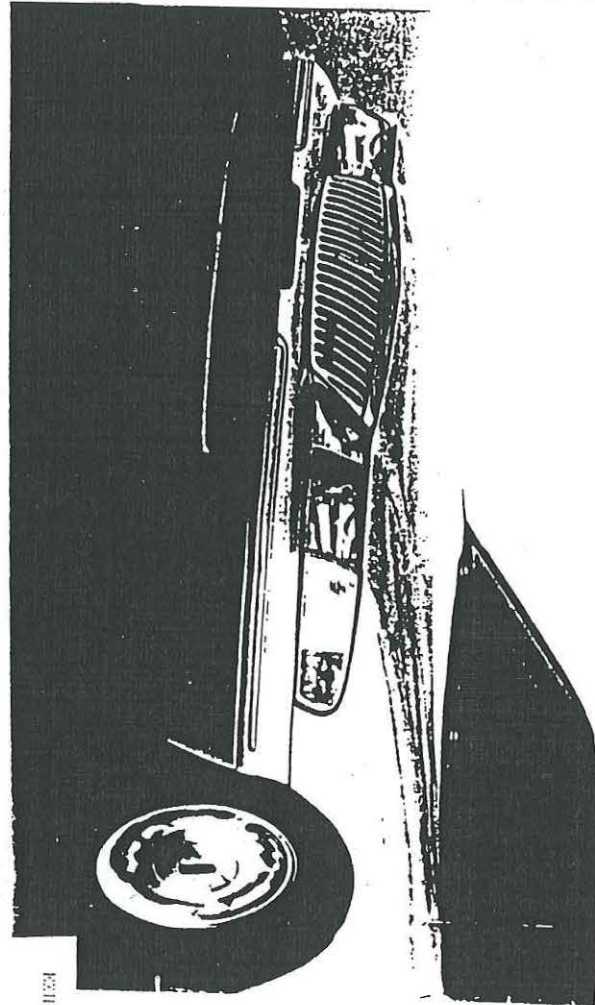
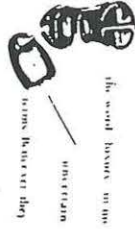


EXHIBIT H

DECISION AND ORDER

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

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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, and having duly considered the comment filed thereafter by an interested person pursuant to Section 2.34 of its Rules, 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 Young & Rubicam Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 285 Madison Avenue, in the City of New York, State of New York.

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 respondent, Young & Rubicam, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising or promotion of the MicronAir Filtration System as configured in the 1995 Lincoln Continental and the 1995 Mercury Mystique or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, that such products remove virtually all pollutants. For the purposes of this order, "substantially similar product" shall mean any automotive cabin air filter which is an electrostatic filter, consisting of layers of non-woven fabric, with at least one layer that has been electrically charged.

II.

It is further ordered, That respondent, Young & Rubicam, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising or promotion of any household or automotive cabin air filter, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the efficacy of any such product in reducing or removing pollutants, unless such representation is true, and at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence, that substantiates such representation. For purposes of this order, "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.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know of an inadequacy of substantiation for the representation.

III.

It is further ordered, That for three (3) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including written complaints from consumers.

IV.

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

V.

It is further ordered, That respondent shall, within ten (10) days from the date of service of this order upon it, distribute a copy of this order to each of its officers, agents, representatives or employees engaged in the preparation or review of advertising or other materials covered by this order.

VI.

It is further ordered, That this order will terminate on August 22, 2016, or twenty 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 paragraph in this order that terminates in less than twenty-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 paragraph.

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 paragraph as though the complaint was never 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.

VII.

It is further ordered, That respondent shall, within sixty (60) days from the date of service of this order upon it, and at such other times as the 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.

Complaint

122 F.T.C.

IN THE MATTER OF

RAYTHEON COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3681. Complaint, Sept. 3, 1996--Decision, Sept. 3, 1996*

This consent order requires, among other things, a Massachusetts-based high technology company to erect an information "firewall" for the duration of the Navy competition, and prohibits the dissemination of any non-public information concerning Raytheon's procurement of Chrysler Technologies Holding, Inc. ("CTH") officials or employees, or receiving any non-public information concerning the bid.

Appearances

For the Commission: *James H. Holden.*

For the respondent: *Robert D. Paul, White & Case, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Raytheon Company ("Raytheon"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the voting securities of Chrysler Technologies Holding, Inc. ("CTH"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and Section 5 of the FTC Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

For purposes of this complaint the following definitions apply:

1. *"Submarine high data rate satellite communications terminal"* means the system to be procured in the United States Department of the Navy's scheduled competitive procurement of the submarine high data rate satellite communications terminal, a satellite communications system for use on U.S. Navy submarines that is capable of, among other things, transmitting and receiving both super high frequency and extremely high frequency signals.

