

Complaint

IN THE MATTER OF

MCCORMICK & COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 7 OF THE CLAYTON ACT AND SECTION 2 OF THE
ROBINSON-PATMAN ACT

*Docket C-3939; File No. 9610050
Complaint, April 27, 2000--Decision, April 27, 2000*

This consent order requires Respondent McCormick & Company to cease and desist from price discrimination within the meaning of Section 2(a) of the Robinson-Patman Act, by selling its product at a net higher price than it does to any competing purchaser, where the discrimination may cause competitive harm. The order also makes available the statutory defenses provided in the Act and requires that for each instance that Respondent wishes to raise the provided defense, it must contemporaneously document all information that it believes entitles it to the defense.

Participants

For the Commission: *Patrick J. Roach, F. Martin Dajani, David Conn, Dana F. Abrahamsen, Cecelia M. Waldeck, Mark D. Peterson, Ara Jabagchourian, Dennis C. Harketts, Stephanie Langley, Veronica G. Kayne, Daniel P. Ducore, and BE.*

For the Respondents: *Lewis Noonberg and Kenneth Starling, Piper Marbury Rudnick & Wolfe, LLP.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by these Acts, the Federal Trade Commission, having reason to believe that McCormick & Company, Incorporated, a corporation (sometimes referred to as "respondent" or "McCormick"), has violated the provisions of these Acts, and it appearing to the

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Commission that a proceeding would be in the public interest, hereby issues its complaint, stating its charges as follows:

Definitions

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

a. "Core spice line" means a retail product line of basic spices, herbs, and blends of spices, herbs and other food products that are sold in similar packaging with the same brand or trade name. Generally, the product line is composed of 40 or more items or products.

b. "Gourmet spice line" means a retail product line of basic spices, herbs and blends of spices, herbs and other food products with the same brand or trade name that are generally of a higher ingredient grade than a core spice line. Gourmet spice lines are commonly packed in same-size glass jars.

c. "Dry seasoning mixes" means retail products consisting of blends of spices, herbs and other food products with the same brand or trade name that are used to prepare a specific dish, such as meatloaf or tacos, or to prepare gravy or other sauce. Dry seasoning mixes are generally sold in foil or paper packets and typically, the entire packet is used for one average-size dish.

d. "Competitive seasonings" means retail products other than dry seasoning mixes, such as meat tenderizers, monosodium glutamate (MSG), and garlic and other spice blends that are not part of a core or gourmet spice line. Competitive seasonings are frequently marketed by suppliers that do not offer complete core spice lines or gourmet spice lines.

e. "Full Line" means the McCormick product line or offering comprising the products described above in

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subparagraphs a through d.

f. "Net Price" means the list price of McCormick Products less advances, allowances, discounts, rebates, deductions, free goods and other financial benefits provided by McCormick and related to such products.

The Respondent

2. Respondent McCormick & Company, Incorporated., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business at 18 Loveton Circle, Sparks, Maryland 21152.

3. Respondent is now and has been engaged for many years in the production, distribution and sale of spice and seasoning products for resale, including the products that make up its Full Line. Respondent sells these products under the brand names McCormick, Schilling, Fifth Seasons, Spice Classics, Select Seasons, Mojave, Spice Trend, Royal Trading, Crescent, McCormick Schilling, La Cochina De McCormick, McCormick Collection and Old Bay, among others.

4. Respondent has manufacturing facilities in Hunt Valley, Maryland and Salinas, California. The Maryland facility generally serves customers in the Eastern portion of the United States, while the California facility generally serves customers in the West. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as defined in the Federal Trade Commission Act and the Clayton Act, by selling, distributing, shipping, or causing to be shipped spice and seasoning products produced in some states of the United States to customers located in other states and in the District of Columbia.

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5. With 1998 retail sales of \$623.7 million in the Americas, respondent is the largest supplier of spice and seasoning products in the United States. Respondent claims to be “the world’s largest spice company.”

6. Among firms supplying core or gourmet spice lines for sale in supermarkets in the United States, McCormick is by far the leading firm, accounting for the majority of such sales nationally. During the period pertinent to this complaint, McCormick faced competition in such sales from only one other national firm, Burns Philp Food Incorporated, and several much smaller independent regional or local firms. These circumstances, combined with the superior brand recognition of McCormick products, mean that supermarkets that purchase McCormick products have relatively few alternative sources for equivalent products from other suppliers at equivalent prices and terms.

McCormick's Pricing

7. During the period pertinent to this complaint, McCormick had a single national price list for its product lines sold to its direct customers, whether retail or wholesale. McCormick commonly referred to this price list as the "A" List. This list specified separate prices for each individual product or SKU. McCormick modified this price list from time to time, to reflect changes in McCormick's costs to manufacture particular products, among other reasons.

8. Relatively few McCormick customers paid the “A” list price. Instead, McCormick commonly entered into written or unwritten supply agreements with customers that provided substantial discounts off the “A” list prices. These discounts have taken a variety of forms, including cash payments at the commencement of the agreement, free goods, off-invoice discounts, cash rebates, performance funds and other financial benefits that effectively reduced the Net Price of McCormick's products. In addition, McCormick supply agreements have included payments for

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advertising and other promotional activities designed to help customers resell McCormick products. McCormick commonly referred to the aggregate percentage of discounts and benefits provided to a particular customer as the "allowance offer" or "deal rate." McCormick's aggregate discounts and benefits to some customers were substantially greater than to others.

9. Typically, McCormick individually negotiated with particular customers the amount of discounts and promotional payments. The discounts and promotional payments typically were for all or a substantial part of the existing McCormick product line and typically were not incentives to accept new McCormick products.

10. In its supply agreements with customers, McCormick has commonly included provisions that, much as is sometimes seen with slotting allowances, restrict the ability of customers to deal in the products of competing spice suppliers. Such provisions typically demand that the customer allocate the large majority of the space devoted to spice products -- in some cases 90% of all shelf space devoted to packaged spices, herbs, seasonings and flavorings of the kinds offered by McCormick -- to McCormick.

Discrimination in Price

11. Each of the spice and seasoning products that make up McCormick's Full Line is a commodity within the meaning of Section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. § 13(a).

12. In the course and conduct of its business in commerce in the period from at least 1994 to the present, McCormick has in no fewer than five instances discriminated in price by providing different deal rates consisting of preferential up-front "slotting"-type payments or allowances, discounts, rebates, deductions, free goods, or other financial benefits to some purchasers of

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McCormick products including, but not limited to, McCormick's core spice line, gourmet spice line, dry seasoning mixes and competitive seasonings. In these instances, through such discriminatory terms of sale, McCormick has sold McCormick products to some purchasers (the "favored purchasers") at a lower Net Price than to other purchasers (the "disfavored purchasers").

13. The favorable prices and terms McCormick provided to the favored purchasers were not justified by a good faith attempt to meet the equally low price of a competitor, nor were the favorable prices justified by cost savings associated with doing business with the favored retailer.

14. In each instance, McCormick engaged in contemporaneous sales of McCormick products of like grade and quality to the favored and disfavored purchasers.

15. In each instance, the disfavored purchaser competed with the favored purchaser who resold respondent's products at the same level of distribution.

16. In each instance, at least one of the discriminatory sales by McCormick involved commodities that crossed state lines.

17. Each instance involved a substantial price difference over a substantial period of time between competing purchasers in markets where profit margins are low and competition is keen.

18. In each instance, the disfavored purchaser had few, if any, alternative sources from which to purchase comparable goods at prices and terms equivalent to those McCormick provided to the favored purchaser.

19. The effect of these discriminatory acts and practices has been or may be substantially to lessen competition in the line or lines of commerce in which favored and disfavored purchasers are engaged, or to injure, destroy or prevent competition between favored and disfavored purchasers.

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20. The acts and practices of the respondent set forth in Paragraphs 11-19 above constitute unlawful price discrimination in violation of Section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. § 13(a), and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and will continue in the absence of the relief herein requested.

WHEREFORE, the Federal Trade Commission on this twenty-seventh day of April, 2000 issues its complaint against said respondent.

By the Commission, Commissioner Swindle and Commissioner Leary dissenting.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of McCormick & Company, Incorporated 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 Robinson-Patman Act Amendments to the Clayton Act; and

The respondent and counsel for the Commission having thereafter executed an Agreement Containing Consent Order, an admission by respondent of all the jurisdictional facts set forth in

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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 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 thirty (30) 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 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. McCormick & Company, Incorporated., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business at 18 Loveton Circle, Sparks, Maryland 21152.

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 THE PURPOSES OF THIS ORDER, the following definitions shall apply:

- A. "McCormick" or "Respondent" means McCormick & Company, Incorporated, its directors, officers, employees, agents, representatives, predecessors, successors, assigns,

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direct and indirect parents, subsidiaries, divisions, groups, joint ventures and affiliates controlled by or under common control with McCormick, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- B. "Product" means any spice, seasoning, sauce or gravy mix, marinade sauce, spice blend, meat tenderizer, monosodium glutamate, seasoning sold with cooking bags, or other product used to season or flavor foods, packaged for retail sale to consumers; provided, however, that "Product" does not include products that are packaged for sale to food service or industrial customers.
- C. "Purchaser" means any person or entity that purchases McCormick Products for resale.
- D. "Net Price" means the list price of McCormick Products less advances, allowances, discounts, rebates, deductions, free goods and other financial benefits provided by McCormick and related to such products.
- E. "Commission" means the Federal Trade Commission.

II.

IT IS ORDERED that Respondent, in connection with the sale of Products in commerce, as "commerce" is defined in the Clayton Act, shall cease and desist from discriminating, within the meaning of Section 2(a) of the Robinson Patman Act amendments to the Clayton Act, 15 U.S.C. § 13(a), in the price of any Product of like grade and quality by selling such Product to any Purchaser at a Net Price higher than the Net Price charged to any competing Purchaser where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in

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any line of commerce or to injure, destroy, or prevent competition.

PROVIDED, that nothing herein shall prohibit respondent from discriminating in price where to do so would be lawful by reason of any of the defenses established in Sections 2(a) or (b) of the Robinson Patman Act amendments to the Clayton Act, 15 U.S.C. §§ 13(a) or (b).

III.

IT IS FURTHER ORDERED that for each instance in which Respondent wishes to avail itself of the meeting competition defense as set forth in Section 2(b) of the Robinson Patman Act amendments to the Clayton Act, 15 U.S.C. § 13(b), Respondent, for a period of ten (10) years from the date this Order becomes final, shall contemporaneously document all information on which it bases its entitlement to the defense, within the meaning of such provision. For each such instance for which Respondent wishes to avail itself of the meeting competition defense, Respondent shall retain such documentation in its files for five (5) years after the lower price made to meet competition is no longer effective. Neither the presence nor absence of documentation of any specific information shall in itself be deemed to be dispositive of Respondent's compliance with Part II of this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall, within sixty (60) days after service upon it of this Order, distribute a copy of this Order to each of its operating divisions involved in the sale of any Product to any Purchaser and to all current officers, employees, brokers, and agents of these divisions; and shall distribute a copy of this Order to any officer, employee, broker, or agent of these divisions within thirty (30) days of the commencement of such person's employment or affiliation with any such division.

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V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the Respondent which may affect compliance obligations arising out of the Order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other such change.

VI.

IT IS FURTHER ORDERED that Respondent shall, within sixty (60) days after this Order becomes final, and thereafter annually for a period of five (5) years on the anniversary date of the Order, and at such other times as the Commission may by written notice to respondent require, file with the Commission a written report verified by an officer of Respondent setting forth in detail the manner and form in which Respondent has complied and is complying with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on April 27, 2020.

By the Commission, Commissioner Swindle and Commissioner Leary dissenting.

Statement of the Commission

**STATEMENT OF CHAIRMAN ROBERT PITOFSKY AND
COMMISSIONERS SHEILA F. ANTHONY AND
MOZELLE W. THOMPSON**

The Analysis to Aid Public Comment fully describes the Commission action in this matter. Some comments by our dissenting colleagues, however, require a brief response.

The Commission has entered a final order in which McCormick & Company Inc. (“McCormick”) has agreed to cease and desist granting discounts (partly in the form of up-front shelf-allocation payments) to large chains without making comparable payments available to other chains and independents that compete with the favored chains. Under the Supreme Court’s controlling decision in *FTC v. Morton Salt Co.*,¹ injury to competition at the retailer (i.e., “secondary”) level can be inferred where substantial and durable price discrimination exists between competing purchasers who operate in a market with low profit margins and keen competition.

McCormick is far and away the largest manufacturer and supplier of full lines of spices to grocery stores in the United States. In the early 1990s, it found itself in a price war with Burns-Philp Food Inc. (“Burns-Philp”), its only full-line competitor. Substantial discriminatory discounts were granted to favored chains, often accounting for many individual stores, and not to competing retailers.

In examining McCormick’s discounts, the Commission did not simply apply the *Morton Salt* presumption in finding injury to competition, but examined other factors, including the market power of McCormick and the fact that discounts to favored chains were conditioned on an agreement to devote all or a substantial portion of shelf space to the McCormick line of products. Our dissenting colleagues applaud the fact that the Commission is

¹ 334 U.S. 37 (1948) (*Morton Salt*).

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willing to examine injury to competition by looking at factors beyond those narrowly described in the *Morton Salt* approach, but conclude that those factors do not justify a secondary-line price discrimination case here. We do not find their arguments persuasive.

1. The dissenting Commissioners observe that the discriminatory discounts were granted in the midst of, and possibly because of, a price war. But the Robinson-Patman Act limits on discriminatory pricing - including the rule that a seller can meet but not exceed prices offered by a competitor² - are not suspended during price wars.

2. Our colleagues suggest that this is a primary-line case (i.e., injury at the producer level) masquerading as a secondary line (injury at the retailer level) enforcement action. But that kind of distinction between primary-line and secondary-line anti-competitive effects is unduly rigid and mechanical -- particularly in light of the facts of this matter. It is true that part of the injury at the secondary level occurred because McCormick's behavior injured its only full-line competitor. But that is just one part of the secondary-line case. The fact remains that favored chain store buyers received from a dominant seller substantially better discounts than disfavored buyers, and they were injured, and competition at the secondary line was injured, as a result. Moreover, with Burns-Philp out of the picture as an aggressive competitor, chain stores and other retailers at the secondary level will be denied benefits of future competition.

² See *Falls City Indus. v. Vanco Beverage, Inc.*, 460 U.S. 428, 446 (1983) ("a seller's response must be defensive, in the sense that the lower price must be calculated and offered in good faith to 'meet not beat' the competitor's low price.")

Statement of the Commission

3. The Commission was influenced in the decision to enforce the Robinson-Patman Act here because McCormick is a dominant seller. Our colleagues' conclusion -- that market dominance by the discriminating seller should be irrelevant to secondary-line price discrimination -- flies in the face of commentary by leading scholars such as Herbert Hovenkamp suggesting that the dominance of the seller is exactly the factor that should be examined in the exercise of prosecutorial discretion.³

The essential feature of Commission action here should not be lost in a quarrel over particular facts. As the Analysis to Aid Public Comment points out, there will be circumstances in which the *Morton Salt* presumption is appropriate and dispositive. There may be other market settings in which it makes sense for the Commission, as a matter of prosecutorial discretion, or the Commission and Courts, in the process of considering whether there has been a violation, to look past the *Morton Salt* factors to a broader range of market conditions to determine whether there has been real injury to competition. Taking those additional factors into account, the majority concluded that there was injury not just to the disfavored buyers, but to secondary-line competition generally.

³ See, e.g., Herbert Hovenkamp, *Market Power and Secondary-Line Differential Pricing*, 71 Geo. L.J. 1157, 1170 (1983) ("Systematic, long-term price discrimination can be achieved only by a seller with market power. If the seller does not have market power, purchasers asked to pay the higher price will purchase from another seller willing to sell at a more competitive price.")

Dissenting Statement

**DISSENTING STATEMENT OF COMMISSIONERS
ORSON SWINDLE AND THOMAS B. LEARY**

We respectfully dissent from the Commission's decision to issue a final order to resolve allegations that McCormick & Company, Inc. ("McCormick") violated the Robinson-Patman Act. We recognize that the majority sincerely believes that this case will clarify a controversial statute and properly circumscribe its application. We are concerned, however, that this case will have precisely the opposite effect.

McCormick is the largest American supplier of spices to grocery stores, with more than 2,000 contracts¹ that account for a majority of spice sales in the United States. (Complaint ¶ 5). During the past decade, McCormick's main competitor has been Burns Philp Food Incorporated ("Burns Philp"). In the early 1990s, Burns Philp commenced a price war in which both it and McCormick offered increased discounts and other payments to try to win the business of grocery stores.² When the price war ended, McCormick remained the dominant spice supplier in the United States, and Burns Philp's ability to compete may have been impaired.³

¹ See McCormick & Company, Inc., Press Release, *McCormick Signs Settlement Agreement with the Federal Trade Commission* at 2 (Feb. 3, 2000), (McCormick has "more than 2,200 customer contracts").

² Anthony Hughes, *Burns Philp Was Inept, Says ASIC*, *The Age* at 2 (Mar. 11, 1999).

³ *Id.* ("Inadequate financial reporting to the board of directors and its failure to question overstated valuations were largely behind the near-collapse of the food group Burns Philp & Co., a report by the Australian Securities and Investments Commission has found.").

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A supplier may violate Section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. § 13(a), if it engages in price discrimination that causes so-called “primary-line” injury. Primary-line injury under the statute occurs when a difference in price causes harm to competition between *suppliers*. A case predicated on primary-line injury to Burns Philp or other suppliers of spices would require proof that the discriminatory prices that McCormick charged grocery stores were below cost and that McCormick had a reasonable prospect of recouping its losses. See *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993). In other words, primary-line injury to suppliers is actionable only when there is a threat of ultimate injury to buyers. The Commission’s complaint does not allege that McCormick engaged in price discrimination that caused primary-line injury to suppliers such as Burns Philp.

Instead, after more than three years of investigation and the commitment of substantial resources, the majority of the Commission has alleged that McCormick engaged in price discrimination that caused “secondary-line” injury, *i.e.*, harm to competition between *buyers*. Specifically, out of McCormick’s more than 2,000 contracts, the complaint alleges that in five instances McCormick charged higher prices to certain grocery stores than it charged to their competitors. (Complaint ¶ 12). The higher prices that the disfavored grocery stores paid McCormick for spices allegedly harmed their ability to compete against other grocery stores for customers. (*Id.* ¶ 19).

The majority statement conveys the impression that there was actual secondary-line injury in this case. But the Commission does not rely on direct evidence of secondary-line injury to the disfavored grocery stores. Rather, the Commission relies on the so-called “*Morton Salt* inference” of competitive harm. (*Id.* ¶ 17). For more than 50 years, courts have used the *Morton Salt* inference that “injury to competition is established *prima facie* by proof of a substantial price discrimination between competing

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purchasers over time.”⁴ In essence, the *Morton Salt* inference permits a court to infer injury to a disfavored purchaser from a persistent and substantial discriminatory price in a market where profit margins are low and competition is keen, and then to infer injury to competition from the injury to the disfavored purchaser.

We question whether the facts in this case support the application of the *Morton Salt* inference. The Robinson-Patman Act was primarily intended to prevent price discrimination in favor of large buyers at the expense of small buyers.⁵ When a small buyer pays more than a large buyer for an item in an industry with low profit margins and keen competition, the *Morton Salt* inference may make sense. In such circumstances, it is reasonable to infer that the purchasing power of the large buyer will cause the price discrimination to be repeated across many items, with consequent competitive injury to the small buyer.

The complaint does not allege that the favored grocery stores were larger than the disfavored grocery stores⁶ or that they purchased more spices from McCormick. Since the favored stores here were not necessarily purchasing larger quantities of spices than the disfavored stores, it is unlikely that McCormick

⁴ *Falls City Indus., Inc. v. Vanco Beverage, Inc.*, 460 U.S. 428, 435 (1983) (citing *Federal Trade Commission v. Morton Salt Co.*, 334 U.S. 37, 46, 50-51 (1948)).

⁵ In enacting the Robinson-Patman amendments, the Congress addressed the concern that large buyers could secure a competitive advantage over small buyers solely because of the large buyers' quantity purchasing ability. H.R. Rep. No. 2287, 74th Cong., 2d Sess. 7 (1936); S. Rep. No. 1502, 74th Cong., 2d Sess. 4-6 (1936).

⁶ To the extent that the majority tries to suggest that the disfavored stores are “mom-and-pop” operations, in fact only one of the disfavored stores could be so characterized; the rest of the disfavored stores are all large or relatively large grocery store chains.

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granted lower prices to the favored grocery stores because of their buying power. In fact, the most plausible explanation for the lower prices granted in the five instances alleged in the complaint is that they were the almost fortuitous and incidental result of McCormick's responses during its price war with Burns Philp. If the favored stores were not accorded lower spice prices because of their buying power, there is little reason to believe that the favored stores generally would receive lower prices from the suppliers of the thousands of products sold in the typical grocery store. It follows that it is unlikely that the ability of the disfavored grocery stores to compete with favored stores would be harmed – the underlying rationale for use of the *Morton Salt* inference.

The Commission is not relying on the *Morton Salt* inference *by itself* to support bringing a case. The use of the *Morton Salt* inference in this case is considered to be particularly appropriate because McCormick is the largest supplier of spices in the United States and because the company typically demanded that grocery stores allocate to McCormick a large majority of the shelf space they devoted to spices. *See* Complaint ¶¶ 6, 10, 18. Although we share the majority's apparent view that the public interest generally would be better served if the Commission did not bring Robinson-Patman cases based only on the *Morton Salt* inference, the majority has not identified additional facts that warranted bringing this case.

McCormick's alleged market power as a supplier and its alleged discriminatory prices may have harmed the ability of Burns Philp and other suppliers to compete with McCormick. But this does not make it any more plausible that McCormick's alleged discriminatory prices harmed the ability of the *disfavored grocery stores* to compete with the *favored grocery stores*.

In the long run, if McCormick's pricing has harmed the ability of Burns Philp or other suppliers to compete, the loss of alternative suppliers would harm *both* the disfavored grocery stores *and* the favored grocery stores (once their present contracts with McCormick expire). A loss of alternative suppliers is a

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classic consequence of primary-line injury, but such a loss does not necessarily have a *differential* impact on buyers that will cause secondary-line injury -- the relevant level of commerce in this case.⁷

We recognize that there has been much controversy over the years concerning the use of the *Morton Salt* inference and that the inference has not been uniformly applied.⁸ Overall, the concern has been that the inference makes violations too easy to prove.⁹ It is laudable that the majority has tried to limit the use of the *Morton Salt* inference. We do not believe, however, that evidence of *supplier* market power justifies bringing cases in which the *Morton Salt* inference is used as the basis to prove competitive harm among *buyers*.¹⁰ Because the majority has no other basis on which to show secondary-line competitive injury in this case, we dissent.¹¹

⁷ We do not suggest that market power of the supplier is irrelevant in a Robinson-Patman Act case – in fact, it is likely to be present in all cases of economic price discrimination. However, supplier market power is not dispositive of whether secondary-line injury is likely to have occurred. Our agreement with the majority that McCormick is the dominant spice seller does not overcome the lack of proof of secondary-line injury in this case.