2. *"Antenna and terminal controls"* means any current or future equipment and services designed, developed, proposed or provided by Electrospace Systems, Inc. in connection with the United States Department of the Navy's procurement of the submarine high data rate satellite communications terminal.

II. RESPONDENT

3. Respondent Raytheon is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 141 Spring Street, Lexington, Massachusetts.

4. For purposes of this proceeding, respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. ACQUIRED COMPANY

5. Chrysler Technologies Holding, Inc. is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 1000 Chrysler Drive, Auburn Hills, Michigan. CTH's wholly-owned subsidiary, Electrospace Systems, Inc. ("ESI"), researches and develops, among other things, antenna and terminal controls.

6. CTH is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

7. On April 4, 1996, Raytheon and CTH entered into a Stock Purchase Agreement whereby Raytheon will acquire all of the voting securities of CTH for approximately \$455 million.

V. THE RELEVANT MARKET

8. For purposes of this complaint, the relevant line of commerce in which to analyze the effects of the acquisition is the research, development, manufacture and sale of the submarine high data rate satellite communications terminal.

9. For purposes of this complaint, the relevant geographic area in which to analyze the effects of the acquisition is the United States.

VI. TRADE AND COMMERCE

10. The market for the submarine high data rate satellite communications terminal in the United States is highly concentrated whether measured by Herfindahl-Hirschmann Indices ("HHI") or concentration ratios.

11. Respondent and CTH's prime contractor, GTE Corporation, are two of a very small number of competitors in the scheduled procurement of the submarine high data rate satellite communications terminal.

12. Entry into the market for the research, development, manufacture and sale of the submarine high data rate satellite communications terminal would not occur in a timely manner to deter or counteract the adverse competitive effects described in paragraph thirteen because of the time required to research and develop the necessary technology and because of the timing of the Department of the Navy's scheduled procurement.

VII. EFFECTS OF THE ACQUISITION

13. The effects of the acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant market set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by, among others ways, providing a means for respondent or GTE Corporation to gain access to competitively sensitive non-public

information concerning the other's submarine high data rate satellite communications terminal designs and bidding strategies, whereby actual competition between respondent and GTE Corporation would be reduced.

VIII. VIOLATIONS CHARGED

14. The acquisition agreement described in paragraph seven constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

15. The acquisition described in paragraph seven, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of all of the voting securities of Chrysler Technologies Holding, Inc. ("CTH"), and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 Acts, 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 described 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 Raytheon Company ("Raytheon") 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 141 Spring Street, Lexington, Massachusetts.

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, as used in this order, the following definitions shall apply:

A. "*Respondent*" or "*Raytheon*" means Raytheon Company, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by Raytheon Company, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. For purposes of paragraph II of this order, Raytheon does not include ESI.

B. "*CTH*" means Chrysler Technologies Holding, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 1000 Chrysler Drive, Auburn Hills, Michigan, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by CTH, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

C. "*ESI*" means Electrospace Systems, Inc., a wholly-owned subsidiary of Chrysler Technologies Holding, Inc., with its principal office and place of business located at 1301 East Collins Boulevard, Richardson, Texas, or any other entity within or controlled by Chrysler Technologies Holding, Inc. that is engaged in, among other things, the research, development, manufacture or sale of antenna and

terminal controls, its directors, officers, employees, agents, representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures controlled by ESI (or such similar entity), and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

D. "*Commission*" means the Federal Trade Commission.

E. "*Submarine high data rate satellite communications terminal*" means the system to be procured in the United States Department of the Navy's scheduled competitive procurement of the submarine high data rate satellite communications terminal, a satellite communications system for use on U.S. Navy submarines that is capable of, among other things, transmitting and receiving both super high frequency and extremely high frequency signals.

F. "*Antenna and terminal controls*" means any current or future equipment and services designed, developed, proposed or provided by ESI in connection with the United States Department of the Navy's procurement of the submarine high data rate satellite communications terminal.

G. "*Non-public information of Raytheon*" means any information not in the public domain and in the possession or control of Raytheon relating to the submarine high data rate satellite communications terminal.

H. "*Non-public information of ESI*" means any information not in the public domain and in the possession or control of ESI relating to the submarine high data rate satellite communications terminal, and any information not in the public domain furnished by Rockwell International Corporation or GTE Corporation or any other company to ESI in its capacity as subcontractor to Rockwell International Corporation in connection with the U.S. Navy's procurement of the submarine high data rate satellite communications terminal.

I. "*Acquisition*" means Raytheon's acquisition of all of the voting securities of Chrysler Technologies Holding, Inc.

II.

It is further ordered, That:

A. Raytheon shall not provide, disclose or otherwise make available, directly or indirectly, to ESI any non-public information of Raytheon until either: (1) the United States Department of the Navy

selects only one supplier for the submarine high data rate satellite communications terminal; or (2) the United States Department of the Navy cancels its procurement of the submarine high data rate satellite communications terminal entirely.