⁸ See ABA Section of Antitrust Law, *Antitrust Law Developments* 450-51 (4th ed. 1997).

⁹ See, e.g., LaRue, *Robinson-Patman Act in the Twenty-First Century: Will the Morton Salt Rule Be Retired?*, 48 S.M.U.L. Rev. 1917 (1995).

¹⁰ As noted above, McCormick's alleged discriminatory prices were offered during a price war with its main competitor. We assume without deciding that a "meeting competition" defense under the Robinson-Patman Act would not have insulated McCormick from liability.

¹¹ We do recognize that the narrowly circumscribed order would be appropriate in a proper secondary-line case.

Analysis to Aid Public Comment

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order from McCormick & Company, Incorporated ("McCormick"), the world's largest spice company, that is designed to resolve claims, set forth in the accompanying Complaint, that McCormick discriminated in the pricing of its products to certain competing supermarket purchasers in violation of Section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. § 13(a). The Consent Order requires McCormick to refrain from unlawfully discriminating in the prices at which it sells its products to competing purchasers in the supermarket channel. In addition, in those instances in which McCormick believes that its pricing is lawful because its prices were offered to meet competition from a competing supplier, the Consent Order requires McCormick, for a period of ten years, to contemporaneously document the information on which it bases its entitlement to the statutory "meeting competition" defense.

The proposed Consent Order has been placed on the public record for 30 days so that the Commission may receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

McCormick's Business. McCormick, with its principal office and place of business in Sparks, Maryland, has been engaged for many years in the production, distribution and sale of spice and seasoning products for resale. Its products sold through supermarkets include core and gourmet spice lines, dry seasoning mixes, and so-called "competitive seasonings" such as meat tenderizers, monosodium glutamate (MSG), and garlic and other spice blends. Respondent sells these products under the brand names McCormick, Schilling, Fifth Seasons, Spice Classics, Select Seasons, Mojave, Spice Trend, Royal Trading, Crescent,

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McCormick Schilling, La Cochina De McCormick, McCormick Collection and Old Bay, among others. With 1998 retail sales of \$623.7 million in the Americas, McCormick is the largest supplier of spice and seasoning products in the United States, and claims to be “the world’s largest spice company.”

Among those firms that supply core or gourmet spice lines for sale in supermarkets in the United States, McCormick is by far the leading firm, accounting for the majority of such sales nationally. Since the early 1990’s, McCormick has faced competition in such sales from only one other national firm, Burns Philp Food Incorporated, and several much smaller independent regional or local firms. These circumstances, combined with the superior brand recognition of McCormick products, mean that supermarkets that purchase McCormick products have relatively few alternative sources for equivalent products from other suppliers at comparable prices and terms.

McCormick’s Pricing. During the period pertinent to the Complaint, McCormick had a single national price list for its products sold to direct customers, whether retail supermarkets or wholesalers reselling to independent supermarkets. McCormick modified this price list from time to time, to reflect changes in McCormick’s costs to manufacture particular products, among other reasons. However, relatively few McCormick customers paid the list price. Instead, McCormick commonly entered into written or unwritten supply agreements with customers that provided substantial discounts off the list prices. These discounts took a variety of forms, including cash payments at the commencement of the supply agreement, free goods, off-invoice discounts, cash rebates, performance funds and other financial benefits that effectively reduced the net price of McCormick’s products. Typically, McCormick individually negotiated with particular customers the amount of discounts and payments; the aggregate percentage of discounts and benefits provided to a

Analysis to Aid Public Comment

particular customer was commonly known as the “allowance offer” or the “deal rate.” McCormick’s aggregate discounts and financial benefits to some customers were substantially greater than to some other competing customers.

Frequently the McCormick discounts included up-front cash payments that resembled the payments sometimes called “slotting allowances” in the supermarket industry. However, the McCormick discounts and payments typically were for all or a substantial part of the existing McCormick product line and typically were not incentives to accept new McCormick products. McCormick’s supply agreements with customers commonly include provisions that, as is sometimes seen with slotting allowances, restrict supermarket customers’ ability to deal in the products of competing spice suppliers. Such provisions commonly require that the customer allocate to McCormick the large majority (as much as 90%) of the shelf space devoted to spice products.

Price Discrimination. The Complaint alleges that in the period from at least 1994 to the present, McCormick has on no fewer than five instances discriminated in price by providing different deal rates consisting of preferential up-front “slotting”-type payments or allowances, discounts, rebates, deductions, free goods, or other financial benefits. Through such discriminatory terms of sale, McCormick sold its products to the favored purchasers at a lower net price than to the disfavored purchasers, in violation of Section 2(a) of the Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. § 13(a).

The Complaint alleges that, in each instance of discrimination, McCormick made contemporaneous sales of McCormick products of like grade and quality to a favored and a disfavored purchaser; the disfavored purchaser competed with the favored purchaser which resold respondent’s products at the same level of distribution; and at least one of the discriminatory sales by McCormick involved commodities that crossed state lines. The Complaint also alleges that each of the spice and seasoning

Analysis to Aid Public Comment

products that make up McCormick's product line is a commodity within the meaning of the statute.

The Complaint alleges that McCormick's price discrimination threatened injury at the "secondary line" level of competition, that is, at the level of the favored and disfavored purchasers. It alleges that each instance of discrimination involved a substantial price difference over a substantial period of time between competing purchasers in markets where profit margins are low and competition is keen. These circumstances give rise to an inference of competitive harm within the meaning of the statute, pursuant to the reasoning of the Supreme Court in Federal Trade Commission v. Morton Salt Co., 334 U.S. 37, 50-51 (1948), and subsequent cases. While that inference may not be sufficient, by itself, in some circumstances to warrant bringing a case, in this instance the inference is strengthened by McCormick's position as the largest supplier of spice and seasoning products in the United States and by the fact that McCormick typically demanded that customers allocate to McCormick the large majority of the space devoted to spice products -- in some cases 90% of all shelf space devoted to packaged spices, herbs, seasonings and flavorings of the kinds offered by McCormick. As alleged in the Complaint, disfavored purchasers consequently had few, if any, alternative sources from which to purchase comparable goods at prices and terms equivalent to those which McCormick provided to the favored purchasers.

The Complaint also alleges that the favorable prices and terms McCormick provided to the favored purchasers were not justified by good faith attempts to meet the equally low price of a competitor; nor were the favorable prices justified by cost savings associated with doing business with the favored retailer. The instances of price discrimination were therefore not within the scope of either the statutory "meeting competition" or "cost justification" defenses established by Sections 2(a) and (b) of the

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Robinson-Patman Act amendments to the Clayton Act, 15 U.S.C. § 13(a) and (b).

The Order Provisions. The Consent Order provides relief for the violations alleged in the Complaint. The Order applies to McCormick's sale of products, broadly defined to include spices, seasonings and other products used to season or flavor foods, packaged for sale to consumers. The Consent Order does not apply to products packaged for sale to food service or industrial customers, which are beyond the scope of the conduct at issue in the Complaint. Order, ¶ I.B. The Order applies to McCormick's sales to persons or entities that purchase McCormick products for resale. Order, ¶ I.C.

The principal relief is contained in Paragraph II of the Consent Order, which requires that McCormick cease and desist from price-discriminating, within the meaning of Section 2(a) of the Robinson-Patman Act, by selling its products to any purchaser at a net price higher than that charged to any competing purchaser, where the discrimination may cause competitive harm as contemplated by the statutory language. "Net Price" is defined as the list price of McCormick Products less advances, allowances, discounts, rebates, deductions, free goods and other financial benefits provided by McCormick and related to such products. Order, ¶ I.D.

The inclusion of competitive harm language in Paragraph II ensures that the remedy established by the Consent Order is not over-broad and does not enjoin instances of price discrimination otherwise lawful under the statute. This paragraph also includes a proviso that makes applicable under the Order the statutory defenses set forth in Sections 2(a) and (b) of the Robinson-Patman Act, thus accomplishing explicitly what otherwise would be implicit pursuant to the Supreme Court's decision in Federal Trade Commission v. Ruberoid Co., 343 U.S. 470, 475-78 (1952).

As further relief, Paragraph III orders that for each instance in which McCormick wishes to avail itself of the "meeting

Analysis to Aid Public Comment

competition” defense of Section 2(b) of the Robinson Patman Act,¹ McCormick is required to contemporaneously document all information on which it bases its entitlement to the defense, and to retain such documentation in its files for five years after the lower price made to meet competition is no longer effective. This provision is “fencing-in” relief² that should ensure the existence of a reliable evidentiary basis in future instances where McCormick invokes the defense.

In addition to these principal relief provisions, the Consent Order requires that McCormick distribute a copy of the Order to all officers, employees, brokers, and agents of its operating divisions involved in the sale of products covered by the order, and in the future to new employees, brokers, and agents. Order, ¶ IV. McCormick is required to inform the Commission of corporate changes that may affect its compliance obligations under the Order (Order, ¶ V), and to file reports concerning its compliance under the Order (*id.*, ¶ VI). The term of the Order is twenty years (*id.*, ¶ VII); the obligations under ¶ III to document the “meeting competition” defense and under ¶ VI to file annual compliance reports extend for ten and five years, respectively.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.

¹ Section 2(b) of the Robinson-Patman Act permits a seller to rebut a prima-facie case of price discrimination by showing that his lower price “was made in good faith to meet an equally low price of a competitor.” 15 U.S.C. §13(b).

² See Federal Trade Commission v. National Lead Co., 352 U.S. 419, 430 (1957).

Complaint

IN THE MATTER OF

MOTOR UP CORPORATION, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket D-9291; File No. 9723034
Complaint, April 8, 1999--Decision, May 3, 2000*

This consent order addresses representations by Respondents Motor Up Corporation, Inc., Motor Up America, Inc, and Kyle Burns, individually and as an officer of Motor Up Corporation, Inc. Regarding its products ability to improve performance over just motor oil. The order prohibits Respondent from making any engine treatment, fuel treatment, motor oil, grease, transmission fluid, or break fluid, and any additive intended to be used with or substituted for any of these products, unless they can support the claim with competent and reliable evidence. Respondent is also prohibited from misrepresenting in advertising the existence, contents, validity, results, conclusions, or interpretations of any studies on its product and its performance. In addition, Respondent is prohibited from providing false demonstrations, pictures, experiments, illustrations, or tests of an engine oil additive or similar product.

Participants

For the Commission: *Edwin Rodriguez, Jonathan Cowen, Robert M. Frisby, Mary K. Engle, Elaine D. Kolish, Keith B. Anderson, Gerard R. Butters, and Paul A. Pautler.*

For the Respondents: *Steven Fellman and Ira Kasdan, Galland, Kharasch, Morse & Garfinkle, and Edward Glynn, Venable, Baetjer, Howard & Civiletti.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Motor Up Corporation, Inc. and Motor Up America, Inc., corporations, and Kyle Burns, individually and as an officer of Motor Up Corporation, Inc. ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing

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to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Motor Up Corporation, Inc. is a Pennsylvania corporation with its principal office or place of business at 1530 Chestnut Street, Philadelphia, Pennsylvania 19102.
2. Respondent Motor Up America, Inc. is a Pennsylvania corporation with its principal office or place of business at 759 Federal Highway, Suite 312, Stuart, Florida 34994. Motor Up America, Inc. is a wholly owned subsidiary of Motor Up Corporation, Inc.
3. Respondent Kyle Burns is president of Motor Up Corporation, Inc. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporate respondents, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Motor Up Corporation.
4. Respondents have advertised, labeled, offered for sale, sold and distributed products to the public, including Motor Up No Oil Change Engine Treatment Concentrate ("Motor Up"), a motor oil additive.
5. 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.
6. Respondents have disseminated or have caused to be disseminated advertisements for Motor Up, including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements, demonstrations, and other visual depictions:

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A. A program-length television advertisement for Motor Up, entitled "Motor Up" (Exhibit A):

(1) Host: "COMPARED TO A LEADING MOTOR OIL, MOTOR UP HAS ELEVEN TIMES THE ANTI-WEAR AGENTS, AND ARE YOU READY FOR THIS, SEVENTY TIMES MORE EXTREME PRESSURE AGENTS WHICH DRAMATICALLY REDUCE WEAR AND TEAR UNDER SEVERE CONDITIONS." (p.5)

(2) "Settling/Adherence" Demonstration

Host: "WATCH WHAT HAPPENS WHEN WE ADD MOTOR UP!"

[Host pours Motor Up into transparent container filled with water and at the bottom of which lies a metal plate. Motor Up settles to the bottom of the container. Host removes the metal plate. Some of the product adheres to the plate.]

"IT ACTUALLY PENETRATES THE WATER. WHILE THE OTHERS ARE STILL FLOATING THERE ON THE SURFACE... TAKE A LOOK AT THIS ... HA, MOTOR UP NOT ONLY PENETRATES THROUGH THE WATER TO THE METAL, LOOK RIGHT HERE! IT'S PHYSICALLY BONDED ITSELF TO THE METAL EVEN THROUGH THE WATER...

IT'S THIS SLIPPERY BARRIER THAT PROTECTS YOUR ENGINE PARTS FROM CORROSION DAMAGE. NO WATER CAN GET TO THE METAL SO NO CORROSION DAMAGE CAN OCCUR.

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AND IT'S THIS SAME BARRIER THAT PROTECTS YOUR ENGINE DURING COLD STARTS WHEN IT SITS OVER NIGHT AND ALL THE OIL DRAINS OFF THE PARTS..." (p. 6)

- (3) Host: "WE WANTED SCIENTIFIC PROOF THAT MOTOR UP REDUCES WEAR AND TEAR ON ENGINE PARTS... IN FACT, ONE STUDY HAS SHOWN THAT MOTOR UP REDUCES WEAR AND TEAR IN YOUR ENGINE BY UP TO FIFTY PERCENT" (p. 9)
- (4) Host: "MOTOR UP REDUCES WEAR AND TEAR ON YOUR ENGINE. PROLONGING ITS LIFE.. YOU'RE ACTUALLY ADDING MILES TO THE LIFE OF YOUR CAR...

ONE TREATMENT, ONE TIME, WILL STAY IN YOUR ENGINE, EVEN BETWEEN OIL CHANGES BECAUSE MOTOR UP BONDS TO THE METAL INSIDE ... IT WONT (SIC) DRAIN OUT" (p. 9)

- (5) Announcer: "MOTOR UP . . . REDUCE[s] WEAR AND TEAR ON ENGINE PARTS, PROTECT[s] DURING COLD START UPS AND MUCH MORE." (p. 16, repeated at pp. 24-25)
- (6) Announcer: "ONE TREATMENT ... ONE TIME PROTECTS YOUR ENGINE FOR UP TO 50,000 MILES ... GUARANTEED! (p. 16)

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(7) "Disaster Strikes: Lost Oil Pan and Oil"
Demonstration

Announcer: "YOU'LL WITNESS UNBELIEVABLE HOME VIDEO TO **PROVE** THAT MOTOR UP CAN HELP PREVENT BREAKDOWNS." (p. 2)

Host: "IT'S ACTUAL HOME VIDEO THAT WAS SHOT FOR THE PRODUCERS AND WRITERS TO PREPARE FOR THIS PROGRAM. HOWEVER, IT BEST ILLUSTRATES HOW MOTOR UP CAN PROTECT YOU IF DISASTER STRIKES." (p. 19)

[A car raised up on a hydraulic car lift is in an automotive garage. The oil is drained from the car and the oil pan is removed. The car is started and allowed to run. Water is then sprayed on the exposed engine parts from beneath, and the engine continues to run.]

Participant: "LOOK AT THIS... THE ENGINE HAS NO OIL AND THESE GUYS CAN'T EVEN GET MOTOR UP OFF THE ENGINE PARTS BY SPRAYING IT WITH WATER... THIS ENGINE SHOULD HAVE BROKEN DOWN LONG AGO... BUT IT'S STILL RUNNING AFTER TREATING IT WITH MOTOR UP." (p. 20)

Participant: "GIVE IT ANOTHER BLAST OF WATER! IT DOESN'T GET MUCH WORSE THAN THAT ... I'D SAY THAT, THAT MOTOR UP IS CLINGING TO THE ENGINE! UNBELIEVABLE!" (p. 21)

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- (8) Host: "I'VE TOLD YOU HOW IT PREVENTS CORROSION IN YOUR ENGINE" (p. 29)
- (9) Announcer: "YOU'VE HEARD FROM THE LEADING PROFESSIONAL'S (SIC) HOW MOTOR UP . . . REDUCES WEAR AND TEAR ON ENGINE PARTS. PROTECTS DURING COLD START UPS! AND MUCH MORE." (p. 30)
- (10) Announcer: "UNLIKE OTHER ENGINE TREATMENTS, YOU JUST POUR MOTOR UP IN ANYTIME, AND IT WON'T DRAIN OUT. EVEN AFTER AN OIL CHANGE." (p. 31)

B. Motor Up Bottle Labeling (Exhibit B):

- (1) UNIQUE CHEMISTRY EXTENDS ENGINE LIFE
- (2) Gives your vehicle's engine deep penetrating protection against friction, wear and damage.
- (3) Won't wear off or drain out when you change oil.

C. Brochure sent to retail distributors (Exhibit C):

- (1) MotorUp Cuts Adhesive Wear As Much As 90.17%.
- (2) MotorUp Prolongs Engine Life.
- (3) MotorUp Protects Against Wear Even Without Oil.

D. Motor Up Web site on the Internet (Exhibit D):

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- (1) Prolongs Engine Life.
- (2) MotorUp . . . won't drain out even when you change the oil.
- (3) Scientific Proof. Extensive product testing in the U.S. and Europe shows that MotorUp reduces friction and wear by as much as 50%.
- (4) Ideal for newer engines (sic) too! Keep your car running great and protect it from power-robbing wear and tear - the leading cause of engine repairs.

7. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that:

A. Compared to motor oil alone, Motor Up:

- (1) Reduces engine wear;
- (2) Reduces engine wear by up to 50 percent;
- (3) Reduces adhesive engine wear by up to 90.17 percent;
- (4) Reduces engine wear during cold starts;
- (5) Provides more protection against engine wear in cold temperatures;
- (6) Extends the duration of engine life; and
- (7) Helps prevent engine breakdowns; and

B. Motor Up:

- (1) Prevents corrosion in engines;

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- (2) Will not drain out from the engine even when the oil is changed;
- (3) Protects engines for up to 50,000 miles; and
- (4) Protects against engine wear even without motor oil.

8. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that at the time they made the representations set forth in Paragraph 7, respondents possessed and relied upon a reasonable basis that substantiated such representations.

9. In truth and in fact, at the time they made the representations set forth in Paragraph 7, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that tests prove that, compared to motor oil alone, Motor Up reduces engine wear by up to 50 percent.

11. In truth and in fact, tests do not prove that, compared to motor oil alone, Motor Up reduces engine wear by up to 50 percent. Therefore, the representation set forth in Paragraph 10 was, and is, false or misleading.

12. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that:

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- A. The "settling/adherence" demonstration referred to in Paragraph 6, Subsection A.(2), proves, demonstrates or confirms that Motor Up prevents corrosion in engines; and
- B. The "disaster strikes" demonstration referred to in Paragraph 6, Subsection A.(7), proves, demonstrates or confirms that, compared to motor oil alone, Motor Up reduces engine wear and helps prevent engine breakdowns.

13. In truth and in fact:

- A. The "settling/adherence" demonstration referred to in Paragraph 6, Subsection A.(2), does not prove, demonstrate or confirm that Motor Up prevents corrosion in engines; and
- B. The "disaster strikes" demonstration referred to in Paragraph 6, Subsection A.(7), does not prove, demonstrate or confirm that, compared to motor oil alone, Motor Up reduces engine wear and helps prevent engine breakdowns.

Therefore, the representations set forth in Paragraph 12 were, and are, false or misleading.

14. 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.

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NOTICE

Notice is hereby given to each of the respondents hereinbefore named that the eleventh day of May, 1999, at 10:00 o'clock A.M., or such later date as determined by an Administrative Law Judge of the Federal Trade Commission, is hereby fixed as the time and the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the Administrative Law Judge shall file an initial decision containing an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal

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the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. If, however, the Commission should conclude from the record facts developed in any adjudicative proceedings in this matter that the proposed order provisions as to Motor Up Corporation, Inc. and Motor Up America, Inc., corporations, and Kyle Burns, individually and as an officer of Motor Up Corporation, Inc., might be inadequate to fully protect the consuming public, the Commission may order such other relief as it finds necessary or appropriate.

Moreover, the Commission has reason to believe that, if the facts are found as alleged in the complaint, it may be necessary and appropriate for the Commission to seek relief to redress injury to consumers, or other persons, partnerships or corporations, in the form of restitution and refunds for past, present, and future consumers and such other types of relief as are set forth in § 19(b) of the Federal Trade Commission Act. The Commission will determine whether to apply to a court for such relief on the basis of the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

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ORDER

DEFINITIONS

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

- 1. "Motor Up" shall mean Motor Up No Oil Change Engine Treatment Concentrate.**
- 2. "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.**
- 3. Unless otherwise specified, "respondents" shall mean Motor Up Corporation, Inc. and Motor Up America, Inc., corporations, their successors and assigns and their officers; Kyle Burns, individually and as an officer of Motor Up Corporation, Inc.; and each of the above's agents, representatives, and employees.**
- 4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.**

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Motor Up or any other product for use in a

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motor vehicle, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

- A. that, compared to motor oil alone, use of such product:
 - (1) Reduces engine wear;
 - (2) Reduces engine wear up to 50 percent or by any other quantity;
 - (3) Reduces adhesive engine wear by up to 90.17 percent or by any other quantity;
 - (4) Reduces engine wear during cold starts;
 - (5) Provides more protection against engine wear in cold temperatures;
 - (6) Extends the duration of engine life; or
 - (7) Helps prevent engine breakdowns; or
- B. that such product:
 - (1) Prevents corrosion in engines;
 - (2) Will not drain out from the engine even when the oil is changed;
 - (3) Protects engines for up to 50,000 miles; or
 - (4) Protects against engine wear even without motor oil; or
- C. regarding the performance, benefits, efficacy, attributes, or use of such product,

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unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Motor Up or any other product for use in a motor vehicle, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

III.

IT IS FURTHER ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of Motor Up or any other product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that any demonstration, picture, experiment, illustration or test proves, demonstrates or confirms any material quality, feature or merit of such product, or the superiority or comparability of the product in a material respect relative to any other product.

IV.

IT IS FURTHER ORDERED that respondents Motor Up Corporation, Inc. and Motor Up America, Inc., and their successors and assigns, and respondent Kyle Burns shall, for five (5) years after the last date of dissemination of any representation

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covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

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

V.

IT IS FURTHER ORDERED that respondents Motor Up Corporation, Inc. and Motor Up America, Inc., and their successors and assigns, and respondent Kyle Burns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that respondents Motor Up Corporation, Inc. and Motor Up America, Inc., and their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not

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limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent Kyle Burns, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that respondents Motor Up Corporation, Inc. and Motor Up America, Inc., and their successors and assigns, and respondent Kyle Burns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file

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with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

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IX.

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

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

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

IN WITNESS WHEREOF, the Federal Trade Commission has caused its complaint to be signed by its Secretary and its official seal to be hereto affixed at Washington, D.C. this eighth day of April, 1999.

By the Commission.

Complaint Exhibits

Exhibits

Exhibit A

"MOTOR UP"

TRT: 28.30

Complaint Exhibits

"MOTOR-UP"

INFOMERCIAL SCRIPT
TRANSCRIBED FINAL 3/6/96

*CONTENTS:

A. PAID DISCLAIMER:

THE FOLLOWING PROGRAM IS A PAID ADVERTISEMENT FOR MOTOR UP
BROUGHT TO YOU BY NATIONAL MEDIA CORPORATION

B. TEASE:

MALE V.O.:

WHAT IF YOU COULD IMPROVE THE WAY YOUR OLD POOR RUNNING
ENGINE SOUNDS IN JUST MINUTES'

AND WHAT IF IT WAS SO EASY THAT OVER ONE MILLION PEOPLE WITH
CARS JUST LIKE YOURS HAD (ALREADY DONE IT'

TESTIMONIAL MALE: ED SHELIG/DAUGHTER

"THE VALVES QUIETED DOWN, THE SLUGGISHNESS WENT AWAY. THE
HESITATION I MEAN IT'S LIKE DRIVING A NEW VEHICLE"

MALE V.O.:

AND WHAT IF ALL YOU HAD TO DO WAS SIMPLY POUR THIS POWERFUL
PRODUCT INTO YOUR ENGINE

THEN WATCH AND LISTEN TO IT TRANSFORM YOUR CAR'S MOTOR RIGHT
BEFORE YOUR EYES!

NO MORE SHAKING, KNOCKING OR HESITATION

Complaint Exhibits

TESTIMONIAL FEMALE:

"IT DOESN'T HAVE THAT KNOCKING SOUND, LIKE THE WHOLE ENGINE IS MOVING ... HA, HA"

MALE V.O.:

AND WOULDN'T IT BE GREAT IF THIS PRODUCT DID SOMETHING SO AMAZING TO PROTECT ENGINE PARTS THAT IT LEFT THE COMPETITION BEHIND.

WELL DON'T CHANGE THAT CHANNEL BECAUSE THIS PRODUCT IS FINALLY HERE INTRODUCING MOTOR UP THE NO OIL CHANGE ENGINE TREATMENT! AND TODAY YOU'LL SEE DEFINITE REASONS WHY YOUR NEW OR USED CAR NEEDS IT

YOU'LL EVEN SEE IF MOTOR UP CAN HELP THESE NASTY JUNKYARD ENGINES RUN BETTER'

TESTIMONIAL MALE 1: (JUNKYARD GUY)

"I'VE NEVER SEEN ANYTHING LIKE THAT WORK BEFORE . I'D LIKE TO SEE YOU DO IT"

TESTIMONIAL MALE 2: (JUNKYARD GUY)

"NOT IF THERE HERE IN THE JUNKYARD I DON'T THINK THERE GOING TO RUN ANY BETTER THAN THEY DID ON THE ROAD"

MALE V.O.:

YOU'LL WITNESS UNBELIEVABLE HOME VIDEO TO PROVE THAT MOTOR UP CAN HELP PREVENT BREAKDOWNS

AND YOU'LL HAVE A FRONT ROW SEAT TO SEE IF MOTOR UP CAN START AN ENGINE FROZEN IN A SOLID BLOCK OF ICE.

TESTIMONIAL MALE: (FREEZER)

Complaint Exhibits

"I TELL YOU MY CAR SPENDS ALL WINTER OUTSIDE ... I'M GOING TO LOOK INTO THIS".

MALE V.O.:

YOU'LL DISCOVER HOW MOTOR UP WILL MAKE YOUR OLD CAR SOUND LIKE NEW AND YOUR NEW CAR SOUND EVEN BETTER

TESTIMONIAL MALE:

"DON'T ASK ME HOW IT WORKS ... I DON'T KNOW ... ALL I'M TELLING YOU IS IT WORKS ... I'M NOT BEING PAID FOR THIS ... ALL I'M TELLING YOU IT WORKS"

MALE V.O.:

ALL NEXT ... ON MOTOR UP AMERICA

C. SEGMENT #1:

C. SHOW OPEN:, *HOST WELCOMES VIEWERS TO PROGRAM FROM GARAGE STUDIO SET

JIM HOWARD ON CAMERA/ON SET:

HELLO EVERYBODY AND WELCOME TO MOTOR-UP AMERICA, I'M JIM HOWARD ... NOW, IF YOU DRIVE A CAR WITH OVER 15 000 MILES ON IT ... IT MAY HAVE LOST ITS PEP ... MAYBE IT RUNS POORLY OR HOT, ... YOU MIGHT HEAR A SLIGHT KNOCKING SOUND ... OR MAYBE YOUR CAR IS JUST PLAIN TOUGH TO START

WHAT IF I TOLD YOU ... I'VE GOT A PRODUCT THAT WILL IMPROVE ALL OF THOSE CONDITIONS ... YOU ONLY HAVE TO USE IT ONE TIME ... AND ITS AS EASY TO USE AS POURING YOURSELF A GLASS OF WATER

BUT WAIT A MINUTE, LETS SAY YOU DRIVE A NEWER CAR, WOULDN'T IT BE GREAT IF YOU COULD KEEP IT SOUNDING JUST LIKE THE DAY YOU BOUGHT IT ... WELL ... NOW YOU CAN

Complaint Exhibits

BEFORE YOU DO ANYTHING ELSE TO YOUR CAR INTRODUCE YOUR ENGINE TO MOTOR UP ... **THE #1 ADVANCED ENGINE TREATMENT CONCENTRATE** THAT WORKS INSTANTLY AND KEEPS ON WORKING ..NO OIL CHANGE, NO MESS AND NO MECHANIC. MOTOR UP IS TOMORROWS ENGINE TREATMENT TODAY!

TO PROVE OUR POINT WE Poured MOTOR UP INTO THE POOREST RUNNING ENGINES WE COULD FIND AND GUARANTEED INSTANT IMPROVEMENTS. WATCH AND LISTEN TO WHAT AN ENGINE SOUNDS LIKE BEFORE ADDING MOTOR UP AND AFTER ADDING MOTOR UP

• **BEFORE AND AFTER RESULTS:**
SPLIT SCREEN OF BEFORE/AFTERS WITH LIVE SOUND

TESTIMONIAL MALE: BRIAN OAKLEY

"IT'S AMAZING HOW SOMETHING SO NEXPENSIVE CAN MAKE AN IMPROVEMENT SO QUICK AFTER TWO MECHANICS DO A CARBURETOR AND A TRANSMISSION HA HA HA"

• **BEFORE AND AFTER RESULTS:**
SPLIT SCREEN OF BEFORE/AFTERS WITH LIVE SOUND

TESTIMONIAL FEMALE: LORI STONEBACK

"IT SOUND REALLY GOOD IT'S NOT SHAKING THAT'S WHAT'S AMAZING ME IT'S NOT SHAKING ANYMORE.

COMMENTATOR V.O.

"AND DO YOU KNOW WHO FIXED IT?"

TESTIMONIAL FEMALE: LORI STONEBACK

"I DID". HA, HA, HA

• **BEFORE AND AFTER RESULTS:**
SPLIT SCREEN OF BEFORE/AFTERS WITH LIVE SOUND

TESTIMONIAL MALE: ROBERT RUMMEL

Complaint Exhibits

"LISTEN TO THAT MOTGR SHE'S PURRING LIKE A KITTEN NOW. BEFORE THERE WAS LIKE A LITTLE MISS SOUND TO IT. ACTUALLY IT SEEMS LIKE IT'S GETTING QUIETER AS IT'S RUNNING THERE"

• **BEFORE AND AFTER RESULTS:**

SPLIT SCREEN OF BEFORE/AFTERS WITH LIVE SOUND

TESTIMONIAL FEMALE: SHARON McCRACKEN

"IT OVERHEATS ALL THE TIME WHEN I STOP AT A RED LIGHT IT UMM IT THE STARTS **GETTING** HIGHER AND WHEN I GET IN A TRAFFIC JAM I GET REAL SCARED LIKE LETS MOVE, LETS **MOVE!** CAUSE IT GOES DOWN **AS** SOON AS I START DRIVING YOU KNOW SO ITS NOT DOING IT NOW HA HA"

TESTIMONIAL MALE: ROBERT RUMMEL

"WHAT IS THE THE NAME IS MOTOR-UP IT SHOULD BE UNBELIEVABLE MOTOR-UP"

JIM HOWARD ON CAMERA/ON SET:

IT'S NOT UNBELIEVABLE IT'S MOTOR UP AND IT WORKS THAT FAST WE PROVED IT TO THOSE PEOPLE IN LESS THAN FIVE MINUTES. COMPARED TO A LEADING MOTOR OIL, MOTOR-UP HAS ELEVEN TIMES THE ANTI-WEAR AGENTS, AND ARE YOU READY FOR THIS, SEVENTY TIMES MORE EXTREME PRESSURE AGENTS WHICH DRAMATICALLY REDUCE WEAR AND TEAR UNDER SEVERE CONDITIONS

CORROSION DEMO:

NOW I WANT TO SHOW YOU WHY MOTOR UP IS THE #1 CONCENTRATE AVAILABLE TODAY

IT WAS SPECIFICALLY DEVELOPED TO BE HEAVIER THAN WATER. WATER GETS INTO YOUR ENGINE THROUGH CONDENSATION AND WATER IS THE MAIN REASON FOR CORROSION ON YOUR ENGINE PARTS. (HOLDS UP PIECE OF METAL)

Complaint Exhibits

NOW WATCH THIS THE LEADING ENGINE TREATMENT ISN'T DESIGNED TO BE HEAVIER THAN WATER. SO IT ACTUALLY FLOATS ON THE SURFACE..SLICK 50.. THE SAME IT FLOATS.. RIGHT THERE ON TOP'

WATCH WHAT HAPPENS WHEN WE ADD MOTOR UP'

IT ACTUALLY PENETRATES THE WATER WHILE THE OTHERS ARE STILL FLOATING THERE ON THE SURFACE TAKE A LOOK AT THIS HA MOTOR UP NOT ONLY PENETRATES THROUGH THE WATER TO THE METAL LOOK RIGHT HERE! IT'S PHYSICALLY BONDED ITSELF TO THE METAL EVEN THROUGH THE WATER..

IT'S THIS SLIPPERY BARRIER THAT PROTECTS YOUR ENGINE PARTS FROM CORROSION DAMAGE NO WATER CAN GET TO THE METAL SO NO CORROSION DAMAGE CAN OCCUR

AND IT'S THIS SAME BARRIER THAT PROTECTS YOUR ENGINE DURING COLD STARTS WHEN IT SITS OVER N I GHT AND ALL THE OIL DRAINS OFF THE PARTS

TESTIMONIAL MALE: LCU WHELLER

"YOU KNOW IT USED TO BE I'D GO OUT AN A AFTER I GET THE CAR CHISELED OFF AND SCRAPPED OFF I'M READY TO GO . YOU KNOW. YOU JUMP IN AND A YOU TURN THE KEY AND THERE'S ALWAYS THAT MOMENT OF HESITATION IS IT GONNA GO?

WELL, SINCE I PUT MOTOR UP IN A YAT THOUGHT DOESN'T ENTER MY MIND I TURN THE KEY SHE CRANKS RIGHT OVER AND AWAY WE GO'

TESTIMONIAL MALE: RALPH CHRISTMAN

"I HAD . BEFORE I USED TO HAVE TROUBLE STARTING THE CARS IN THE MORNING AND NOW I DON'T EVER SINCE I HAD MOTOR UP, THIS IS THE SECOND YEAR AND THIS SECOND YEAR I'VE HAD NO PROBLEM"

TESTIMONIAL MALE: JUNIOR BURNET

"THERE IT IS' ONE CRANK BEFORE I HAD TO KEEP GIVING IT GAS BEFORE IT STARTED AND ONE CRANK AND IT STARTED RIGHT AWAY' SO

Complaint Exhibits

THAT'S PRETTY GOOD AT LEAST I'M SEEING RESULTS ALREADY FROM THAT STUFF YOU PUT IN!

TESTIMONIAL FEMALE: JUDITH EBERHARDT

"YEAH. IT'S NOT GONNA WAKE UP THE NEIGHBORS ANYMORE!, HA, HA, HA"

JIM HOWARD: ON CAMERA ON SET

NOW, UNLIKE THESE OTHER ADDITIVES WHERE YOU HAVE TO WAIT FOR AN OIL CHANGE ... WITH MOTOR UP, YOU JUST POUR IT IN AND IT WORKS INSTANTLY, IT'S LIKE A MECHANIC IN A BOTTLE.

MOTOR UP WORKS WITH ANY TYPE OF ENGINE GAS OR DIESEL IT WORKS WITH ALL THE TYPES OF OIL YOU ALREADY USING IN YOUR CAR REGULAR OR SYNTHETIC! IT EVEN WORKS IF YOU'VE ALREADY TRIED ONE OF THESE ENGINE TREATMENTS

NOW LOOK. ANY PROFESSIONAL WILL TELL YOU IF YOU CAN REDUCE FRICTION YOUR ENGINE WILL RUN SMOOTHER. QUIETER AND COOLER.

MALE V.O.:

SO WE ASKED LEADING PROFESSIONALS TO PROVE TO US THAT "MOTOR UP" PERFORMS INSIDE YOUR ENGINE

FIRST, WE ASKED THE MECHANIC OF THE YEAR TO PROVE THAT MOTOR UP WILL HELP A!! ENGINE RUN COOLER! HERE ARE THE RESULTS..

BEFORE MOTOR-UP. THE ENGINE TEMPERATURE WAS 122 DEGREES... AFTER ADDING MOTOR UP THE ENGINE TEMPERATURE DROPPED BY NINETEEN DEGREES!

TESTIMONIAL MALE: ED WATSON

"AND THE TEMPERATURE ACTUALLY DROPS IT'S RUNNING A LOT COOLER, THE TRUCK HAS A LITTLE BIT MORE HORSEPOWER. I'M RUNNING REGULAR GAS NOW, I DON'T HAVE TO RUN HIGH TEST IN IT ANYMORE

TESTIMONIAL MALE: ANTHONY ALTIER

Complaint Exhibits

"IT'S NOT, IT'S NOT OVER HEATED BY NOW IT WOULD OF OH THE TEMPERATURE WOULD HAVE BEEN UP AND THE THERMOSTAT WOULD HAVE PROBABLY BLOWN BY NOW' 'HEY ALL RIGHT' IT WORKS!"

MALE V.O.:

NEXT, WE ASKED THIS RACE CAR ENGINE TESTING FACILITY TO PROVE THAT MOTOR UP INCREASES THE HORSEPOWER OF THIS ENGINE.

AFTER POURING MOTOR UP IN, THE ENGINE SHOWED A DRAMATIC INCREASE IN HORSEPOWER.

TESTIMONIAL MALE: SANDY SHAMLIN

"I'VE BEEN DYNOING ENGINES FOR TWENTY TWO YEARS BUT I'VE NEVER SEEN AN INCREASE LIKE THIS"

COMMENTATOR V.O.:

WHAT DO YOU THINK?"

TESTIMONIAL MALE: KEN HESS

'OH YEAH, DEFINITELY' 'EXCELLENT' DEFINITELY, OH YEAH! A LOT MORE HORSEPOWER I CAN FEEL IT'

TESTIMONIAL FEMALE: LORETTA MIMCTE

THE PICK UP WAS, WAS THERE, IT WAS QUIET! IT WAS JUST LIKE A BRAND NEW CAR THAT I HAD! I DIDN'T EVEN KNOW I HAD A HUNDRED THOUSAND MILES ON IT!"

JIM HOWARD: OFF CAMERA

"SO HOW DID IT FEEL?"

TESTIMONIAL MALE: BOB HANLEY

'WELL THE ACCELERATION IS OUTSTANDING' REAL SMOOTH ALL THE WAY THROUGH THE TACK"

Complaint Exhibits

MALE V.O.:

FINALLY, WE WANTED SCIENTIFIC PROOF THAT MOTOR UP REDUCES WEAR AND TEAR ON ENGINE PARTS . IN FACT ONE STUDY HAS SHOWN THAT MOTOR UP REDUCES WEAR AND TEAR IN YOUR ENGINE BY UP TO FIFTY PERCENT ...

JIM HOWARD: ON CAMERA, ON SET

REDUCING WEAR AND TEAR, ISN'T THAT WHAT IT'S ALL ABOUT ... NOW. TAKE FOR INSTANCE THIS SNEAKER WOULDN'T IT BE GREAT IF THERE WAS A PRODUCT THAT YOU COULD PUT ON IT THAT WOULD PREVENT IT FROM WEARING OUT AND PROLONG IT'S LIFE . WOULDN'T YOU WANT IT ? I KNOW I WOULD.

MOTOR UP REDUCES WEAR AND TEAR ON YOUR ENGINE . PROLONGING ITS LIFE . YOU'RE ACTUALLY ADDING MILES TO THE LIFE OF YOUR CAR .

ONE TREATMENT . ONE TIME . WILL STAY IN YOUR ENGINE, EVEN BETWEEN OIL CHANGES . BECAUSE MOTOR UP BONDS TO THE METAL INSIDE . IT WON'T DRAIN OUT . AND THERE'S ABSOLUTELY NO RISK TO USING MOTOR UP . IF AN ENGINE FAILURE OCCURS IN AN ENGINE THAT'S BEEN TREATED WITH MOTOR UP . FOR UP TO THREE YEARS OR 50,000 MILES . WE'LL PAY FOR THE REPAIR UP TO \$10,000.00 .

JIM-HOWARD: VOICE OVER

LESS FRICTION MEANS LESS DAMAGING HEAT . A SMOOTHER, QUIETER RUNNING ENGINE AND SUPERIOR PROTECTION DURING COLD STARTS!

JIM HOWARD: ON CAMERA, ON SET!

WHAT WE DID NEXT GAVE COLD STARTS AN ENTIRELY NEW MEANING . WE TOOK TWO IDENTICAL RUNNING ENGINES . TREATED ONE WITH MOTOR UP AND THEN WE DID THE UNEXPECTED . WE FROZE THEM!

JIM HOWARD: IN FREEZER WITH AUDIENCE!

Complaint Exhibits

NOW, THIS THING SAYS PNEENN DEGREES BELOW ZERO RIGHT THAT'S JUST A NUMBER, THAT'S JUST A NUMBER LET ME SEE IF I CAN SHOW YOU HOW COLD IT REALLY IS. YOU GUYS GETTING THIS?

YOU GOTTA WATCH THIS THIS IS HOW COLD IT IS IN THIS ROOM!

IT JUST SHATTERED, THIS IS SOLID ICE! THESE ENGINES HAVE BEEN LOCKED IN THIS ICE FOR OVER TWENTY FOUR YOURS AND NOW WERE HERE FOR THE MOMENT OF TRUTH. NOW ITS TIME TO ACTUALLY START CHIPPING AWAY, FREE THE FAN AND FREE THE FAN BELT.

JIM HOWARD: V.0

AS THEY STARTED CHIPPING AWAY AT THE THE SOLID ICE, I WAS CURIOUS TO FIND WHAT THE CROWD TYOUGH!

TESTIMONIAL MALE:

"I USED TO LIVE IN MAINE IT HAD TWENTY BELOW TEMPERATURES AND I REMEMBER ONE MORNING WITH MY BROTHER WE SPENT HOURS ON IT AND WE NEVER DID GET IT STARTED TILL IT WARMED UP THAT DAY AND IT WAS TWENTY BELOW THAT DAY AND THAT THERMOMETER OVER THERE TELLS ME ITS SIMILAR IN HERE .SO IT'S NOT GOING TO START "

JIM HOWARD: OFF CAMERA

WHAT DO YOU THINK SIR IS THIS GOING TO WORK?

TESTIMONIAL MALE:

"NO, NO! I'VE, I'VE NEVER HAD TO DO THAT TO MY ENGINE AND I ALWAYS HAVE TROUBLE WITH IT STARTING IN THE WINTER TIME"

TESTIMONIAL FEMALE:

"I'VE HAD JUST PLAIN OLD SNOW MAKE MINE NOT RUN! SO THIS ICE NO WAY!"

TESTIMONIAL MALE:

Complaint Exhibits

"THIS IS A TEST . . . THIS IS A TEST!" JIM HOWARD OFF CAMERA "IT'S TOO COLD!"

TESTIMONIAL FEMALE:

"IT'S WAY TOO COLD .. WAY TO COLD!"

TESTIMONIAL MALE:

"IT WONT START..THE THING CAN'T EVEN TURN"

TESTIMONIAL FEMALE:

"IT'S COAGULATED' (STUCK)"

TESTIMONIAL MALE:

NO WAY"

JIM HOWARD:

IT'S COAGULATED(STUCK)

*GROUP LAUGHTER

JIM HOWARD:

IT LOOKS LIKE THESE GUYS ARE ABOUT READY HOW ABOUT IT? KEVIN IS IT FREE?

KEVIN ICEMAN:

"YES SIR IT'S READY TO ROLL"

JIM HOWARD:

ALL RIGHT LETS GIVE IT A SHOT THEN, WHAT WE NEED IS SOME BODY TO START THIS

TESTIMONIAL MALE:

Complaint Exhibits

"I'LL TELL YOU WHAT THAT ENGINE WON'T EVEN CRANK AND NEITHER WILL THAT ONE. IT WON'T EVEN GO ROAR,RRR!"

JIM HOWARD:

COME HERE, COME HERE, YOU'RE GOING PUT IT TO THE TEST! YOUR FROM MAINE YOU HAVE EXPERIENCE ON THIS HERE'S WHAT I WANT YOU TO DO!

TURN THAT KEY TO THE RIGHT AND PUSH THAT STARTER BUTTON

TESTIMONIAL MALE:

"DO THAT NOW?"

JIM HOWARD:

RIGHT NOW! GO AHEAD!

TESTIMONIAL MALE:

"RED LIGHTS ON ... WELL. IT CRANKED MORE THAN I THOUGHT IT WOULD."

JIM HOWARD:

KEEP CRANKING! WE'LL GIVE IT WE'LL IT A WHOLE CHANCE ... YOU KEEP CRANKING! YOU KEEP COME HERE FROM WYOMING COME HERE! YOU'RE ALSO EXPERIENCED AT THIS JUST TURN THAT KEY TO THE RIGHT AND PUSH THAT STARTER BUTTON HERE WE GO!

TESTIMONIAL FEMALE:

"ANYTIME?"

JIM HOWARD:

EVERYBODY HOLD YOUR BREATH!

GROUP EXHILARATION!