B. Raytheon shall not obtain or seek to obtain, directly or indirectly, any non-public information of ESI until either: (1) the United States Department of the Navy selects only one supplier for the submarine high data rate satellite communications terminal; or (2) the United States Department of the Navy cancels its procurement of the submarine high data rate satellite communications terminal entirely.

III.

It is further ordered, That respondent shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I. Said Interim Agreement shall continue in effect until the provisions in paragraph II of this order are complied with or until such other time as is stated in said Interim Agreement.

IV.

It is further ordered, That within twenty (20) days of the date this order becomes final, and annually on the anniversary of the date this order becomes final until either the United States Department of the Navy selects only one supplier for the submarine high data rate satellite communications terminal or cancels its procurement of the submarine high data rate satellite communications terminal entirely, and at such other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with paragraph II of this order.

V.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or sale of any division or any other change in the

corporation, in each instance where such change may affect compliance obligations arising out of the order.

VI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege and applicable United States Government national security requirements, upon written request, and on reasonable notice, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent, relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent, and without restraint or interference from respondent, to interview officers, directors, or employees of respondent, who may have counsel present, regarding any such matters.

VII.

It is further ordered, That respondent's obligations under this order shall terminate when either: (1) the United States Department of the Navy selects only one supplier for the submarine high data rate satellite communications terminal; or (2) the United States Department of the Navy cancels its procurement of the submarine high data rate satellite communications terminal entirely.

APPENDIX I

INTERIM AGREEMENT

This Interim Agreement is by and between Raytheon Company ("Raytheon"), a corporation organized and existing under the laws of the State of Delaware, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

PREMISES

Whereas, Raytheon has proposed to acquire all of the outstanding voting securities of Chrysler Technologies Holding, Inc.; and

Whereas, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm, and divestiture or other relief resulting from a proceeding challenging the legality of the proposed Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, Raytheon entering into this Interim Agreement shall in no way be construed as an admission by Raytheon that the proposed Acquisition constitutes a violation of any statute; and

Whereas, Raytheon understands that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

Now, therefore, Raytheon agrees, upon the understanding that the Commission has not yet determined whether the proposed Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Raytheon agrees to execute and be bound by the terms of the order contained in the Consent Agreement, as if it were final, from the date Raytheon signs the Consent Agreement.

2. Raytheon agrees to deliver, within three (3) days of the date the Consent Agreement is accepted for public comment by the Commission, a copy of the Consent Agreement and a copy of this

Interim Agreement to the United States Department of Defense, Rockwell International Corporation, and GTE Corporation.

3. Raytheon agrees to submit, within twenty (20) days of the date the Consent Agreement is signed by Raytheon, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by Raytheon setting forth in detail the manner in which Raytheon will comply with paragraph II of the Consent Agreement.

4. Raytheon agrees that, from the date Raytheon signs the Consent Agreement until the first of the dates listed in subparagraphs 4.a. and 4.b., it will comply with the provisions of this Interim Agreement:

a. Ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The date the Commission finally issues its Complaint and its Decision and Order.

5. Raytheon waives all rights to contest the validity of this Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege and applicable United States Government national security requirements, and upon written request, and on reasonable notice, Raytheon shall permit any duly authorized representative or representatives of the Commission:

a. Access, during the office hours of Raytheon and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Raytheon relating to compliance with this Interim Agreement; and

b. Upon five (5) days' notice to Raytheon and without restraint or interference from it, to interview officers, directors, or employees of Raytheon, who may have counsel present, regarding any such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

Complaint

122 F.T.C.

IN THE MATTER OF

PRECISION MOULDING CO., INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3682. Complaint, Sept. 3, 1996--Decision, Sept. 3, 1996*

This consent order prohibits, among other things, a California-based supplier of wood products used to construct frames for artists' canvases from requesting, suggesting, urging or advocating that any competitor raise, fix or stabilize prices or price levels, and from entering into any agreement or conspiracy to fix, raise or maintain prices.

Appearances

For the Commission: *Michael Antalics, William Lanning and William Baer.*

For the respondent: *Bruce Ryan, Paul, Hastings, Janofsky & Walker, Washington, D.C.*

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 Precision Moulding Co., Inc., a corporation, hereinafter sometimes referred to as respondent or "Precision," 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. Respondent Precision Moulding Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 3308 Cyclone Court, Cottonwood, California, and its mailing address at P.O. Box 406, Cottonwood, California.

PAR. 2. Respondent is now, and for some time has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of stretcher bars and other wood products. A "stretcher bar" is an art

supply wood product which when assembled with three other stretcher bars comprises a rectangular frame over which a canvas used for painting is stretched. Stretcher bars come in various lengths and widths, but are usually between 6" to 120" in length. Precision is the dominant supplier of commercial stretcher bars in the United States.