Complaint Exhibits

JIM HOWARD:

THERE IT IS INCREDIBLE' DO YOU BELIEVE THAT'

TESTIMONIAL FEMALE:

"I'M BUYING THAT STUFF AND I'M GIVING IT TO MY WHOLE FAMILY"

JIM HOWARD:

FIRST TIME, ISN'T THAT AMAZING! DO YOU BELIEVE THIS'

TESTIMONIAL FEMALE:

"I DON'T BELIEVE IT"

TESTIMONIAL MALE:

'I JUST DON'T BELIEVE THIS'

JIM HOWARD:

FROZEN IN A SOLID BLOCK OF ICE' IS THAT INCREDIBLE?

TESTIMONIAL MALE:

"THAT'S INCREDIBLE, I CAN'T BELIEVE IT!"

JIM HOWARD:

COME IN HERE YOU DIDN'T BELIEVE IT YOU WERE A SKEPTIC!

TESTIMONIAL MALE:

"YES, YES, NOT FROZEN IN ICE"

JIM HOWARD:

YOU NEVER BELIEVE ANY OF THIS STUFF'

Complaint Exhibits

TESTIMONIAL MALE:

"NO, NO, NO WAY!"

JIM HOWARD:

THIS IS THE FIRST TIME YOU'VE EVER SEEN SOMETHING'

TESTIMONIAL MALE:

"THIS IS, THIS IS INCREDIBLE, I MEAN I DON'T EVEN KNOW WHAT TO SAY"

TESTIMONIAL MALE:

"UNBELIEVABLE!"

JIM HOWARD:

YOU'RE SITTING HERE CRANKING THIS ENGINE GETTING NOWHERE

TESTIMONIAL MALE:

"IT DIED, IT DIED, ABSOLUTELY!"

JIM HOWARD:

IT DIED, YOU LOST POWER YOU COULDN'T EVEN CRANK IT ANYMORE!

TESTIMONIAL MALE:

"I COULDN'T DO ANYTHING WITH IT!"

JIM HOWARD:

AND ONE TURN RIGHT'

TESTIMONIAL FEMALE:

"YOU BETCHA' I WAS SURPRISED I WISHED I'D OF HAD IT IN MY TRUCK
LAST YEAR IT WOULD HAVE SAVED ME A CASE OF FROST BITE'

Complaint Exhibits

JIM HOWARD:

I HAVEN'T HEARD YOU SAY ANYTHING YOU'VE BEEN SITTING HERE
KEEPING YOUR HANDS WARM WHAT DO YOU THINK ABOUT IT!

TESTIMONIAL MALE:

"UNBELIEVABLE, I SAW IT WITH MY OWN EYES AND I STILL DON'T BELIEVE
IT, IT'S INCREDIBLE!"

JM HOWARD:

YOU SAW IT AND YOU STILL DON'T BELIEVE IT?

TESTIMONIAL MALE:

"I STILL DON'T BELIEVE IT!"

JIM HOWARD:

EVEN THOUGH IT HAPPENED RIGHT NOW!

TESTIMONIAL MALE:

"NO. NO! I TELL YOU, MY CAR SPENDS ALL WINTER OUTSIDE, I'M GOING TO
LOOK INTO THIS!"

JIM HOWARD: VOICE OVER

THE MOTOR UP ENGINE STARTED ON THE FIRST TURN WHILE THE OTHER
JUST DIED BUT I WASN'T FINISHED YET'

JIM HOWARD:

THE PRODUCER GOING TO KILL ME DRAIN THE OIL FROM THIS THING'
LETS DO IT!

D. CTA #1: COMMERCIAL INSERT

WHEN YOU WANNA GO? DOES YOUR CAR SAY NO'

Complaint Exhibits

THEN YOU NEED MOTOR UP THE NO OIL CHANGE ENGINE TREATMENT THAT PUTS THE GET UP AND GO BACK IN YOUR RIDE

MOTOR UP PERFORMS IN CARS, TRUCKS, BOATS, RV's NEW OR USED GIVING THEM A SMOOTHER, QUIETER, COOLER RUNNING ENGINE IN JUST MINUTES.

WHEN ADDING THESE ENGINE TREATMENTS ... YOU HAVE TO WAIT FOR AN OIL CHANGE AND SPEND MORE MONEY ... BUT WITH **MOTOR UP**, YOU SIMPLY POUR IT IN AND YOU'RE DONE ... SAVING YOU TIME, MONEY AND PROTECTING YOUR INVESTMENT INSTANTLY.

AND BECAUSE MOTOR UP SCIENTIFICALLY PENETRATES **THEN** BONDS TO THE METAL INSIDE YOUR ENGINE ... IT SIGNIFICANTLY REDUCES FRICTION AND HEAT

THE RESULT IS INCREASED HORSEPOWER, REDUCED WEAR AND TEAR ON ENGINE PARTS, PROTECTION DURING COLD START UPS, AND MUCH MORE

HEY, DON'T BE EMBARRASSED BY YOUR NOISY CLUNKER ... MAKE IT SOUND LIKE NEW AGAIN WITH MOTOR UP ... GET QUICK RESULTS LIKE THIS

***BEFORE AND AFTER RESULTS: "AUDIO FREQUENCY"**

TESTIMONIAL MALE: ED SCPELIG

"NO SMOKING, NO HESITATION ... IT STARTED RIGHT UP, IT DRIVES LIKE A BRAND NEW CAR!"

MALE V.O.:

MOTOR UP IS THE NEW GENERATION OF ENGINE TREATMENTS AND OVER ONE MILLION LUCKY PEOPLE HAVE ALREADY USED IT!

ONE TREATMENT ... ONE TIME PROTECTS YOUR ENGINE FOR UP TO 50,000 MILES ... **GUARANTEED!**

IN FACT ... WHEN YOU ORDER MOTOR UP YOU'LL RECEIVE THIS 50,000 MILES/3 YEAR LIMITED WARRANTY CERTIFICATE.

Complaint Exhibits

IF YOU HAVE A **BREAKDOWN** MOTOR UP WILL PAY FOR THE COVERED REPAIR UP TO **\$10,000** NOW THAT'S ENDURANCE INSURANCE

ACT NOW AND RECEIVE LUBE IT UP SPRAY ... TO SOLVE ALL YOUR STUCK AND RUSTY PROBLEMS..

TAKE THE SQUEAK OUT WITH JUST ONE SPRAY AS LUBE IT UP PROTECTS METAL SURFACES IN YOUR CAR, BOAT AND ALL AROUND YOUR HOUSE

HAS A LEAKY RADIATOR GOT YOU **HOT** .. DON'T SWEAT IT!

WE'LL INCLUDE **RESTORE RADIATOR** TREATMENT JUST POUR IT IN TO LUBRICATE AND CONDITION YOUR COOLING SYSTEM PREVENT CORROSION DAMAGE AND STOP RADIATOR LEAKS WHEN THEY HAPPEN

HEY, DON'T WAIT FOR A LEAK AND BE STRANDED LET RESTORE SEAL IT **SO YOU CAN KEEP ON TRUCKEN**

ARE YOUR WINDSHIELD WIPERS SKIPPING, CHATTERING AND STREAKING DON'T BUY NEW ONES BECAUSE YOU ALSO GET 303 WINDSHIELD WIPER TREATMENT TO MAKE YOUR WINDSHIELD WIPERS WORK LIKE NEW AGAIN

303 RECONDITIONS HARDENING RUBBER BLADES YOU'LL SEE CLEARER IN THE RAIN, MESSY SNOW AND ICE WON'T STICK TO YOUR BLADES. AND THEY'LL LAST LONGER

THIS AN EXCLUSIVE TV OFFER AND IT'S NOT AVAILABLE IN STORES!

YOU MAY EXPECT TO PAY OVER 70.00 DOLLARS BUT YOU WONT! YOU WONT PAY \$60.00 OR EVEN FIFTY DOLLARS YOU GET IT ALL FOR THE SPECIAL INTRODUCTORY PRICE OF JUST **\$29.95**.

AND MOTOR UP COMES WITH THIS PROMISE...

POUR THE ENTIRE **BOTTLE** INTO YOUR ENGINE IF IT DOESN'T RUN SMOOTHER OR SOUND QUIETER JUST RETURN THE COMPLETE PACKAGE AND WE'LL REFUND THE PURCHASE PRICE

Complaint Exhibits

AND WHEN YOU CALL ASK THE OPERATOR ABOUT THE SPECIAL *2
PRICE OFFER ON A SECOND BOTTLE OF MOTOR LIP

SO BEFORE YOU START IT UP ... JUST POUR IN MOTOR UP!

SPOT TIME: 00:02:47:25

TAG MALE V.O.

"PER NATIONAL MEDIA CUSTOMIZATION INSTRUCTIONS"

TAG TIME: 00:00:20:01

TRT COMMERCIAL 0003 0726

E. SHOW SEGMENT #2:

TESTIMONIAL FEMALE:

"THIS PRODUCT IS GREAT I WOULD DEFINITELY RECOMMEND THIS TO ALL
THE SURROUNDING AMBULANCE SERVICES"

TESTIMONIAL MALE:

"WHEN I REVVED IT UP I HAD A LITTLE KNOCK IN IT I COULDN'T FIGURE
OUT WHAT IT WAS IT WASN'T IN THERE BEFORE I DON'T EVEN HEAR IT
NOW! I DON'T HEAR IT AT ALL!"

TESTIMONIAL MALE:

"BUT TO JUST PUT IN ONE BOTTLE, AND ONE DAY LATER TO HAVE SUCH A
MARKED IMPROVEMENT I WOULD NOT HAVE BELIEVED THAT!"@

JIM HOWARD: ON CAMERA, ON SET:

WELCOME BACK TO MOTOR UP AMERICA YOU KNOW OUT ON THE
HIGHWAY DANGER CAN STRIKE IN AN INSTANT AND HELP CAN BE VERY
FAR AWAY NOW IF YOU CAN AFFORD ONE OF THESE EXPENSIVE
CELLULAR PHONES AND CALL FOR YELP YOU MIGHT BE OK BUT THE
PROBLEM STILL EXISTS WHY NOT REDUCE THE CHANCE OF PROBLEMS
AND HELP PROTECT YOURSELF AND YOUR FAMILY FROM BREAKDOWNS

Complaint Exhibits

NOW, WHAT YOU'RE ABOUT TO SEE WAS NOT INTENDED TO BE AIRED ON NATIONAL TELEVISION IT'S ACTUAL HOME VIDEO THAT WAS SHOT FOR THE PRODUCERS AND WRITERS TO PREPARE FOR THIS PROGRAM HOWEVER, IT BEST ILLUSTRATES HOW MOTOR UP CAN PROTECT YOU IF DISASTER STRIKES

JIM HOWARD: VOICE OVER

LISTEN TO THE ENGINE BEFORE ADDING *MOTOR UP!*

COMMENTATOR OFF CAMERA #1:

NOW THIS IS THE CAR, IT JUST STARTED UP AND WERE POINTING OUT AH NOTICE, HOW THAT ENGINES LIKE KINDA TREMORING THERE AH

I WOULD HAVE TO SORT OF OBJECTIVELY SAY THAT THE ENGINE IS RUNNING 'WELL NOT TREMBLING AS MUCH' AS YOU SEE

COMMENTATOR OFF CAMERA #2:

IT'S DEFINITELY RUNNING BETTER'

COMMENTATOR OFF CAMERA #1:

THE GENTLEMEN HERE HAVE DRIVEN IT FOR ABOUT TWENTY MINUTES' TO MAKE SURE THAT THE CAR IS COMPLETELY COVERED AND SATURATED NUMBER ONE IS WERE GOING TO DRAIN THE OIL AND A

COMMENTATOR OFF CAMERA #2:

THERE'S THE INSIDE OF THE ENGINE'

COMMENTATOR OFF CAMERA #1:

SO WHAT YOUR SEEING IS THE GUTS OF AN ENGINE RUNNING, WITH NO OIL AND NO OIL PAN NOTHING BUT MOTOR UP CLINGING TO THE METAL

COMMENTATOR OFF CAMERA #2:

WOW!

Complaint Exhibits

COMMENTATOR OFF CAMERA #1:

WERE GOING TO SPRAY THE UNDERNEATH OF THIS CAR WITH A BLAST OF WATER! ANYTIME YOU'RE READY'

COMMENTATOR OFF CAMERA #3:

THIS WON'T WORK | KNOW THAT'

COMMENTATOR OFF CAMERA #1:

GO FOR IT!

COMMENTATOR OFF CAMERA #2:

THATS UNBELIEVABLE 'VE NEVER SEEN ANYTHING LIKE T YOU WANT ME TO SPRAY IT WITH WATER?

COMMENTATOR OFF CAMERA #1:

GO AHEAD GO FOR IT'

COMMENTATOR OFF CAMERA #2:

ALL RIGHT!

COMMENTATOR OFF CAMERA #1:

NOW THE UNDERSIDE OF THIS CAR IS BEING DRENCHED'

JIM HOWARD: VOICE OVER

LOOK AT THIS THE ENGINE HAS NO OIL AND THESE GUYS CAN'T EVEN GET MOTOR UP OFF THE ENGINE PARTS BY SPRAYING IT WITH WATER THIS ENGINE SHOULD HAVE BROKEN DOWN LONG AGO BUT IT'S STILL RUNNING AFTER TREATING IT WITH MOTOR UP

COMMENTATOR OFF CAMERA #1:

Complaint Exhibits

GIVE IT ANOTHER BLAST OF WATER. IT DOESN'T GET MUCH WORSE THAN THAT ... I'D SAY THAT. THAT MOTOR UP IS CLINGING TO THE ENGINE! UNBELIEVABLE!

COMMENTATOR OFF CAMERA #2:

THESE ARE THE CONNECTING RODS, NORMALLY YOU WOULDN'T BE ABLE TO TOUCH THESE. YOU'RE RUNNING WITHOUT OIL THEY START TO CEASE. THEY GET UP HOT ENOUGH TO MELT THE METAL. TURN THE BEARING BLUE AND SPIT IT RIGHT OUT THE SIDE. LOOK AT THIS WE JUST SHUT IT OFF AND I'M NOT BURNING MYSELF ON ANYTHING'

JIM HOWARD: ON CAMERA, ON SET

PROTECTION LIKE THAT IS WHY MOTOR UP IS THE #1 ADVANCED ENGINE TREATMENT CONCENTRATE. HOW YOU PROTECT YOUR CAR TODAY WILL PREVENT IT FROM HAVING PROBLEMS TOMORROW.

MOTOR UP CONTAINS NO HARMFUL SOLIDS LIKE PTFES AND GRAPHITE THAT CAN BUILD UP AND CLOG YOUR OIL FILTER CAUSING EXPENSIVE REPAIRS.

JIM HOWARD: VOICE OVER

NOW THROUGHOUT THE PROGRAM I'VE SHOWN YOU HOW MOTOR UP REDUCES WEAR AND TEAR AND SAVES YOU MONEY, HOW IT INCREASES HORSEPOWER AND WHY ITS BETTER THAN THE COMPETITION. YOU'VE ALSO SEEN AND HEARD THE IMPROVEMENTS IN AN ENGINE AFTER ADDING MOTOR UP.

JIM HOWARD: ON CAMERA, ON SET

BUT WE WANTED TO GIVE MOTOR UP THE ULTIMATE BEFORE AND AFTER TEST. SO WE WENT LOOKING FOR THE WORST RUNNING ENGINES WE COULD FIND. AND YOU KNOW WHERE WE FOUND THEM? IN A JUNKYARD.

JIM HOWARD: VOICE OVER

SO WE TOLD THESE GUYS MOTOR UP WOULD MAKE THEIR JUNKYARD CARS SOUND LIKE NEW AGAIN.

Complaint Exhibits

TESTIMONIAL MALE: ED WATSON

"I DON'T I'VE NEVER SEEN ANYTHING LIKE THAT WORK BEFORE I'D LIKE TO SEE YOU DO IT"

COMMENTATOR OFF CAMERA:

HOW ABOUT YOU GUY WHAT DO YOU THINK'

TESTIMONIAL MALE: TOM WASHER

"NO DAMN WAY NO DAMN WAY"

TESTIMONIAL MALE: JOSEPH GIORDANO

"I DON'T THINK SO EITHER NOT IF= THERE HERE IN THE JUNKYARD I DON'T THINK THERE GOING TO RUN ANY BETTER THAN THEY DID ON THE ROAD' WE'LL SEE BUT THIS LITTLE BOTTLE YOUR TELLING ME IS GOING TO DO IT HUH' WE'LL SEE WHAT HAPPENS IF WE POUR IT IN THERE '

"WE'LL GIVE IT A SHOT SEE WHAT IT SOUNDS LIKE. MOTOR UP HUH"

***BEFORE AND AFTER: LIVE SOUND SPLIT SCREEN**

TESTIMONIAL MALE: JOSEPH GIORDANO

"SOUNDS MUCH BETTER. I'M SURPRISED I CAN'T BELIEVE IT!"

TESTIMONIAL MALE: ED WATSON

"YEAH. LET'S TRY ANOTHER LET'S TRY ANOTHER ONE"

COMMENTATOR OFF CAMERA:

ARE YOU SATISFIED WITH THIS ONE'

TESTIMONIAL MALE: ED WATSON

"AHH WE'LL SEE I GOT ANOTHER ONE FOR YOU TO CHECK OUT"

Complaint Exhibits

TESTIMONIAL MALE: JOSEPH GIORDANO

"THIS CAR SHAKES, RATTLES AND ROLLS IT COULDN'T SET OUT OF ITS OWN WAY A BICYCLE COULD BEAT IT!"

***BEFORE AND AFTER: LIVE SOUND SPLIT SCREEN**

TESTIMONIAL MALE: JOSEPH GIORDANO

"IT ACTUALLY REVS WITHOUT STALLING OUT HOLY BEEP THATS AMAZING THE CAR ALWAYS STALLS OUT EVERY TIME I GIVE IT GAS!

NOW THAT YOU PUT THAT TREATMENT IN IT'S NOT STALLING OUT NO MORE"

TESTIMONIAL MALE: ED WATSON

"IT KEEPS RUNNING WHEN YOU SHUT IT OFF ITS GOT BAD BAD TIMING AND A BAD PRE-IGNITION

ENGINES OLD AND WORN CUT'

TESTIMONIAL MALE: TOM WASHER

"THIS BEEP GOOD MAN THIS BEEP GOOD'

COMMENTATOR OFF CAMERA:

WHAT ARE YOU SAYING OVER THERE?

TESTIMONIAL MALE: JOSEPH GIORDANO

"EVERYDAY, I GET GASSED OUT BY THIS CAR CARBON. I MEAN I ALMOST PASS OUT FROM THE SMELL AND IT DIDN'T DO IT THIS TIME!"

COMMENTATOR OFF CAMERA:

WHAT HAPPENS WHEN YOU TURN IT OFF?

TESTIMONIAL MALE: JOSEPH GIORDANO

Complaint Exhibits

"OFF IT JUST KEEPS RUNNING AND RUNNING ON BY ITSELF CHO CHO CHO CHO CHO CHO IT TAKES LIKE ABOUT TWENTY MINUTES TO SHUT OFF IT NEVER SHUT OFF LIKE THAT BEFORE

TESTIMONIAL MALE: ED WATSON

"I'VE NEVER SEEN ANYTHING LIKE THIS YOU POUR IT IN AND ALL OF A SUDDEN IT-AUTOMATICALLY STARTS WORKING NEVER SEEN ANYTHING LIKE IT BEFORE]

THIS MOTOR IS SO QUIET NOW, I'M NOT ASHAMED TO SELL IT RIGHT NOW .NO'"

JIM HOWARD: ON CAMERA, ON SET

WHETHER YOU HAVE AN OLD CAR OR A NEW CAR YOU CAN MAKE IT RUN BETTER BY ORDERING MOTOR UP RIGHT NOW THIS IS YOUR OPPORTUNITY DON'T MISS IT

F. CTA #2: COMMERCIAL INSERT

WHEN YCU WANNA GO? DOES YOUR CAR SAY NO'

THEN YOU NEED MOTOR UP THE **NO OIL CHANGE** ENGINE TREATMENT THAT PUTS THE **CET** UP AND GO BACK IN YOUR RIDE

MOTOR UP PERFORMS IN CARS TRUCKS BOATS RV's NEW OR USED GIVING THEM A SMOOTHER QUIETER COOLER RUNNING ENGINE IN JUST MINUTES

WHEN ADDING THESE ENGINE TREATMENTS YOU HAVE TO WAIT FOR AN OIL CHANGE AND SPEND MORE MONEY BUT WITH MOTOR UP YOU SIMPLY POUR IT IN AND YOUR DONE SAVING YOU TIME MONEY AND PROTECTING YOUR INVESTMENT INSTANTLY

AND BECAUSE MOTOR UP SCIENTIFICALLY PENETRATES THEN BONDS TO THE METAL INSIDE YOUR ENGINE IT SIGNIFICANTLY REDUCES FRICTION AND HEAT

Complaint Exhibits

THE RESULT IS INCREASED HORSEPOWER, REDUCED WEAR AND TEAR ON ENGINE PARTS, PROTECTION DURING COLD START UPS, AND MUCH MORE.

HEY, DON'T BE EMBARRASSED BY YOUR NOISY CLUNKER. MAKE IT SOUND LIKE NEW AGAIN WITH MOTOR UP. GET QUICK RESULTS LIKE THIS:

'BEFORE AND AFTER RESULTS: "AUDIO FREQUENCY"

TESTIMONIAL MALE: ED SCHELIG

"NO SMOKING, NO HESITATION, IT STARTED RIGHT UP. IT DRIVES LIKE A BRAND NEW CAR!"

MALE V.O.:

MOTOR UP IS THE NEW GENERATION OF ENGINE TREATMENTS AND OVER ONE MILLION LUCKY PEOPLE HAVE ALREADY USED IT.

ONE TREATMENT, ONE TIME ~~PROTECTS~~ YOUR ENGINE FOR UP TO 50,000 MILES. GUARANTEED!

IN FACT, WHEN YOU ORDER MOTOR UP YOU'LL RECEIVE THIS 50,000 MILES/3 YEAR LIMITED WARRANTY CERTIFICATE.

IF YOU HAVE A BREAKDOWN, MOTOR UP WILL PAY FOR THE COVERED REPAIR UP TO \$10,000. NOW THAT'S ENDURANCE INSURANCE.

ACT NOW AND RECEIVE LUBE IT UP **SPRAY** TO SOLVE ALL YOUR STUCK AND RUSTY PROBLEMS.

TAKE THE SQUEAK OUT WITH JUST ONE SPRAY AS LUBE IT UP PROTECTS METAL SURFACES IN YOUR CAR, BOAT AND ALL AROUND YOUR HOUSE.

HAS A LEAKY RADIATOR GET YOU HOT? DON'T SWEAT IT!

WE'LL INCLUDE RESTORE RADIATOR TREATMENT. JUST POUR IT IN TO LUBRICATE AND CONDITION YOUR COOLING SYSTEM. PREVENT CORROSION DAMAGE AND STOP RADIATOR LEAKS WHEN THEY HAPPEN.

Complaint Exhibits

HEY, DON'T WAIT FOR A LEAK AND BE STRANDED. LET RESTORE SEAL IT
SO YOU CAN KEEP ON TRUCKEN

ARE YOUR WINDSHIELD WIPERS SKIPPING, CHATTERING AND
STREAKING...DON'T BUY NEW ONES. BECAUSE YOU ALSO GET 303
WINDSHIELD WIPER TREATMENT TO MAKE YOUR WINDSHIELD WIPERS
WORK LIKE NEW AGAIN.

303 RECONDITIONS HARDENING RUBBER BLADES. YOU'LL SEE CLEARER
IN THE RAIN, MESSY SNOW AND ICE WON'T STICK TO YOUR BLADES.. AND
THEY'LL LAST LONGER.

THIS AN EXCLUSIVE TV OFFER, AND IT'S NOT AVAILABLE IN STORES'

YOU MAY EXPECT TO PAY OVER 100 DOLLARS. BUT YOU WON'T! YOU
WOIN'T PAY \$60.00. OR ~~EVEN~~ FIFTY DOLLARS. YOU GET IT ALL FOR THE
SPECIAL INTRODUCTORY PRICE OF JUST \$29.95.

AND MOTOR UP COMES WITH THIS PROMISE.

POUR THE ENTIRE BOTTLE INTO YOUR ENGINE. IF IT DOESN'T RUN
SMOOTHER OR SOUND QUIETER. JUST RETURN THE COMPLETE PACKAGE
AND WE'LL REFUND THE PURCHASE PRICE.

AND WHEN YOU CALL. ASK THE OPERATOR ABOUT THE SPECIAL 1/2 PRICE
OFFER ON A SECOND BOTTLE OF MOTOR UP!

SO BEFORE YOU START IT UP. JUST POUR IN MOTOR UP!

SPOT TIME: 00:02:47:25

TAG MALE V.O.

"PER NATIONAL MEDIA CUSTOMIZATION INSTRUCTIONS"

TAG TIME: 00:00:20:01

TRT COMMERCIAL: 00:03:07:25

G. SEGMENT #3:

Complaint Exhibits

TESTIMONIAL MALE:

"THE CAR ACTUALLY RUNS OUT OF CHARACTER' IT REALLY RUNS' I'M REALLY AMAZED I WISH I COULD PUT THE CAMERA IN TYE CAR AND RUN IT UP THE HILL AND SHOW YOU' ITS JUST GREAT'

TESTIMONIAL FEMALE:

IT'S CALM...ITS HAPPY, IT PURRING, CAN I KEEP THIS?

JIM HOWARD: (INFREEZER),

WELCOME BACK TO MOTOR UP AMERICA WELL AGAINST MY BETTER JUDGMENT BUT AT THE INSISTENCE OF THESE PEOPLE IN THE [REDACTED] WITH ME WE HAVE ACTUALLY DRAINED THE MOTOR OIL FROM THIS ENGINE ENCASED IN ICE NOW ARE YOU READY JEFF

JEFF OFF CAMERA:

"READY!"

TESTIMONIAL FEMALE:

"READY!"

JIM HOWARD:

ALL RIGHT TURN THE KEY ON

TESTIMONIAL FEMALE:

"CONTACT!"

'GROUP REACTS EXHILARATION

JIM HOWARD:

THERE IT IS INCREDIBLE'

Complaint Exhibits

TESTIMONIAL FEMALE:

"WOW AMAZING!"

JIM HOWARD:

IT HAS NO OIL IN IT IT'S ENCASED IN SOLID ICE LOOK AT THAT DO YOU BELIEVE THAT'

TESTIMONIAL FEMALE:

"I CAN'T BELIEVE IT, IT'S AMAZING!"

JIM HOWARD:

"YOU DIDN'T THINK IT WOULD WORK DID YOU?"

TESTIMONIAL MALE:

'NO I DIDN'T I CAN'T BELIEVE THIS YOU LEFT IT IN HERE OVERNIGHT IT'S TWENTY BELOW IN HERE AND THE THING STARTS RIGHT UP YOU DRAIN THE OIL @UTAND IT JUST KEEPS RUNNING ITS UNREAL"

JIM HOWARD:

EXACTLY HOW ABOUT YOU KEVIN?

KEVIN THE ICEMAN:

"I'M IMPRESSED"

JIM HOWARD:

DID YOU LAY ANOTHER SIDE BET ON THIS ONE '

KEVIN THE ICE MAN:

"NO, NO NO I TOOK THE ATTITUDE I'M FROM MISSOURI SHOW ME AND YOU GUYS YOU DID IT'

Complaint Exhibits

JIM HOWARD:

HOW ABOUT YOU MAM!

TESTIMONIAL FEMALE:

"I CAN'T BELIEVE WHAT I'M SEEING RIGHT NOW' I THOUGHT IT WAS IMPOSSIBLE!"

JIM HOWARD:

THAT'S THE LIFE BLOOD OF YOUR ENGINE HE'S JUST DRAINED IT OFF IN A BUCKET! THE ONLY THING PROTECTING THAT ENGINE RIGHT NOW IS MOTOR UP!

TESTIMONIAL MALE:

I'D PUT IT IN IN A SECOND I TELL YOU THIS STUFF IS ABSOLUTELY AMAZING FIRST IT STARTS AND THE OTHER DOESN'T AND NOW IT STARTS WITHOUT THE OIL JUST FASCINATING

JIM HOWARD:

INCREDIBLE, FOLKS, YOU HAVE SEEN AND HEARD HOW MOTOR UP INSTANTLY IMPROVE YOUR CARS PERFORMANCE

YOU'VE HEARD, YOU'VE HEARD HOW IT REDUCES WEAR AND TEAR.

I'VE SHOWN YOU HOW IT REDUCES FRICTION AND INCREASES YOUR HORSEPOWER

I'VE TOLD YOU HOW IT PREVENTS CORROSION IN YOUR ENGINE AND BONDS WITH METAL SURFACES ALL OF WHICH WILL SAVE YOU HUNDREDS IN REPAIR BILLS AND PROTECT YOUR ENGINE SIMPLY BY POURING IT IN

LOOK IF YOU WATCHING THIS SHOW RIGHT NOW YOU PROBABLY DON'T HAVE MOTOR UP IN YOUR CAR BUT HERE'S HOW YOU CAN GET IT

DO YOURSELF A FAVOR BEFORE YOU START IT UP MOTOR UP

Complaint Exhibits

H. SHOW RECAP END TAG CLOSE:

MALE V.O.:

THIS IS YOUR FINAL OPPORTUNITY TO HAVE MOTOR UP THE NO OIL CHANGE ENGINE TREATMENT DELIVERED DIRECTLY TO YOUR DOOR FOR JUST \$29.95'

THIS IS AN EXCLUSIVE TV ONLY OFFER AND IS NOT AVAILABLE IN STORES'

WHY WAIT ... ACT NOW. BECAUSE EVERYDAY YOU TURN THE KEY TO START YOUR ENGINE, 365 A DAY YOUR CAR GOES WITHOUT THE PROTECTION AND BENEFITS MOTOR UP DELIVERS

TODAY YOU'VE WATCHED MOTOR UP HELP CLUNKING JUNKYARD ENGINES RUN BETTER'

YOU'VE HEARD FROM THE LEADING PROFESSIONALS HOW MOTOR UP INCREASES HORSEPOWER REDUCES WEAR AND TEAR ON ENGINE PARTS PROTECTS DURING COLD START UPS' AND MUCH MORE

TESTIMONIAL MALE: ED SHELIG

"THE SLUGGISHNESS WENT AWAY THE HESITATION I MEAN ITS LIKE DRIVING A NEW VEHICLE"

MALE V.O.:

AND RIGHT HERE ON THIS PROGRAM YOU'VE EVEN SEEN MOTOR UP START AN ENGINE FROZEN IN A SOLID BLOCK OF ICE

ENGINE START CROWD REACTION

JIM HOWARD:

THERE IT IS INCREDIBLE'

MALE V.O.:

Complaint Exhibits

CHANCES ARE YOUR VEHICLE IS ONE OF THE MOST IMPORTANT INVESTMENTS YOU'LL EVER MAKE! SO PROTECT IT WITH MOTOR UP TODAY! AND DON'T FORGET TO ASK THE OPERATOR ABOUT THE SPECIAL HALF PRICE OFFER ON A SECOND BOTTLE OF MOTOR UP!

UNLIKE OTHER ENGINE TREATMENTS YOU JUST POJR MOTOR UP IN ANYTIME AND IT WON'T DRAIN OUT EVEN AFTER AN OIL CHANGE

CALL THE NUMBER ON YOUR SCREEN NOW AND FOR JUST \$29.95 WE'LL SEND MOTOR UP TO YOUR HOUSE! MOTOR UP IS TOMORROW'S ENGINE TREATMENT YOU CAN GET TODAY!

OUR OPERATORS ARE READY TO HELP YOU! IF YOUR CAR COULD MAKE A PHONE CALL IT WOULD BE DIALING RIGHT NOW! SO ORDER MOTOR UP TODAY!

TESTIMONIAL MALE: JOSEPH GIORDANO

"IF YOU GUYS COULD SHOW ME ON THIS CAR CAUSE THIS CAR RUNS LIKE BEEP I MEAY THIS CAR IS THE BIGGEST PIECE OF BEEP IN THE YARD I DRIVE THIS CAR ALL THE TIME"

TESTIMONIAL MALE TOM SYASHER

"SOUNDS A HELL OF A LOT BETTER"

TESTIMONIAL MALE: JOSEPH GIORDANO

"IT SOUNDS MUCH BETTER! THE ENGINES NOT SHAKING AND CHOKING OUT LIKE IT USUALLY DOES"

TESTIMONIAL MALE: ED WATSON

"THERE'S A BIG DIFFERENCE IN THIS CAR THE MINUTE YOU PUT IT IN. IT'S SO MUCH MORE QUIETER"

TESTIMONIAL MALE: JOSEPH GIORDANO

Complaint Exhibits

"WELL, PROTECTION IS THE MOST IMPORTANT THING WHEN IT COMES TO AN ENGINE. SO I WOULD BUY ONE OF THOSE BOTTLE AND PUT IT IN THERE AND YOU'LL SEE A LOT LONGER LIFE IN YOUR MOTOR!"

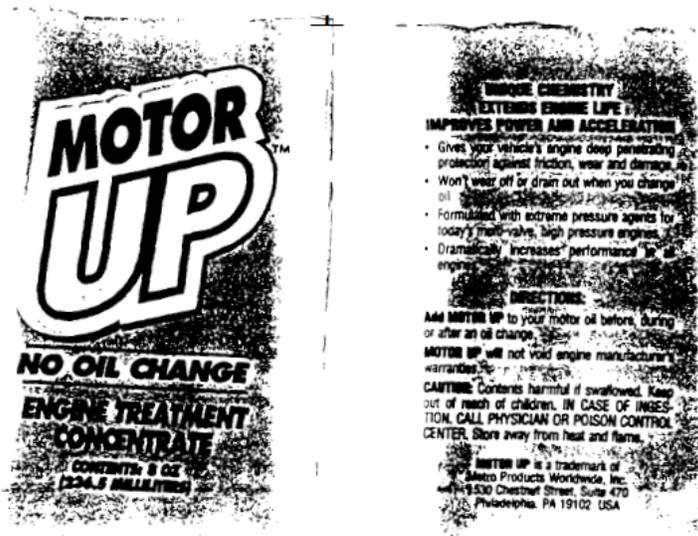
1. PAID ADVERTISEMENT DISCLAIMER:**MALEV.O.:**

THE PRECEDING PROGRAM WAS A PAID ADVERTISEMENT FOR MOTOR UP BROUGHT TO YOU BY NATIONAL MEDIA CORPORATION

TRT: 28:30

Complaint Exhibits

Exhibit B



Complaint Exhibits

Exhibit C

**MotorUp Has Mastered The Science Of Lubrication.**

Lubrication has a profound effect on wear. It separates the surfaces as they move relative to each other with a film of lubricant that can be sheared with low resistance without causing any damage to the surface. MotorUp has mastered the science of lubrication and produced a product that provides maximum protection against friction and wear and virtually eliminates the heat which is a byproduct of these functions. A summary of selected test results follows.

MotorUp Cuts Adhesive Wear As Much As 90.17%.

Gamma Wear Test: This test is designed to evaluate the adhesive wear experienced by test parts in a controlled environment. The dimension of the surface profile of a journal is measured to determine the extent of adhesive wear. The results are measured in "teeth advanced" or the number of positions that the equipment advances due to adhesive wear under gradually increasing loads.

At a load of 50 pounds, the addition of MotorUp to base oil decreased the number of teeth advanced by 90.17%, at 100 pounds MotorUp decreased the teeth advanced by 53.97% and at 150 pounds, the teeth advanced was decreased by 60.64%. These loads are far in excess of any that might occur in everyday automotive engine use.

MotorUp Prolongs Engine Life.

Another astonishing result of the Gamma Wear Test is the extension of service life provided by MotorUp. Service Life Index (SLI) is the average length of time a component can be expected to operate effectively without diminished performance. At 50 pounds MotorUp increased SLI by 10.17 times, at 100 pounds MotorUp increased SLI by 2.17 times and at 150 pounds MotorUp extended SLI by 2.54 times. That means that at 150 pounds, a component with an average SLI of one year would last for 2.54 years.

Thick Film Gamma Test: This test is similar to the Gamma test, except that the wear to the journal assembly is represented by weight loss instead of gear teeth advanced. The weight loss without MotorUp was determined to be 2,190 ug, whereas the weight loss with MotorUp was found to be 1,860 ug. Therefore, the use of MotorUp produced 15.07% less weight loss, a significant reduction.

MotorUp Protects Against Wear Even Without Oil.

Film Affinity Retention: This test determines the degree of wear protection that the MotorUp film on the surface of engine parts can provide when the lubrication system loses the base lubricating oil. In other words, how much the journal assembly is protected by the residual MotorUp fluid film on the component surface rather than a continuous lubricating oil stream.

A test with plain oil and oil with MotorUp was conducted. When the base oil was drained and only residual oil was left, 206 teeth were advanced at 100 pounds over a period of ten minutes. With MotorUp, when the treated oil was drained, only 1 tooth was advanced at the same load in the same period of time.

Listen To What Users Are Saying About MotorUp:

"Although I was somewhat skeptical at first, I have found MotorUp to be a very good product. Thanks for a great product."
Frank T., New York, NY

"Approximately a month ago I purchased a quart of your product. I am now back to buy a gallon. The reason is simple: your product works! I have an '83 Chevy pickup with a 305 engine and the engine starts much easier. It turns over much faster and runs much smoother."
Samuel G., Dallas, TX

"My motorcycle has a clutch that chattered considerably when starting from a dead start and the operating temperature would peg the needle when sitting at a stop light. I rode from San Leandro to Pleasanton in fourth gear running 10,500 on the tach. Not only did the temperature stay steady, but the engine ran better. I would strongly recommend MotorUp to anyone considering your product."
Ron E., San Leandro, CA

"After 313,000 miles of using your product the motor still performs like new without any mechanical problems. While turning the engine over to start it, it spins at very slow temperatures just as fast as if it were a summer day."
George J., San Antonio, TX

"After 100,000 miles of driving my 1979 Chevy, I can say that MotorUp definitely works. Even my wife remarked how smooth the engine runs now."
Paul H., San Antonio, TX

"I have a 1979 Chevy truck with a 305 engine. I have had problems with the engine running and better starting. My truck runs excellent now. I have used your product for several years and it has worked great for me."
Paul H., San Antonio, TX

"I have a 1979 Honda Civic. This car had problems with valves and 107,000 engine miles. It appeared to be broken. After using your product, the car now has 132,000 miles on it and the valves are still in shape. I like this car and neither choice was very attractive to me. The car now has 132,000 miles on it and the valves are still in shape."
Paul H., San Antonio, TX

Complaint Exhibits

Exhibit D



[ORDER MotorUp](#)

[MotorUp Technical Specs](#)

[MotorUp Home Page](#)

MotorUp Performance Promise
Satisfaction Guaranteed or your Money Back

Prolongs Engine Life	Increases Horsepower	Requires No Oil Change	Not PTFE Based
Smoothes			



[Frequently Asked Questions](#)



[Some Quick Facts](#)



[What Users Are Saying](#)



[How to Order MotorUp](#)

Why spend thousands of dollars on engine repairs? Treat your engine to MotorUp now!

More than one million clunkers all over the U.S. have had their performance restored by MotorUp, the "No Oil Change" Engine Treatment. Just one bottle of MotorUp quiets engine noise and smooths out rough running.

There's no need to change your oil!

Just add MotorUp to your crankcase and go. After that just follow the manufacturer's recommended oil change schedule and you'll see an immediate improvement.

Here's how MotorUp works.

MotorUp penetrates the metal parts in your engine - even through dirty oil. It seeks out and bonds to the metal inside your engine and won't drain out even when you change the oil.

Scientific Proof.

Extensive product testing in the U.S. and Europe shows that MotorUp reduces friction wear by as much as 50%.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having issued its complaint charging the respondents named in the caption hereof with violation of Section 5(a) of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorneys, 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 complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the complaint issued by the Commission.

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Motor Up Corporation, Inc. is a Pennsylvania corporation with its principal office or place of business at 123 South Broad Street, Philadelphia, Pennsylvania 19102.

2. Respondent Motor Up America, Inc. is a Pennsylvania corporation with its principal office or place of business at 759 Federal Highway, Suite 312, Stuart, Florida 34994. Motor Up America, Inc. is a wholly owned subsidiary of Motor Up Corporation, Inc.

Decision and Order

3. Respondent Kyle Burns is president of Motor Up Corporation, Inc. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporate respondents, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Motor Up Corporation.

4. 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**DEFINITIONS**

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

1. "Motor Up" shall mean Motor Up No Oil Change Engine Treatment Concentrate.

2. "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.

3. Unless otherwise specified, "respondents" shall mean Motor Up Corporation, Inc. and Motor Up America, Inc., corporations, their successors and assigns and their officers; Kyle Burns, individually and as an officer of Motor Up Corporation, Inc.; and each of the above's agents, representatives, and employees.

Decision and Order

4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any engine treatment, fuel treatment, motor oil, grease, transmission fluid, or brake fluid, and any additive intended for use with or as a substitute for such products, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

A. that, compared to motor oil alone, use of such product:

- (1) Reduces engine wear;
- (2) Reduces engine wear up to 50 percent or by any other quantity;
- (3) Reduces adhesive engine wear by up to 90.17 percent or by any other quantity;
- (4) Reduces engine wear during cold starts;
- (5) Provides more protection against engine wear in cold temperatures;
- (6) Extends the duration of engine life; or
- (7) Helps prevent engine breakdowns; or

B. that such product:

- (1) Prevents corrosion in engines;
- (2) Will not drain out from the engine even when the oil is changed;
- (3) Protects engines for up to 50,000 miles; or
- (4) Protects against engine wear even without motor oil, grease, transmission fluid or brake fluid; or

C. regarding the performance, benefits, efficacy, attributes, or use of such product,

Decision and Order

unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Motor Up or any other product for use in a motor vehicle, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

III.

IT IS FURTHER ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of Motor Up or any other product for use in a motor vehicle, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that any demonstration, picture, experiment, illustration or test proves, demonstrates or confirms any material quality, feature or merit of such product, or the superiority or comparability of the product in a material respect relative to any other product.

IV.

IT IS FURTHER ORDERED that respondents Motor Up Corporation, Inc. and Motor Up America, Inc., and their successors and assigns, and respondent Kyle Burns shall, for five (5) years after the last date of dissemination of any representation

Decision and Order

covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

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

V.

IT IS FURTHER ORDERED that respondents Motor Up Corporation, Inc. and Motor Up America, Inc., and their successors and assigns, and respondent Kyle Burns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

Decision and Order

VI.

IT IS FURTHER ORDERED that respondents Motor Up Corporation, Inc. and Motor Up America, Inc., and their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent Kyle Burns, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

Decision and Order

VIII.

IT IS FURTHER ORDERED that respondents Motor Up Corporation, Inc. and Motor Up America, Inc., and their successors and assigns, and respondent Kyle Burns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IX.

This order will terminate on May 3, 2020, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

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

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

Analysis to Aid Public Comment

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

By the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Motor Up Corporation, Inc, Motor Up America, Inc., and Kyle Burns, the principal who controls these corporations (referred to collectively as "Motor Up"). The agreement would settle a complaint by the Federal Trade Commission that Motor Up engaged in unfair or deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns representations made about Motor Up No Oil Change Engine Treatment Concentrate, an engine oil additive, in advertising. The administrative complaint alleged that Motor Up violated the FTC Act by disseminating ads that made unsubstantiated performance claims about the oil additive. The Complaint alleged that the respondents represented that, compared to motor oil alone, Motor Up: (1) reduces engine wear; (2) reduces engine wear by up to 50 percent; (3) reduces adhesive engine wear by up to 90.17 percent; (4) reduces engine wear during cold starts; (5) provides more protection against engine

Analysis to Aid Public Comment

wear in cold temperatures (6) extends the duration of engine life; and (7) helps prevent engine breakdowns. The Complaint also alleged that respondents represented that Motor Up: (1) prevents corrosion in engines; (2) will not drain out from the engine even when the oil is changed; (3) protects engines for up to 50,000 miles; and (4) protects against engine wear even without motor oil. The Complaint alleged that respondents represented that they had a reasonable basis for making these claims, but in fact did not possess competent evidence supporting the claims. The Complaint alleged that respondents claimed that tests prove that, compared to motor oil alone, Motor Up reduces engine wear by up to 50 percent without possessing tests that prove the claim. The Complaint also alleged that respondents represented that product demonstrations in their advertising proved, demonstrated, or confirmed that Motor Up prevents corrosion in engines and that, compared to motor oil alone, Motor Up helps prevent breakdowns and reduces engine wear, when in fact the demonstrations do not prove, demonstrate, or confirm these product attributes.

The proposed consent order contains provisions designed to prevent Motor Up from engaging in similar acts and practices in the future. Part I of the proposed consent order prohibits Motor Up from making any claims about any engine treatment, fuel treatment, motor oil, grease, transmission fluid, or brake fluid, and any additive intended for use with or as a substitute for these products, unless Motor Up can support the claims with competent and reliable evidence. Part I specifies certain specific claims and states that these and all other claims must be supported by evidence. It also states that the evidence required to support claims may be competent and reliable scientific evidence.

Analysis to Aid Public Comment

Parts II prohibits Motor Up from misrepresenting in advertising the existence, contents, validity, results, conclusions, or interpretations of any test or study dealing with the Motor Up engine oil additive or any other motor vehicle product.

Part III prohibits Motor Up from using false demonstrations. It prohibits Motor Up from representing that any demonstration, picture, experiment, illustration or test of the Motor Up engine oil additive or any other motor vehicle product proves, demonstrates or confirms the product's attributes unless the demonstration, picture, experiment, illustration or tests does in fact prove, demonstrate, or confirm the attributes. This provision applies to all demonstrations of product attributes, including comparisons with other products.