PAR. 3. Respondent maintains and has maintained a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Between January and May of 1995, respondent became aware that a new competitor was soliciting the business of its customers. These customers provided respondent with written documentation that the competitor was offering stretcher bars at prices below those offered by respondent. Upon reviewing the information concerning the competitor's prices, the President of the respondent stated that the competitor's prices were "ridiculous."

PAR. 5. At all times relevant herein, respondent perceived the competitor as a competitive threat because of the competitor's low prices. Between January and May of 1995, respondent intentionally delayed a scheduled across-the-board increase in the price of its stretcher bars because of the competitive threat posed by the competitor.

PAR. 6. In May of 1995, the President and General Manager of the respondent planned to travel to the eastern United States, in part, to make an unannounced visit to its competitor.

PAR. 7. On or about June 23, 1995, the President and General Manager of respondent visited the headquarters of the new competitor and met with an officer thereof. During the meeting, the General Manager of respondent told the competitor that its prices for stretcher bars were "ridiculously low." He also told the competitor that he did not "have to give the product away." This was understood by the competitor to be an invitation to fix prices. At this point, the competitor advised the respondent's representatives that he was aware that price fixing was illegal and did not want to get "contaminated." The competitor then implored the respondent's representatives to refrain from further discussion concerning prices.

PAR. 8. After a brief discussion about equipment, the respondent's representatives returned to a discussion about prices. The General Manager of the respondent threatened the competitor

with a price war and told the competitor that the competitor would not be able to survive a price war with Precision. At this point, the competitor reiterated that the respondent's discussion of prices was "dangerous" from a legal perspective, and the competitor advised the respondent that the conversation was over.

PAR. 9. After the June 1995 meeting and throughout the remainder of 1995, respondent continued to delay the implementation of its scheduled across-the-board price increase for its stretcher bars until it could ascertain whether the competitor would continue to be a competitive threat.

PAR. 10. The conduct described in paragraphs seven and eight constituted an implicit invitation by respondent to its competitor to raise prices of stretcher bars and refrain from competition. The invitation, if accepted, would have constituted an agreement in restraint of trade.

PAR. 11. The aforesaid acts and practices constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices herein alleged are continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that 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 described 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 Precision Moulding Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3308 Cyclone Court, Cottonwood, California, and its mailing address at P.O. Box 406, Cottonwood, California.

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

ORDER

I.

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

A. "*Respondent*" means Precision Moulding Co., Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups, and affiliates controlled by Precision Moulding Co., Inc., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

B. "*Stretcher bar products*" means an art supply wood product which when assembled comprises a rectangular frame over which a canvas used for painting is stretched, and includes any size of stretcher bar.

II.

It is ordered, That respondent, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with

the manufacture, advertising, offering for sale, sale or distribution of any stretcher bar products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

A. Requesting, suggesting, urging, or advocating that any competitor raise, fix or stabilize prices or price levels, or engage in any other pricing action; and

B. Entering into, attempting to enter into, adhering to, or maintaining any combination, conspiracy, agreement, understanding, plan or program with any competitor to fix, raise, establish, maintain or stabilize prices or price levels.

Provided, that nothing in this order shall prohibit respondent from: (1) agreeing to sell or distribute its stretcher bar products to its competitors, and (2) negotiating or agreeing upon the price which any of its stretcher bar products will be sold to its competitors.

III.

It is further ordered, That respondent shall:

A. Within thirty (30) days of the date on which this order becomes final, provide a copy of this order to all of its directors, officers, and management employees;

B. For a period of three (3) years after the date on which this order becomes final, and within ten (10) days after the date on which any person becomes a director, officer, or management employee of respondent, provide a copy of this order to such person; and

C. Require each person to whom a copy of this order is furnished pursuant to subparagraphs III.A and B of this order to sign and submit to Precision Moulding Co., Inc. within thirty (30) days of the receipt thereof a statement that: (1) acknowledges receipt of the order; (2) represents that the undersigned has read and understands the order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the order may subject Precision Moulding Co., Inc. to penalties for violation of the order.

IV.

It is further ordered, That respondent shall:

A. Within sixty (60) days from the date on which this order becomes final, and annually thereafter for three (3) years on the anniversary date of this order, and at such other times as the Commission may by written notice to the respondent require, file with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order;

B. For a period of three (3) years after the order becomes final, maintain and make available to the staff of the Federal Trade Commission for inspection and copying, upon reasonable notice, all records of communications with competitors of respondent relating to any aspect of pricing for stretcher bar products, and records pertaining to any action taken in connection with any activity covered by Parts II, III and IV, of this order; and

C. Notify the Commission at least thirty (30) days prior to any change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this order.

V.

It is further ordered, That this order shall terminate on September 3, 2016.