The proposed order also contains provisions regarding distribution of the order, record-keeping, notification of changes in corporate status, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

Complaint

IN THE MATTER OF

DURA LUBE CORPORATION, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket D-9292; File No. 962 3146
Complaint, April 29, 1999--Decision, May 3, 2000*

This consent order addresses Dura Lube Corporation's dissemination of advertisements making unsubstantiated claims regarding Super Dura Lube Engine Treatment and Advanced Dura Lube Engine Treatment ("Dura Lube"). Respondents represented that, compared to motor oil alone or oil treated with any other product, Dura Lube: (1) reduces engine wear; (2) reduces engine wear by more than 50%; (3) prolongs engine life; (4) reduces emissions; (5) reduces the risk of serious engine damage when oil pressure is lost; (6) improves gas mileage; and (7) improves gas mileage by up to 35%. Respondents also represented that product demonstrations in their advertising proved, demonstrated, or confirmed that, (a) compared to motor oil alone, Dura Lube reduces the risk of serious engine damage when oil pressures is lost, and (b) without Dura Lube, motor oil fails to protect automobile engines under hot running conditions, when in fact the demonstrations do not prove, demonstrate, or confirm these product attributes. Finally, the Complaint alleged that Respondents represented that former astronaut Charles "Pete" Conrad had endorsed the product based on a valid exercise of his expertise in the evaluation of automobile engine lubricants, when in fact Mr. Conrad did not have expertise in the evaluation and testing of automobile engine lubrication. The consent order requires Dura Lube Corporation, et al., to pay \$2 million in consumer redress and prohibits Respondents from making unsubstantiated representations regarding the performance, benefits, efficacy, attributes or use of any product for use in an automobile, or from misrepresenting the results of any study.

Participants

For the Commission: *Joel Brewer, Jonathan Cowen, Lemuel Dowdy, and Robert M. Frisby.*

Complaint

For the Respondents: *Lewis Rose, Arent Fox Kintner Plotkin & Kahn.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Dura Lube Corporation, American Direct Marketing, Inc, Howe Laboratories, Inc, Crescent Manufacturing, Inc, The Media Group, Inc, and National Communications Corporation, corporations; Herman S. Howard, individually and as an officer and director of the corporations; and Scott Howard, individually and as an officer and director of the corporations hereinafter sometimes referred to as "respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Dura Lube Corporation ("DLC") is a New York corporation with its principal office or place of business at 102-3 Hamilton Avenue, Stamford, Connecticut 06902. DLC coordinates the activities of the other corporate respondents herein, which include the manufacture, promotion and sale of Super Dura Lube Engine Treatment and Advanced Dura Lube Engine Treatment ("Dura Lube"), both purported automobile engine treatment products.

2. Respondent American Direct Marketing, Inc. ("ADM") is a Delaware corporation with its office and principal place of business located at 300 McCann Street, Nashville, Tennessee 37210. ADM is responsible for the direct marketing of Dura Lube.

3. Respondent Howe Laboratories, Inc. ("Howe") is a Delaware Corporation with its office and principal place of business located at 102-3 Hamilton Avenue, Stamford, Connecticut 06902. Howe is responsible for the distribution of Dura Lube to retailers.

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4. Respondent Crescent Manufacturing, Inc. (“Crescent”) is a New York corporation with its office and principal place of business located at 8800 South Main Street, Eden, New York 14057. Crescent manufactures and packages Dura Lube.

5. Respondent The Media Group, Inc. (“Media Group”) is a New York corporation with its office and principal place of business located at 102-3 Hamilton Avenue, Stamford, Connecticut 06902. Media Group provides advertising services for Dura Lube.

6. National Communications Corporation (“National”) is a Delaware corporation with its office and principal place of business located at 102-3 Hamilton Avenue, Stamford, Connecticut 06903. National provides advertising services for Dura Lube.

7. Respondent Herman S. Howard is or was at relevant times herein an officer of the corporate respondents. Individually or in concert with others, he has formulated, directed, or controlled the acts and practices of the corporate respondents, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of DLC.

8. Respondent Scott Howard is or was at relevant times herein an officer of the corporate respondents. Individually or in concert with others, he has formulated, directed, or controlled the acts and practices of the corporate respondents, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of DLC.

9. The aforementioned respondents cooperated and acted together in carrying out the acts and practices hereinafter set forth.

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10. Respondents have manufactured, advertised, promoted, labeled, offered for sale, sold, and distributed to the public various aftermarket motor oil additives (sometimes referred to as engine treatments) known by the product name Super Dura Lube Engine Treatment and Dura Lube Advanced Engine Treatment. These products consist of chlorinated paraffin and other chemicals suspended in motor oil.

11. 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.

12. Respondents have disseminated or have caused to be disseminated advertisements and labeling for Dura Lube, including but not necessarily limited to the attached Exhibits A through E. These advertisements contain the following statements, demonstrations, and other depictions:

A. A program-length television advertisement for Dura Lube-branded products (Exhibit A):

(1) **Host:** ...thousands of testimonials in writing...from people all across the country stat[e] how great Dura Lube really is. For instance, Minnesota. Newspaperman Gerald Snyder boosts his mileage and avoids a hundred dollar transmission repair by treating his car with Dura Lube. Los Angeles. Johnny Ishibashi's '68 Pontiac had flunked California's tough emissions test. But after just one bottle of Dura Lube, it passed with flying colors.... (Exhibit A, p. 2)

(2) **Video:** Mechanics manipulating remote controls of running automobile engine.

Host: We added Dura Lube to the oil of a huge race car engine and then drained all the oil out including the Dura Lube. Dura Lube works even if all your oil is gone.... Should the engine have

Complaint

seized already? Under normal circumstances. Severe engine damage would have happened by now.... Then, with no oil pressure we started revving that 500 horsepower engine up under full load. Got any load yet?

Mechanic: Oh, we've got a lot of load, Jim. Up to 120 horsepower, 160, 224, 254, 260, 292...

Excited Mechanic: I was ready to leave the building. I thought we were going to see the Fourth of July today and parts flying through that wall.

Mechanic: 302, 348...

Superscript: NO OIL PRESSURE!

Excited Mechanic: I was ready to run.

Mechanic: ...409, 453, 473

Second Excited Mechanic: I'm still speechless.

Mechanic: ...482, 520, 525.

Third Excited Mechanic: Oh, no. Unbelievable. I don't believe it. Oh, my God.

Superscript: A 500 HP Dura-Lube treated race car engine just ran successfully with no oil pressure under full load and high RPM...Unrehearsed!

Host: That test left professional mechanics shaking. But even with no oil at all, even with that big torture run up, the bearings in the Dura Lube-treated engine looked as good as new, as you can see for yourself. (Exhibit A, pp. 3-4)

(3) **Video:** Spectators around automobile engine mounted in open field; fire engine in background.

Host: You know, Dura Lube really is a miracle, and we're going to prove it again. We're going to empty all the oil out. Now, you would expect that, right? Guess what we're going to do next? We're going to take all the water out. No oil. No coolant in the engine.... When we told the authorities what

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kind of test we were planning, they insisted that we have a fire truck standing by. They didn't think any engine could withstand the kind of torture we had in mind. First, we started up a big six-cylinder engine. Then we drained out all the oil and that engine just kept humming along. No problem. But we wanted to top ourselves.... We drained that radiator dry as a bone and the engine just purred right along. All right. The oil's gone. Water's gone or just about gone. Why is this still running?

Superscript: Floyd Stivik—Lubrication Specialist

Floyd Stivik: Dura Lube. The quality of Dura Lube's what's happening, Jim. Dura Lube actually stays up there and does the lubrication for you. It doesn't leave your engine.

Host: So it's not treating the oil, it's treating the metal.

Stivik: That's exactly right. It's treating the metal....

Host (to Spectator): Do you know anything about engines?

Spectator: No, just put oil in when the little oil light goes on.

Host: Well, you always worry that one day you're going to come home from work and the wife tells you that she meant to tell you for the last three days the red light is on in the car. And the next thing you know, you've got major problems, major cost factors. With this you wouldn't have that problem. (Exhibit A, pp. 5-8)

(4) **Video:** Scenes of outer space; graphic illustrations of moving parts in automobile engine.

Announcer: Introducing Dura Lube. The world's first space age all-purpose lubricant that virtually eliminates friction like nothing on earth. In space there is no friction, but inside your engine friction drags on every moving component generating heat,

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wear and tear, causing poor fuel economy, more pollution, even engine breakdown.

Superscript: FRICTION CAUSES: Heat! Wear! Poor Fuel Economy! More Pollution! Engine Breakdown!

Announcer: Dura Lube radically reduces friction by penetrating metal surfaces to create a nonfriction shield that gives you a more efficient engine. With Dura Lube you'll have a cooler running engine and get more miles per gallon, more horsepower with less pollution and a quieter ride.

Superscript: DURALUBE Cooler Engine! More MPG! More Horsepower! Less Pollution! Quieter Ride! Much Less Wear!

Announcer: You'll eliminate the damage caused by cold starts saving you hundreds if not thousands of dollars.

Superscript: DURALUBE You'll save hundreds of dollars, if not thousands!

Announcer: Nothing compares to Dura Lube because it treats the metal, not the oil.

Superscript: Treats the metal, not the oil.

Announcer: In fact, the higher the temperature and pressure the better it performs. Dura Lube eats the heat and saves the engine.

Superscript: Eats the heat! Saves the engine. Protects up to 50,000 miles!

Announcer: Just one bottle added to your engine's oil protects for up to 50,000 miles. (Exhibit A, pp. 15-16)

- (5) **Host:** ...Now, that was a torture test, not something we recommend. But NASCAR driver Steve Hansen experienced exactly that. He didn't mean to.

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Steve Hansen didn't intend to completely lose his oil pump in the middle of a big race, but it happened.

Superscript: It happened on August 7, 1993!

Video: Cars circling racetrack.

Hansen: During the feature race, I started right up front, second car on the outside, green light went on, floored the car wide open. My oil pressure dropped down to nothing. I had no oil pressure.

Superscript: Elko Minnesota September 11, 1993.

Hansen: At that time I thought to myself, well, I'm done. I'll pull off the track. But the motor still was running good. So I went for it. I figured if it's going to blow up, it's going to blow up. I continued to race strong. The oil light got brighter and brighter.... It wasn't knocking. It wasn't ticking. It was running strong. I finished a 15-lap race which isn't bad considering I had no oil and the motor was still running.... (Exhibit A, pp. 19-20)

- (6) **Host:** That's what Dura Lube can do in emergencies. Let's see what it's doing for folks day after day.

First Consumer Endorser: The car was overheating a lot and running hot and I put it right in the motor with the oil and not a problem since.

Superscript: Cools the engine!

Second Consumer Endorser: I used to have this exhaust problem, there would be this little cloud of smoke that was behind my car all the time. After I used Dura Lube it disappeared completely.

Superscript: Cleaner emissions!

Third Consumer Endorser: I used it in my own personal vehicle and I've noticed almost 40 to 45 percent increase in my fuel.

Superscript: More MPG!

Host: Oh, come on.

Complaint

Third Endorser: Really. Really. I usually fuel up once a week and now I'm doing it every two weeks. And I only go like five miles a day round trip.

Host: So you've got a routine.

Third Endorser: I've got a routine. Believe me, I've got a routine. Let me tell you. I can honestly say without a word of a lie that I've almost doubled the amount of time I can go on a tank of gas in my truck. (Exhibit A, pp. 20-21).

(7) **Host:** How can one product do so much? Breakthrough technology. And no one knows that better than astronaut Pete Conrad. You probably know him from his famous walk on the moon. But to Pete that's old news. Just recently he flight managed our nation's latest breakthrough, the Delta Clipper, the rocket ship blasts off and then it stops in mid-air. Now, this is like something out of Buck Rogers. Then it moves sideways. And then it lands, ready to take off again.

Superscript: Pete Conrad

Conrad: With Delta Clipper you have an old idea using today's technology that will allow low cost access to space. With Dura Lube, what can I say? I knew it was a real advance in engine lubrication. Now everyone knows it. Sure there were skeptics. Just like there were plenty of skeptics regarding the Delta Clipper idea, but now we know they're both winners. (Exhibit A, p. 22)

(8) **Host:** Just how is Dura Lube able to do all those things? Well, recently we got together with our lubrication specialist, Floyd Stivik. He showed me a simple demonstration of the secret to Dura Lube's success....

Complaint

Stivik: Dura Lube will actually go in and relieve that heat and pressure. That's saving oil, saving maintenance on the car, saving those engines, Jim.

Host: Especially the small cars.

Stivik: Especially small cars, Jim. Let me show you what we're going to do here. We have a piece of sheet metal. We're going to simulate an engine.

Host: I see this is flat.... What are you going to do?

Superscript: Perfectly level.

Stivik: We're going to...put in oil. Hand me some oil, Jim.

Host: Now, do you care which one?

Stivik: It doesn't make any difference. Dura Lube is completely compatible with all oil, Jim. Synthetics, naturals, it doesn't make any difference....

Video: Untreated oil heated on piece of sheet metal.

Stivik: ...We're going to see that actually it's going to start cooking down and it will actually move away from the flames.

Host: You can certainly see that it is spreading out.

Stivik: Spreading out and you can see it's starting to cook a little along this edge and moving away from the heat over here.... Now I'm going to pour some Dura Lube in here and we're going to see what happened.... Look at how it's going to travel. It's traveling towards that heat. Jim, it goes to the heat. That's what's really important. Dura Lube eats the heat and saves those engines. Look at that. Look at that moving to the heat. Isn't it amazing? Look what it's doing. It's going to come in and marry up to that old oil and do the lubrication job that's necessary on that engine. (Exhibit A, pp. 23-25)

- (9) **Announcer:** Just look at this heat and pressure test conducted by the Falex Corporation. Now, this

Complaint

independent laboratory found premium oil failing at 1,250 pounds. STP hit the failure mark and 1,750 pounds. Slick 50 fared a little bit better, but it too failed at 2,250 pounds. Now look at Dura Lube. It ran in the optimal temperature zone the whole day. Dura Lube ran off the chart.

Superscript: NO FAILURE

Superscript: Pete Conrad

Conrad: I insisted that they run that test. They did it and it passed with flying colors. (Exhibit A, pp. 25-26)

- (10) Host: You're cruising to the grocery store or something and your oil light comes on. Middle of the night, what are you going to do? Are you going to sit there and walk? If you have Dura Lube in your car, you're going to make it to your destination. (Exhibit A, p. 27)

B. Dura Lube Advanced Engine Treatment Container Box Labeling (Exhibit B)

- (1) Tested #1. Dura Lube Advanced Engine Treatment for gas and diesel engines saves fuel, improves performance, protects engine at start up, prolongs engine life. (Exhibit B, front panel)

Complaint

(2) **Pictured:** Conrad in space suit with NASA logo.

Text: Dura-Lube is the best lubricant I've ever seen. It's absolutely amazing! -- Charles "Pete" Conrad, International Dura-Lube spokesman.

- Captain United States Navy (retired)
 - Skylab 1: Commander; 1973
 - *Apollo XII: Commander; 1969
 - Gemini XI: Commander Pilot, 1966
 - Gemini V: Pilot, 1965
- *Executed the second lunar landing

(Exhibit B, side panel).

(3) **Pictured:** Chart of Falex Pin & V-Block test results. Text of caption explains chart as comparing results for "a leading motor oil," "a leading synthetic oil," Slick 50 and Dura Lube. All but the Dura Lube results show failure when load is increased.

Text: Dura-Lube dramatically reduces friction and wear, increases gas mileage and horsepower, makes starting easier, improves performance, and extends engine life.

Dura-Lube's micro-thin layer of bonded protection, however, safeguards vital engine components during these critical (cold start) periods, allowing engine parts to glide effortlessly against each other, reducing wear by more than 50%!

Dura-Lube contains none of the potentially harmful solid particles such as lead, silicone, molybdenum disulfide, PTFE, or graphite, which are found in other lubrication products. These ingredients can present a hazard to the environment

Complaint

and some can change tolerance in your vehicle's engine.

Dura-Lube's amazing formulation is the choice of professionals worldwide. It is used by taxi companies, police departments, and utilities to reduce fuel and maintenance costs, and to prolong engine life. Professional drivers choose Dura-Lube to protect their engines through the extreme conditions of auto racing, and because Dura-Lube increases horsepower, torque, compression, and fuel economy.

Dura-Lube contains NO chlorinated solvents, NO chlorinated esters, and NO ingredients listed as halogenated hazardous wastes by the U.S. E.P.A. (Exhibit B, back panel)

(4) **Headline:** Some Facts You Should Know

Text: Added to the engine of any car or truck, Dura-Lube dramatically reduces friction and wear, increases gas mileage and horsepower, makes starting easier, improves performance, and extends engine life.

[Dura-Lube] dramatically reduces friction and wear and allows your vehicle's engine to run smoother and cleaner.

Q: Can I use Dura-Lube if I've already treated my engine oil with another product?

A. Yes. You should notice an immediate improvement.

Q: Who tested Dura-Lube?

Complaint

A. Tests on Dura-Lube have been performed by the Falex Corporation, the world's largest manufacturer of friction and wear test equipment; by approved test facilities in the United States by numerous testing facilities in Europe, and by satisfied drivers all over the world who have traveled millions of trouble free miles using Dura-Lube.

Q: How long does Dura-Lube last?

A. Dura-Lube protects your vehicle's engine for up to 50,000 miles of normal driving.

C. Dura Lube Advanced Engine Treatment Bottle Labeling
(Exhibit C)

Dura-Lube Engine Treatment dramatically reduces friction and wear, increases gas mileage and horse power, makes starting easier, improves performance, and extends engine life. Dura Lube Engine Treatment protects engine up to 50,000 miles of normal driving.

D. Dura Lube Print Advertising (Exhibit D):

- (1) **Headline:** Save up to \$25 per month on gas...or it's free!
- (2) **Pictured:** Chart titled "Metal against metal pressure test." Caption explains chart as comparing results of extreme pressure tests for "Penzoil" [sic], "Quaker State," "Slick 50," "Marvel" and "STP." All but the Dura Lube results show failure when pressure up to 40 pounds is applied.
- (3) **Text:** Duralube will save you up to 35% on gasoline! -- and add thousands of miles to the life of your car's engine -- in just one treatment!

Complaint

- (4) Our new product actually saves you money on gas by improving the efficiency of your engine and increasing your gas mileage by 15, 25, even 35%.
- (5) The experts agree. We knew we'd have doubters, but we have proof on our side. In tests performed by the U.S. Government's Environmental Protection Agency DuraLube clearly increased gas mileage and cut down on harmful emissions. But we knew some people still wouldn't be convinced, so we contracted with another independent testing laboratory, and then another, and all agreed that DuraLube works.

E. Dura Lube Direct Response Advertising (Exhibit E)

(1) **Inset:** Picture of Conrad

Picture caption with quote: Charles "Pete" Conrad, Jr., International Dura Lube Spokesperson, Research and Development Specialist. "It's absolutely amazing! DURA LUBE passed the tests with flying colors."

- (2) **Text:** Dura Lube dramatically reduces friction and wear by penetrating metal surfaces to create a non friction shield and give you a better running engine. You'll get a smoother ride while eliminating the damage caused by cold engine starts.... In independent lab tests, 3 of the most popular lubricants failed, but DURA LUBE ran off the chart. The engineers couldn't get it to fail!

Complaint

(3) We've even test-raced DURA LUBE in a 500 horsepower engine without any oil and found that DURA LUBE's state of the art protection kept on working because DURA LUBE treats the metal, not the oil. DURA LUBE *eats the heat and saves the engine*. Just one bottle added to your engine's oil protects for up to 50,000 miles so your motor will run smoother and last longer. This means less maintenance, less breakdowns, and less repairs! DURA LUBE's secret formula contains no solids of any kind.

(4) **Pictured:** Graph comparing result of Falex Pin & V-Block test showing Dura Lube passing and other lubricants failing.

13. Through the means described in Paragraph 12, respondents have represented, expressly or by implication, that:

- A. Dura Lube does not contain any chlorinated compound.
- B. Dura Lube has been tested by the U.S. Environmental Protection Agency.

14. In truth and in fact:

- A. Dura Lube contains chlorinated paraffin, a chlorinated compound.
- B. Dura Lube has not been tested by the U.S. Environmental Protection Agency.

Therefore, the representations set forth in Paragraph 13 were, and are, false or misleading.

15. Through the means described in Paragraph 12, respondents have represented, expressly or by implication, that:

Complaint

- A. Compared to motor oil alone or motor oil treated with any other product, using Dura Lube:
1. Reduces engine wear.
 2. Reduces engine wear by more than 50%.
 3. Prolongs engine life.
 4. Reduces emissions.
 5. Reduces the risk of serious engine damage when oil pressure is lost.
 6. Improves gas mileage.
 7. Improves gas mileage by up to 35%.
- B. One treatment of Dura Lube continues to protect the engine for up to 50,000 miles.

16. Through the means described in Paragraph 12, respondents have represented, expressly or by implication, that at the time they made the representations set forth in Paragraphs 13 and 15, respondents possessed and relied upon a reasonable basis that substantiated such representations.

17. In truth and in fact, at the time they made the representations set forth in Paragraphs 13 and 15, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in Paragraph 16 was, and is, false or misleading.

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18. Through the means described in Paragraph 12, respondents have represented, expressly or by implication, that tests prove that:

- A. Compared to motor oil alone, using Dura Lube:
 - 1. Improves gas mileage.
 - 2. Improves gas mileage by up to 35%.
 - 3. Reduces emissions.
 - 4. Prolongs engine life.
 - 5. Reduces engine wear.
 - 6. Reduces the risk of serious engine damage when oil pressure is lost.
- B. One treatment of Dura Lube continues to protect the engine for up to 50,000 miles.

19. In truth and in fact, tests do not prove that:

- A. Compared to motor oil alone, using Dura Lube:
 - 1. Improves gas mileage.
 - 2. Improves gas mileage by up to 35%.
 - 3. Reduces emissions.
 - 4. Prolongs engine life.
 - 5. Reduces engine wear.
 - 6. Reduces the risk of serious engine damage when oil pressure is lost.

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- B. One treatment of Dura Lube continues to protect the engine for up to 50,000 miles.

Therefore, the representations set forth in Paragraph 18 were, and are, false or misleading.

20. Through the means described in Paragraph 12, including, but not necessarily limited to, the demonstrations in Exhibit A, respondents have represented, expressly or by implication, that:

- A. The demonstration consisting of running an automobile engine after draining the motor oil treated with Dura Lube, proves, demonstrates or confirms that, compared to motor oil alone, Dura Lube reduces the risk of serious engine damage when oil pressure is lost.
- B. The demonstration consisting of heating untreated oil on sheet metal and then treating it with Dura Lube proves, demonstrates or confirms that, without Dura Lube, motor oil fails to protect automobile engines under hot running conditions.

21. In truth and in fact:

- A. The demonstration referred to in Paragraph 20.A does not prove, demonstrate or confirm that, compared to motor oil alone, Dura Lube reduces the risk of serious engine damage when oil pressure is lost.
- B. The demonstration referred to in Paragraph 20.B does not prove, demonstrate or confirm that, without Dura Lube, motor oil fails to protect automobile engines under hot running conditions.

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Therefore, the representations set forth in Paragraph 20 were, and are, false or misleading.

22. Through the means described in Paragraph 12, including, but not necessarily limited to, the advertisements, labeling and promotional materials attached as Exhibits A-B and E, respondents have represented, expressly or by implication, that Charles "Pete" Conrad ("Conrad"), a former Naval aviator and NASA astronaut, has expertise in the evaluation and testing of automobile engine lubrication, and has conferred his endorsement of Dura Lube on the basis of an independent, objective and valid evaluation or test using procedures generally accepted in the field of automobile engine lubrication to yield accurate and reliable results.

23. In truth and in fact, Conrad does not have expertise in the evaluation and testing of automobile engine lubrication, and has not conferred his endorsement of Dura Lube on the basis of an independent, objective, and valid evaluation or test using procedures generally accepted in the field of automobile engine lubrication to yield accurate and reliable results. Therefore, the representations as set forth in Paragraph 22 were, and are, false and misleading.

24. 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.

NOTICE

Notice is hereby given to each of the respondents hereinbefore named that the third day of June, 1999, at 10:00 a.m. o'clock, or such later date as determined by an Administrative Law Judge of the Federal Trade Commission, is hereby fixed as the time, and Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580 as the

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place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the Administrative Law Judge, without further notice to you, to find

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the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. If, however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions as to Dura Lube Corporation, American Direct Marketing, Inc., Howe Laboratories, Inc., Crescent Manufacturing, Inc., and The Media Group, Inc., corporations; Herman S. Howard, individually and as an officer and director of the said corporations; and Scott Howard, individually and as an officer and director of the said corporations, might be inadequate to fully protect the consuming public, the Commission may order such other relief as it finds necessary or appropriate, including corrective advertising or other affirmative disclosure.

Moreover, the Commission has reason to believe that, if the facts are found as alleged in the complaint, it may be necessary and appropriate for the Commission to seek relief to redress injury to consumers, or other persons, partnerships or corporations, in the form of restitution and refunds for past, present, and future consumers and such other types of relief as are set forth in Section 19(b) of the Federal Trade Commission Act. The Commission will determine whether to apply to a court for such relief on the basis of the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

ORDER

Definitions

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

Complaint

“Dura Lube” shall mean the aftermarket motor oil additive known as Super Dura Lube Engine Treatment, Advanced Dura Lube Engine treatment, or any product of substantially similar composition marketed as a motor oil product.

“Motor oil product” shall mean a product for use in conjunction with or in place of fully formulated motor oil.

“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.

Unless otherwise specified, “respondents” shall mean Dura Lube Corporation, American Direct Marketing, Inc., Howe Laboratories, Inc., Crescent Manufacturing, Inc., The Media Group, Inc., and National Communications Corporation, corporations, their successors and assigns, and their officers, agents, attorneys, representatives, and employees; and Herman S. Howard and Scott Howard, individually and as officers of the corporations, whether acting directly or through any corporation, subsidiary, division, trust or other device, or any of them.

“Commerce” shall be as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of Dura Lube, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that:

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- A. Dura Lube contains no chlorinated compound or any harmful component.
- B. Dura Lube has been tested by the U.S. Environmental Protection Agency or meets the specifications, requirements or standards of any governmental or standard setting organization.

II.

IT IS FURTHER ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for use in any motor vehicle, in or affecting commerce, do forthwith cease and desist from:

- A. Making any representation, in any manner, expressly or by implication, that:
 - 1. Compared to motor oil alone or motor oil treated with any other product, using such product:
 - a. Reduces engine wear;
 - b. Reduces engine wear by any percentage, dollar or other figure;
 - c. Prolongs engine life;
 - d. Reduces emissions;
 - e. Reduces the risk of serious engine damage when oil pressure is lost;
 - f. Improves gas mileage;
 - g. Improves gas mileage by any percentage, miles per gallon, dollar, or other figure;

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2. One or any other number of treatments of such product reduces wear for 50,000 or any other number of miles; or,
 3. Regarding the performance, benefits, efficacy, attributes or use of such product, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.
- B. Misrepresenting, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

III.

IT IS FURTHER ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that any demonstration, picture, experiment, illustration or test proves, demonstrates or confirms any material quality, feature or merit of such product, or the superiority or comparability of the product in a material respect relative to any other product.

IV.

IT IS FURTHER ORDERED that, respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product, in or affecting commerce, shall cease and desist from representing, directly or by

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implication, that such product has been endorsed by a person, group or organization that is an expert with respect to the endorsement message, unless:

- A. The endorser's qualifications give the endorser the expertise that the endorser is represented as possessing with respect to the endorsement; and
- B. The endorsement is supported by an objective and valid evaluation or test using procedures generally accepted by experts in that science or profession to yield accurate and reliable results.

V.

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

- A. All labeling, packaging, advertisements and promotional materials setting forth any representation covered by this order;
- B. All materials that were relied upon to substantiate any representation covered by this order; and
- C. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control, or of which they have knowledge, that contradict, qualify, or call into question such representation, or the basis relied upon for the representation, including complaints and other communications with consumers, third-party dispute mediators, or governmental or consumer protection organizations.

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VI.

IT IS FURTHER ORDERED that:

- A. The corporate respondents and their successors and assigns shall notify the Federal Trade Commission at least thirty (30) days prior to any change in the corporate respondents that may affect compliance obligations arising under this order, including but not limited to dissolution, assignment, sale, merger or other action that would result in the emergence of a successor corporation, the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order, the proposed filing of a bankruptcy petition, or a change in the corporate name or address. *Provided, however,* that with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as practicable after obtaining such knowledge.

- B. Each of the individual respondents, for a period of ten (10) years after the date of issuance of this order, shall notify the Federal Trade Commission of the discontinuance of his current business or employment, or his affiliation with any new business or employment. The notice shall include the respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities.

All notices required by this Part shall be sent by certified mail to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

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VII.

IT IS FURTHER ORDERED that the corporate respondents and their successors and assigns and the individual respondents shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of this order. Respondents shall deliver this order to current personnel within thirty (30) days after the service of this order, and to future personnel within thirty (30) days after the person assumes such position and responsibilities.

VIII.

IT IS FURTHER ORDERED that respondents shall:

- A. Within thirty (30) days after the date of service of this order, send notice of this order by first class certified mail, return receipt requested, to each purchaser for resale of Dura Lube with which respondents have done business since January 1, 1994. The mailing shall not include any other documents;
- B. In the event that respondents receive any information that subsequent to its receipt of notice of this order any purchaser for resale is using or disseminating any advertisement or promotional material that contains any representation prohibited by this order, respondents shall immediately notify the purchaser for resale that respondents 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 which respondents receive any information that such purchaser for resale has continued to use any representation

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prohibited by this order after receipt of the notice required by subparagraph B of this part.

IX.

IT IS FURTHER ORDERED that respondents 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 signed statements obtained from persons or entities pursuant to part VII of this order;
- B. Copies of all notification letters sent to purchasers for resale pursuant to subparagraph A of part VIII of this order; and
- C. Copies of all communications with purchasers for resale pursuant to subparagraphs B and C of part VIII of this order.

X.

IT IS FURTHER ORDERED that respondents shall, within sixty (60) days after service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied or intend to comply with this order.

XI.

IT IS FURTHER ORDERED that this order will terminate twenty (20) years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an

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accompanying consent decree) in federal court alleging any violation of the order, whichever later occurs; *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 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 had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed at Washington, D.C. this twenty-ninth day of April, 1999.

By the Commission.

Complaint Exhibits

Complaint Exhibits

EXHIBIT A

1 //
2 //
3 //
4 //

5 The following program is a paid advertisement brought
6 to you by The Media Group.

7 Is there a breakthrough the oil companies may not
8 want you to know about? Magic in a bottle that could save
9 you hundreds of dollars on oil and gasoline?

10 This is unbelievable.

11 What do you think?

12 I wouldn't believe it if I didn't see it myself.

13 It's amazing. You drive through a puddle and your
14 car stalls. And this is a whole fire hose on it.

15 What do you think of it?

16 I can't believe it. I really can't believe it.

17 They're flooding this engine. It shouldn't be running.

18 I was amazed. I couldn't believe it.

19 I'm waiting for it to conk out. It just wouldn't.

20 [Clapping] If I didn't see it, I wouldn't believe it.

21 If I wasn't here, I wouldn't have believed it.

22 I wouldn't believe it if I didn't see it.

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1 I wouldn't believe it if I didn't see it. If I've heard
2 that line once, I've heard it a thousand times. Hi there, folks,
3 I'm Jim Caldwell. You know, since we went on the air with our
4 first show talking about Dura Lube, hundreds of thousands of you
5 have started adding it to your engine oil, your transmission
6 fluid, your power steering, your differential. Everywhere there's
7 a moving part, people are using Dura Lube.

8 Now, we knew that Dura Lube was truly a breakthrough
9 product, but we had no idea of the thousands of testimonials in
10 writing that we would receive from people all across the country
11 stating how great Dura Lube really is.

12 For instance, Minnesota. Newspaper man, Gerald
13 Snyder boost his mileage and avoids a hundred dollar
14 transmission repair by treating his car with Dura Lube.

15 Los Angeles. Johnny Ishibashi's '68 Pontiac had flunked
16 California's tough emissions test. But after just one bottle of
17 Dura Lube, it passed with flying colors.

18 New York. Barbara Wreck was ready to junk her whole car
19 when it kept stalling in the rain. But after using Dura Lube
20 spray, the problem absolutely disappeared. That one bottle ended
21 up saving her thousands of dollars.

22 Now, all this probably sounds a little bit too good to be
23 true doesn't it? If something was so good, wouldn't one of the
24 big oil companies come out with it? Well, think about it. Would

Complaint Exhibits

1 a big oil company want to put something on the market that would
2 save you so much money on gas and oil, plus make all of their
3 existing products obsolete? Would any big oil company want to
4 put something on the market that would allow an engine to run
5 without oil?

6 Well, if you saw our last show, you know that's exactly what
7 Dura Lube can do. We added Dura Lube to the oil in a huge race
8 car engine and then drained all the oil out including the Dura
9 Lube. Dura Lube works even if all your oil is gone. It's not
10 like other additives. It's a genuine breakthrough in
11 lubrication. Should the engine have seized already? Under
12 normal circumstances severe engine damage would have happened by
13 now. Already.

14 The Dura Lube obviously has attached itself to the engine
15 components and still protecting it.

16 Then with no oil pressure we started revving that 500
17 horsepower engine up under full load.

18 Got any load yet?

19 Oh, we've got a lot of load, Jim.

20 Up to 120 horsepower, 160, 224, 254, 260, 292.

21 I was ready to leave the building. I thought we were going
22 to see the Fourth of July today and parts flying through that
23 wall.

24 302, 348.

Complaint Exhibits

1 I was ready to run.
2 [Superscript: No oil pressure!]
3 409, 453, 473.
4 I'm still speechless.
5 482, 520, 525. Oh, no. Unbelievable. I don't believe it.
6 Oh, my God.
7 [Superscript: A 500 HP Dura-Lube treated race car engine just
8 ran successfully with no oil pressure under full load and high
9 rpm -- unrehearsed!]
10 That test left professional mechanics shaking. But even
11 with no oil at all, even with that big torture run up, the
12 bearings in the Dura Lube treated engine looked as good as new,
13 as you can see for yourself.
14 I saw it with my own eyes and there's more I can say about
15 that.
16 Logically, it's not possible to do what was just done.
17 It doesn't seem to be not when you think that the bearings
18 of the engine are suspended in oil and you just took away that
19 suspension totally from that crankshaft and that thing stayed
20 together.
21 Ever since that show, Dura Lube has been accepted around the
22 world, from England to France to Australia and Japan, no matter
23 what the people are using, no matter what kind of oil, whether

Complaint Exhibits

1 it's regular, premium or synthetic, Dura Lube simply turns it
2 into a super lubricant. Tomorrow's technology today.

3 But, you know, people got so excited about that big race
4 car-engine demonstration that they kind of missed the fact that
5 there is a Dura Lube formulated specifically for your
6 transmission. This will give you phenomenally smooth and easy
7 shifts and save you hundreds of dollars in costly repairs.

8 Now, check this out- Dura Lube spray. This does things that
9 no other lubricant even claims to do. It will protect your
10 electrical system against any kind of stall due to rain or
11 puddles or snow or ice. And of course, it will work on all those
12 little nooks and crannies like your roller blades. Let's say you
13 want them to spin faster. Or your door locks are frozen or maybe
14 your door hinges or you name it. This product works fantastic.

15 You know Dura Lube really is a miracle, and we're going to
16 prove it again. We're going to top ourselves folks. We're going
17 to take an engine and we're going to empty all the oil out. Now,
18 you would expect that, right? Guess what we're going to do
19 next? We're going to take all the water out. No oil. No
20 coolant in the engine. Then we're going to take this little
21 product right here, Dura Lube spray and we're going to do
22 something that they wouldn't even let us do unless there's a fire
23 engine standing by. In fact, it's exactly why people are saying
24 I wouldn't believe it -if I didn't see it. Watch this. We

Complaint Exhibits

1 gathered a bunch of folks in Suffolk County, Long Island,
2 mechanics, a few long time Dura Lube users, and some folks who'd
3 never even heard of the product. When we told the authorities
4 what kind of test we were planning, they insisted that we have a
5 fire truck standing by. They didn't think any engine could
6 withstand the kind of torture we had in mind.

7 First, we started up a big six cylinder engine. Then we
8 drained out all the oil and that engine just kept humming along.
9 No problem.

10 But we wanted to top ourselves. So we said we'd drain out
11 all the water as well.

12 Can you imagine? Now, your radiator's designed to cool the
13 engine, right? Well, sir, what's going to happen if you take the
14 water out of the radiator and you've already taken the oil out.
15 What do you think's going to happen?

16 I think it would seize, blow up, seize up, never run again.

17 Do you think Dura Lube works?

18 We're going to find out I think.

19 We drained that radiator dry as a bone and the engine just
20 purred right along.

21 All right. The oil's gone. Water's gone or just about gone.
22 Why is this still running?

23 [Superscript: Floyd Stevik -- Lubrication Specialist]

Complaint Exhibits

1 Dura Lube. The quality of Dura Lube's what's happening,
2 Jim. Dura Lube actually stays up there and does the lubrication
3 for you. It doesn't leave your engine.
4 So it's not treating the oil, it's treating the metal.
5 That's exactly right. It's treating the metal.
6 You guys get that? Stan, what do you think of that?
7 It's amazing. The push rods are still spinning round.
8 Nothing's seizing up. There's no noise coming from any place.
9 It's got me baffled so far, but I'm watching. I'm watching. I
10 want to see more of this.
11 What else do you want to see?
12 I just want to see how much longer this is going to run
13 before it starts clicking and before I hear some bearings
14 rapping.
15 This test, I mean, you can't deny the test. I mean, I saw
16 it for myself.
17 If I wasn't here, I wouldn't have believed it. Not at all.
18 Do you know anything about engines?
19 No, just put oil in when the little oil light goes on.
20 Well, you always worry that one day you're going to come
21 home from work and the wife tells you that she meant to tell you
22 for the last three days the red light is on in the car. And the
23 next thing you know you've got major problems, major cost
24 factors. With this you wouldn't have that problem.

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Complaint Exhibits

1 No coolant, no oil pressure. No problems. But you folks
2 ain't seen nothing yet.

3 This is nothing but pure old, good old drinking water. It
4 didn't come from Tennessee but it's great water. I'm going to
5 pour this in the distributor cap.

6 Now, wait a minute. Have you treated this with Dura Lube
7 yet?

8 Oh, it's a good idea. Wow.

9 Small detail.

10 I tell you what -

11 Now, what would have happened if you had not treated that?

12 I wouldn't have started.

13 Let me ask you what would happen if you took that
14 distributor, sir, and soaked it with water?

15 Never would have been able to start it up.

16 Why not?

17 Because you can't get water in there, electrical system.

18 What's wrong with getting water in the electrical system?

19 Electrical and water don't mix.

20 Electrical and water don't mix unless -- I'm sorry --

21 Your electricity bounces around instead of going through the
22 ignition wire to the spark plug. It would be like an explosion
23 instead of a pin point.

Complaint Exhibits

1 An explosion? Well, then here's a real test of Dura Lube's
2 protection.

3 Okay, what I'm going to do is I'm going to spray this cap
4 first.

5 Yep.

6 With protectant, with Dura Lube.

7 Get in here Paul. Let's get some witnesses to exactly what
8 he's doing.

9 Okay?

10 Okay.

11 Now I'm going to pour this cup of water in here.

12 Now, did you put enough in there?

13 I think so. Pour a cup of water in here, okay?

14 Hold it. Now, look at this. Can we have a drink of that?

15 Well, I wouldn't touch that one, but, yeah, it's just pure
16 water. Pure water. We're going to put that cap back on and see
17 if we can start this engine.

18 You're going to dump it out. Okay, so that thing is loaded,
19 just loaded with water.

20 All right. We're going to start it up now, Jim, with all
21 that water in the distributor cap.

22 Do you think this is going to start?

23 I'm skeptical.

24 No way.

Complaint Exhibits

1 No way?

2 It's not going to start.

3 Why not?

4 Too much water in there.

5 You'd think so wouldn't you? Just go around there and stand

6 there and wait. We're going to get your camera on the engine

7 here. Let's see what we're going to do, Jack. Oh, man. It

8 wants to turn over.

9 Oh, my. What do you think of that? What do you think of

10 that?

11 Fantastic, fantastic, unbelievable. I had an engine. As a

12 matter of fact, a guy sold me a car. Because every time it would

13 rain, the car wouldn't stop. This is unbelievable.

14 What do you think?

15 I wouldn't believe it if I didn't see it myself.

16 What do you think?

17 It's incredible.

18 Did you expect that to happen?

19 No oil, no water. I didn't expect that to happen.

20 Distributor cap full of moisture. What do you think, sir?

21 It's unbelievable to see how it repels all that water from

22 getting it into the electrical system like that.

23 That's exactly the word. It repelled. It repelled the

24 water. You're amazed, aren't you? What do you think?

Complaint Exhibits

1 No oil, no water, water in the distributor cap.
2 Next thing you'll be telling us you don't need gasoline to
3 run the thing.
4 Let's make sure that everybody here knows we're not just
5 talking about the crank case. Dura Lube. We've got a
6 transmission conditioner. The all purpose spray.
7 Yeah?
8 Can we spray the engine a little bit?
9 Oh, my gosh. Now, wait a minute. Hold it.
10 Should we leave the valve cover on or off? What do you
11 think?
12 Leave it off.
13 Yeah, leave it off.
14 You want to put water in the valve cover?
15 It'll work.
16 Oh, my gosh. I don't know what to say, folks.
17 Maybe I better put a little protection.
18 Yeah, just put a little something here. Come on. Come on.
19 We've got to give it a little hope here. You're going to spray
20 this with water. What do you think should happen?
21 I think the engine's going to die. I really do.
22 Is the engine going to die, Wayne?
23 I would say it would die almost instantly. I keep

Complaint Exhibits

1 looking around for an external oil source or water source. I
2 can't find it. I can't believe what's going on.
3 This is a heck of a legitimate test, isn't it?
4 It's 100 percent legitimate.
5 You're blown away aren't you?
6 I can't believe it. Like I said, I'm still looking for an
7 external oil source and more water from somewhere, but I can't
8 find it anywhere.
9 You think we're faking this?
10 No, it's not a fake, but I wouldn't believe it if I
11 didn't see it. It's amazing.
12 It's good stuff. All right. I guess we've got to try this. I
13 didn't know they were going to do this too. Here we go, folks.
14 Watch it. Here we go. Watch Floyd. Get the electrical. It's
15 still running. What do we think of this?
16 It's amazing. It's amazing.
17 Frank, get over here. I've got to get a couple of comments
18 from people.
19 It's amazing. You drive through a puddle and your car
20 stalls. And this is a whole fire hose.
21 What do you think of this?
22 I can't believe it. I really can't believe it. They're
23 flooding this engine. It shouldn't be running. It just
24 shouldn't be running.

Complaint Exhibits

1 What do you think, sir?

2 A little common sense, seeing is believing. I can't believe
3 it myself. I'm amazed. I'm still looking.

4 They're putting water down through the head, through the
5 cylinder heads, past the push rods, going into the oil. So
6 the oil should be in the pan and this thing is still running.
7 Water is a lubricant for cooling, but not as far as, not as far
8 as keepin' an engine running.

9 But for everyone who really believes in a product, there's
10 always someone who thinks you're trying to pull a fast one.

11 Can you pull the coil wire out to stall it? Just to see.

12 It will stop. It will kill it.

13 If you pull the coil wire, of course it's going to stop.

14 Right. It will stop. I just want to see if that's the
15 distributor.

16 I can hear his challenge. He wants you to prove that's
17 really the distributor cap. Can you do something here without
18 shocking yourself? What can you do?

19 I'd have to stop it, wouldn't I, to pull that coil?

20 Wayne, you're the expert. He wants -

21 It's going to run up the side, isn't it?

22 It should die right out, right.

23 You're not going to hurt yourself, right Floyd?

24 All right, folks. Proof's in the pudding. Are you sold?

Complaint Exhibits

1 Yes, I'm sold.

2 Oh, now watch. He's going to start it up again. He's going
3 to start it up again, folks.

4 Can other spray lubricants protect an engine from so much
5 moisture? No way. Just look at these independent tests. [Chart
6 inset] Dura Lube spray was one-third more effective than a
7 competing product, One Lube, when it came to moisture protection.
8 WD-40 did even worse. It was only one-eighth as effective as Dura
9 Lube spray. And that's why only Dura Lube spray can offer this
10 amazing guarantee. Your car will go in rain or snow or Dura Lube
11 will pay the tow. [Superscript: Dura-Lube Guarantee. Your car
12 will go in rain or snow or Dura-Lube will pay the tow! \$35 per
13 occurrence. Subject to terms and conditions.] That's a
14 guarantee. Dura Lube can protect a distributor cap full of
15 moisture. Only Dura Lube can stand up to a fire hose. The
16 others don't even make such claims.

17 You're pumping water up there and it's still running. It
18 shouldn't be. It shouldn't be. Does he walk on water too?
19 What's the story here? This is like the next best thing to
20 sliced bread. Really. Where did you find this stuff?

21 Introducing Dura Lube. The world's first space age all
22 purpose lubricant that virtually eliminates friction like nothing
23 on earth. In space there is no friction, but inside your engine
24 friction drags on every moving component generating heat, wear

Complaint Exhibits

1 and tear, causing poor fuel economy, more pollution, even engine
2 breakdown. [Superscript: Friction causes: Heat! Wear! Poor Fuel
3 Economy! More pollution! Engine breakdown!] Dura Lube
4 radically reduces friction by penetrating metal surfaces to
5 create a non-friction shield that gives you a more efficient
6 engine. With Dura Lube you'll have a cooler running engine and
7 get more miles per gallon, more horsepower with less pollution
8 and a quieter ride. [Superscript: DURALUBE Cooler engine! More
9 MPG. More horsepower! Less pollution! Quieter ride! Much less
10 wear!] You'll eliminate the damage caused by cold starts saving
11 you hundreds if not thousands of dollars. [Superscript: DURALUBE
12 You'll save hundreds of dollars, if not thousands!] Nothing
13 compares to Dura Lube because it treats the metal, not the oil.
14 [Superscript: Treats the metal, not the oil.] In fact, the
15 higher the temperature and pressure the better it performs.
16 [Insert: chart of torque pressure tests.] Dura Lube eats the
17 heat and saves the engine. [Superscript: Eats the heat! Saves
18 the engine!] Just one bottle added to your engine's oil protects
19 for up to 50,000 miles. [Superscript: Protects for up to 50,000
20 miles!]

21 And introducing Dura Lube spray. Has this ever happened to
22 you? A rainstorm -- even a small puddle stops you instantly.
23 But even a fire hose can't stop an engine once it has Dura Lube
24 protection. That's why you'll get this guarantee. Use Dura Lube

Complaint Exhibits

1 spray as directed, and if you ever get stuck in rain or snow,
2 Dura Lube will pay your tow.
3 And it does so much more. It protects anywhere you need
4 lubrication, door hinges, roller skates, power tools, anywhere
5 there's metal to metal contact. [Superscript: Protects anywhere
6 you need lubrication. Door hinges. Roller skates. Power tools.
7 Metal to metal contact.] And only one can of Dura Lube-spray
8 replaces these ten cans of the leading competition. So why
9 accept anything else? Order now and you'll receive Dura Lube
10 engine treatment. [Superscript: Engine] One bottle protects for
11 up to 15,000 miles. Dura Lube transmission treatment
12 [Superscript: Transmission.] to guard against fluid breakdown
13 and Dura Lube spray [Superscript: Spray], newly formulated, to
14 also protect against your electrical system -- guaranteed. Get
15 all the protection your car needs for only \$29.95. And if you'll
16 order now, we'll also include these blue shield sunglasses, a \$20
17 value, yours absolutely free. [Superscript: Free -- with order]
18 But wait. If you order two Dura Lube kits during this special TB
19 promotion, you'll receive this fabulous car care kit absolutely
20 free. [Superscript: Free -- with order] With color match --
21 covers scratches with the best shine in your car's own color.
22 Dura Shield to protect and restore leather and vinyl.
23 [Superscript: Protects and restores leather.] Glass shield for
24 clear vision through any weather. [Superscript: Clear vision

Complaint Exhibits

1 through any weather.] And fog shield, the fog eliminator.
2 [Superscript: The fog eliminator.] Another \$20 value, yours
3 free when you order two kits. [Superscript: Not available in
4 stores!] Dura Lube tomorrow's technology today. Here's how to
5 order. [Superscript: The program you are watching is a paid
6 advertisement for Dura-Lube.]

7 To order your Dura Lube system, have your credit card ready
8 and call 1-800-215-1500. Or send your check or money order for
9 \$29.95 plus \$6.99 for shipping and handling to Dura Lube, 300
10 McCann Street, Nashville, Tennessee 37210. Dura Lube provides
11 unequalled protection for your car's engine. So call now 1-800-
12 215-1500, and order today.

13 Welcome back. You know, I want you take a look at a
14 moment from our last show. [Superscript: July 1992].

15 If any oil or oil additive company can step forward and
16 prove through the same test that they have a better product than
17 Dura Lube, the Dura Lube Corporation will write a check for
18 \$100,000.

19 You know what's amazing about that challenge? Nobody
20 stepped forward to claim \$100,000. [Superscript: The challenge
21 ran over a year!] Oh, sure. A few of the big oil companies
22 asked for all the details of the test, but that's the last we
23 heard of them. We absolutely shut the competition down.

Complaint Exhibits

1 One test in our \$100,000 challenge was how long an engine
2 could run without any oil. Now, that was a torture test, not
3 something we recommend. But NASCAR driver Steve Hansen
4 experienced exactly that. He didn't mean to. Steve Hansen
5 didn't intend to completely lose his oil pump in the middle of a
6 big race, but it happened. [Superscript: It happened on August
7 7, 1993!]

8 During the feature race [Superscript: Elko, Minnesota
9 September 11, 1993], I started right up front, second car on the
10 outside, green light went on, floored the car wide open, my oil
11 pressure dropped down to nothing. I had no oil pressure. At
12 that time I thought to myself, well, I'm done. I'll pull off the
13 track, but the motor still was running good. So I went for it.
14 I figured if it's going to blow up, it's going to blow up. I
15 continued to race strong. The oil light got brighter and
16 brighter. I couldn't believe it. I kept going. The motor, it
17 wasn't knocking. I was figuring after three or four laps I could
18 start hearing a knock and it wasn't. It wasn't knocking. It
19 wasn't ticking. It was running strong. I finished a 15 lap race
20 which isn't bad considering I had no oil and the motor was still
21 running. I pulled into the pits. I could see that my pit crew -
22 - Cory, he was discouraged. He thought that I blew up the
23 engine.

Complaint Exhibits

1 I thought he was nuts, you know, I was getting mad because
2 he wasn't pulling off or nothing. But I guess he knew what he
3 was doing.

4 Cory just shook his head and I told him, I said, well, Dura
5 Lube did its job.

6 That's what Dura Lube can do in emergencies.

7 Let's see what it's doing for folks day after day.

8 The car was over heating a lot and running hot and I put it
9 right in the motor with the oil and not a problem since.

10 [Superscript: Cools the engine]

11 I used to have this exhaust problem, there would be this
12 little cloud of smoke that was behind my car all the time. After
13 I used Dura Lube it disappeared completely. [Superscript:
14 Cleaner emissions!]

15 I used it in my own personal vehicle and I've noticed almost 40
16 to 45 percent increase in my fuel. [Superscript: More MPG!]

17 Oh, come on.

18 Really. Really. I usually fuel up once a week and now I'm
19 doing it every two weeks. And I only go like five miles a day
20 round trip.

21 So you've got a routine.

22 I've got a routine. Believe me, I've got a routine. Let me
23 tell you. I can honestly say without a word of a lie that I've

Complaint Exhibits

1 almost doubled the amount of time I can go on a tank of gas in my
2 truck.

3 I had first gotten Dura Lube just before that big winter
4 storm we had that hit the whole East Coast. [Superscript:
5 Prevents stalls.]

6 The storm of the century?

7 The storm of the century is what they called it, yeah. And
8 I had some calls that were really far away. People really in
9 emergency situations that needed cab rides. A lot of cars
10 stalled out, but I just kept going. I made it through everything,
11 all kinds of puddles. I would go through the puddle saying here
12 we go, this is it. This is the end. And it just kept going.

13 I think it's fantastic because I had a car and in January
14 when we had the rainy season, every time it would rain, the car
15 would stay there for a week because it wouldn't move and I'd have
16 to wait for the sun to come out. [Superscript: Saves you money!]
17 All right. Now I see they had all this water poured on the car.
18 I could have saved thousands of dollars because I went out and
19 bought another car.

20 I lost an engine similar to this one because the oil filter
21 came off. [Superscript: Saves your engine] I lost the oil. The
22 light came on, but it was too late. The engine was gone. It
23 cost me a couple thousand dollars to get a new engine.

24 So Dura Lube can definitely save you money.

Complaint Exhibits

1 Yeah, it can save you a lot of money.

2 How can one product do so much? Breakthrough technology.

3 And no one knows that better than Astronaut Pete Conrad. You

4 probably know him from his famous walk on the moon. But to Pete

5 that's old news. Just recently he flight managed our nation's

6 latest break through, the DeltaClipper, the rocket ship blasts

7 off and then it stops in mid-air. Now, this is like something

8 out of Buck Rogers. Then it moves sideways. And then it lands,

9 ready to take off again. [Superscript: Pete Conrad]

10 With Delta Clipper, you have an old idea using

11 today's technology that will allow low cost access to space.

12 With Dura Lube, can I say? I knew it was a real advance in

13 engine lubrication. Now everyone knows it. Sure there were

14 skeptics. Just like there were plenty of skeptics regarding the

15 Delta Clipper idea, but now we know they're both winners.

16 Just how is Dura Lube able to do all those things? Well,

17 recently we got together with our lubrication specialist Floyd

18 Stevik. He showed me a very simple demonstration of the secret

19 to Dura Lube's success.

20 Everything's metal in an engine, Jim.

21 Right.

22 And this metal heats up. Every time it meets, it heats.

23 And it actually creates heat and wear inside an engine.

24 All right.

Complaint Exhibits

1 Dura Lube will actually go in and relieve that heat and
2 pressure. That's saving oil, saving maintenance on the car,
3 saving those engines, Jim.
4 Especially the small cars.
5 Especially small cars, Jim. Let me show you what we're
6 going to do here. We have a piece of sheet metal. We're going
7 to stimulate an engine.
8 I see this is flat here. [Superscript: Perfectly level]
9 Let's remove that. What are you going to do?
10 We're going to put some heat in here. We're actually going
11 to put in oil. Hand me some oil over there, Jim.
12 Now, do you care which one?
13 It doesn't make any difference. Dura Lube is completely
14 compatible with all oil, Jim. Synthetics, naturals, it doesn't
15 make any difference.
16 Here you go.
17 We're going to put a little bit of this oil right here in
18 the front, right over the top of that burner.
19 You want that right under the oil?
20 Yes, right-under the oil.
21 Right under the oil. It is now officially under.
22 There we go.
23 Is that high enough? You want it a little higher?
24 Put a little heat to it, Jim.

Complaint Exhibits

1 That is really going against that metal now. Okay, cooking.

2 We're going to watch that Jim. We're going to see that

3 actually it's really going to start cooking down and it will

4 actually move away from the flames.

5 You can certainly see that it is spreading out.

6 Spreading out and you can see it's starting to cook a little

7 along this edge and moving away from that heat over here.

8 Okay.

9 Now, I'm going to pour some Dura Lube in here and we're

10 going to see what happened. Now, you know this is perfectly

11 level.

12 Right.

13 Look at how it's going to travel. It's traveling towards

14 that heat. Jim, it goes to the heat. That's what's really

15 important. Dura Lube eats the heat and saves those engines.

16 Look at that. Look at that moving to that heat. Isn't that

17 amazing? Look what it's doing. It's going to come in and marry

18 up to that oil and do the lubrication job that's necessary on

19 that engine. Look at that. Look at that, Jim. Look at it --

20 it's still moving toward....

21 Now, let's take a look at that again. Look at the hot spot,

22 the-circle directly above the flame. The oil moves away from the

23 hot spot. You can see the circle it's leaving. But on this

24 totally level surface, Dura Lube goes towards the heat. It likes

Complaint Exhibits

1 heat. Dura Lube eats the heat. That's Dura Lube's secret.
2 Look, it's going right into the hot spot. Dura Lube eats the
3 heat caused by friction. Just look at this heat and pressure
4 test conducted by the Falex Corporation. [Insert: chart of
5 torque-pressure tests] Now, this independent laboratory found
6 premium oil failing at 1,250 pounds. STP hit the failure mark at
7 1,750 pounds. Slick 50 fared a little bit better, but it too
8 failed at 4,250 pounds. Now look at Dura Lube. It ran in the
9 optimal temperature zone the whole way. It never failed. Dura
10 Lube ran off the chart. [Superscript: No Failure]
11 I insisted that they run that test. [Superscript: Pete
12 Conrad] They did it and it passed with flying colors.
13 Then we decided to try a similar test ourselves, this time
14 pitting Dura Lube spray against three popular competitors.
15 First, a silicone spray made by Gunk.
16 Okay, we turn it. It's rotating now. We're going to put the
17 pressure on.
18 It was stopped dead at only five pounds of pressure as
19 measured on a simple scale. Then we tried the Teflon spray One
20 Lube made by Slick 50.
21 I believe that's probably plenty.
22 All right, let's try that.
23 We're going to do the same thing, Jim.

Complaint Exhibits

1 The result? Exactly the same, five pounds once again as you
2 can see. Now, you'd think WD-40 would outperform the rest.

3 We're going to apply the pressure again.

4 What have we got? The same place. In fact, it's a little
5 less. About four, four-and-one-half pounds, virtually the same
6 as the other two. Then came Dura Lube spray. We couldn't even
7 get it to stop. It ran right off the scale. That's just one
8 reason everybody's talking about Dura Lube. [**Superscript: Actual**
9 **elapsed time 46 seconds**]

10 You're cruising to the grocery store or something and your
11 oil light comes on. Middle of the night, what are you going to
12 do? Are you going to sit there and walk? If you have Dura Lube
13 in your car, you're going to make it to your destination.

14 Introducing Dura Lube. The space age lubricant that
15 radically reduces friction by penetrating metal surfaces to
16 create a non-friction shield. With Dura Lube your engine will
17 run cooler and get more miles per gallon, more horsepower with
18 less pollution and a quieter ride. [**Superscript: DURALUBE**
19 **Cooler engine! More mpg. More horsepower! Less pollution!**
20 **Quieter ride! Much less wear!**] And introducing Dura Lube spray.
21 Has this ever happened to you? A rainstorm, even a small puddle
22 stops you instantly. But even a fire hose can't stop an engine
23 once it has Dura Lube protection. That's why you'll get this
24 guarantee. Use Dura Lube spray as directed, and if you ever get

Complaint Exhibits

1 stuck in rain or snow, Dura Lube will pay your tow.
2 [Superscript: Dura-Lube Guarantee. Your car will go in rain or
3 snow or Dura-Lube will pay the tow! \$35 per occurrence. Subject
4 to terms and conditions.]
5 And it does so much more. It protects anywhere you need
6 lubrication, door hinges, roller skates, power tools, anywhere
7 there's metal to metal contact. [Superscript: Protects anywhere
8 you need lubrication. Door hinges. Roller skates. Power tools.
9 Metal to metal contact.] And only one can of Dura Lube spray
10 replaces these ten cans of the leading competition. So why
11 accept anything else? Order now and you'll receive Dura Lube
12 engine treatment. One bottle protects for up to 15,000 miles.
13 [Superscript: Dura-Lube contains no chlorinated solvents or
14 esters and no ingredients listed as halogenated wastes by USEPA.
15 CONTAINS NO SOLIDS!]
16 Dura Lube transmission treatment to guard against fluid
17 breakdown and Dura Lube spray, newly formulated, to also protect
18 your electrical system guaranteed. Get all the protection your
19 car needs for only \$29.95. And if you order now, we'll also
20 include these blue shield sunglasses, a \$20 value, yours
21 absolutely free. But wait. If you order two Dura Lube kits
22 during this special TV promotion, you'll receive this fabulous
23 car care kit absolutely free. With Color Match covers scratches
24 with the best shine in your car's own color. Dura Shield to

Complaint Exhibits

1 protect and restore leather and vinyl. [Superscript: Protects
2 and restores leather.] Glass Shield for clear vision through any
3 weather. [Superscript: Clear vision through any weather.] And
4 Fog Shield, the fog eliminator. [Superscript: The fog
5 eliminator.] Another \$20 value, yours free when you order two
6 kits. Dura Lube. Tomorrow's technology today. Here's how to
7 order. [Superscript: The program you are watching is a paid
8 advertisement for Dura-Lube]

9 To order your Dura Lube system, have your credit card ready
10 and call 1-800-215-1500. Or send your check or money order for
11 \$29.95 plus \$6.95 for shipping and handling to Dura Lube, 300
12 McCann Street, Nashville, Tennessee 37210. Dura Lube provides
13 unequalled protection for your car's engine. So call now. 1-800-
14 215-1500, and order today.

15 Get the electrical.

16 It's still running. What do you think of this?

17 It's amazing. It's amazing.

18 A little common sense, seeing is believing.

19 The preceding program was a paid advertisement for Dura Lube
20 sponsored by the Media Group.

21 //

22 //

23 //

24

Complaint Exhibits

Exhibit B



ADM001273

Complaint Exhibits

Exhibit C



Complaint Exhibits

Exhibit D

A REVOLUTIONARY NEW PRODUCT THAT WILL SAVE YOU MONEY ON GAS!

SAVE UP TO \$25 PER MONTH* ON GAS... or it's FREE!

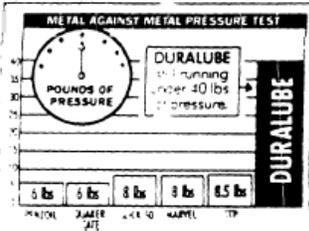


DURALUBE
Will Save You up to 35% on Gasoline!
—and Add Thousands of Miles
To The Life of Your Car's Engine—
in Just One Treatment



ONLY \$19⁹⁵ (good for 12 thousand miles)
SAVE — 2 Bottles for \$29.95

WE CHALLENGE THE OIL COMPANIES
We challenge the oil companies to match our results. We challenge them to offer a product like ours—they won't—and do you know why? Maybe because they're concerned about selling more gas, while our revolutionary product will **SAVE YOU GASOLINE AND ENGINE WEAR!**



DURALUBE WILL SAVE YOU AS MUCH AS 35%
A revolutionary new oil treatment helps you **save gas** and **FIGHT BACK** against the recent in-rease in gas prices. Oil embargoes, oil spills, New Taxes on Gas, Damgers to the environment, all pinch you, the consumer. And you had nowhere to turn! Well now you do! Our new product actually saves you money on gas by improving the efficiency of your engine and increasing your gas mileage by 15, 25, even 35%!

THE EXPERTS AGREE
We knew we'd have doubters, but we have the proof on our side. In tests performed by the U.S. Government's Environmental Protection Agency DuraLube clearly increased gas mileage and cut down on harmful emissions. But we knew some people still wouldn't be convinced, so we contracted

with another independent testing laboratory... and then another and all agreed that **DuraLube Works!**

AND ALL YOU HAVE TO DO IS ADD ONE 8 oz. BOTTLE TO YOUR ENGINE.
DuraLube, the car treatment of the 90's works in your engine to reduce friction, reduce harmful emissions, increase engine power, and **SAVE YOU MONEY ON GAS!** DuraLube is an oil-soluble heat-stable hydro-carbon compound containing patented properties that lubricate metal surfaces to decrease wear and corrosion, preserve the metal parts "O" rings, seals and gaskets in your engine by adding a durable lubricant seal right to the metal surfaces in your engine.

*As per report on file

30 Day MONEY BACK GUARANTEE

DURALUBE, Dept.
300 McCann St. Nashville, TN 37210

I want to save on gas and protect my car's engine against wear.
Send me one 8 oz. bottle of DuraLube for only \$19.95 plus \$3.00 shipping and handling.

SAVE — Two 8 oz. bottles of DuraLube only \$29.95 plus \$4.00 shipping and handling.

Money back guarantee of your purchase price if you are not completely satisfied with the performance of DuraLube — no questions asked. TN residents add sales tax.

Circle Card Buyers — Call 1-813-254-7238. Enclosed is my check or Money Order for \$ _____ or charge my _____ VISA MASTERCARD.

Acct. No. _____ Exp. Date _____
Name _____
Address _____
City _____ State _____ Zip _____

Send to: 10000 10000 10000 10000 10000

All orders processed promptly. Shipment guaranteed within 90 days. © 1991 S.M.

Complaint Exhibits

Exhibit E

ADM 0000 1

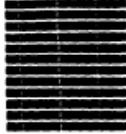


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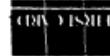
DURA LUBE
300 McCain Street
Nashville, TN 37210-9981

BUSINESS REPLY MAIL

POSTAGE WILL BE PAID BY ADDRESSEE



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



SPECIAL OFFER
YOUR COMPLETE
3-PIECE DURA LUBE™ KIT

PLUS EXTRA BONUS
AT NO ADDITIONAL COST
Color Match™

Color Match™
Color Match™ is a special service that matches your car's paint color to the color of your Dura Lube™ oil. This service is available on all Dura Lube™ oil products. For more information, call 1-800-333-3333.

Color Match™
Color Match™ is a special service that matches your car's paint color to the color of your Dura Lube™ oil. This service is available on all Dura Lube™ oil products. For more information, call 1-800-333-3333.

Color Match™
Color Match™ is a special service that matches your car's paint color to the color of your Dura Lube™ oil. This service is available on all Dura Lube™ oil products. For more information, call 1-800-333-3333.

**Breaking
the friction**

**ADVANCED
ENGINE
TREATMENT**

**DURA
LUBE**

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having issued its complaint charging the respondents named in the caption hereof with violation of Section 5(a) of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorneys, 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 complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the complaint issued by the Commission; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1.a. Respondent Dura Lube Corporation (“DLC”) is a New York corporation with its principal office or place of business at 102-3 Hamilton Avenue, Stamford, Connecticut 06902.

1.b. Respondent American Direct Marketing, Inc. (“ADM”) is a Delaware corporation with its office and principal place of business located at 1000 Apex Street, Nashville, Tennessee 37210.

Decision and Order

1.c. Respondent Howe Laboratories, Inc. ("Howe") is a Delaware corporation with its office and principal place of business located at 102-3 Hamilton Avenue, Stamford, Connecticut 06902.

1.d. Respondent Crescent Manufacturing, Inc. ("Crescent") is a New York corporation with its office and principal place of business located at 8800 South Main Street, Eden, New York 14057.

1.e. Respondent The Media Group, Inc. ("Media Group") is a New York corporation with its office and principal place of business located at 102-3 Hamilton Avenue, Stamford, Connecticut 06902.

1.f. National Communications Corporation ("National") is a Delaware corporation with its office and principal place of business located at 102-3 Hamilton Avenue, Stamford, Connecticut 06902.

1.g. Respondent Herman S. Howard is or was at relevant times herein an officer of the corporate respondents. Individually or in concert with others, he has formulated, directed, or controlled the acts and practices of the corporate respondents, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of DLC, Howe, Media Group, and National.

1.h. Respondent Scott Howard is or was at relevant times herein an officer of the corporate respondents. Individually or in concert with others, he has formulated, directed, or controlled the acts and practices of the corporate respondents, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of DLC, Howe, Media Group, and National.

Decision and Order

2. 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

Definitions

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

“Dura Lube” shall mean the aftermarket motor oil additive known as Super Dura Lube Engine Treatment, Advanced Dura Lube Engine treatment, or any product of substantially similar composition marketed as a motor oil product.

“Motor oil product” shall mean a product for use in conjunction with or in place of fully formulated motor oil.

“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.

Unless otherwise specified, “respondents” shall mean Dura Lube Corporation, American Direct Marketing, Inc., Howe Laboratories, Inc., Crescent Manufacturing, Inc., The Media Group, Inc., and National Communications Corporation, corporations, their successors and assigns, and their officers, agents, attorneys, representatives, and employees; and Herman S. Howard and Scott Howard, individually and as officers of the corporations, whether acting directly or through any corporation, subsidiary, division, trust or other device, or any of them.

Decision and Order

“Commerce” shall be as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of Dura Lube, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that:

- A. Dura Lube contains no chlorinated compound unless such is the case;
- B. Dura Lube has been tested by the U.S. Environmental Protection Agency unless such is the case; or
 - 1. Dura Lube meets the specifications, requirements or standards of any governmental or standard setting organization, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for use in any motor vehicle, in or affecting commerce, do forthwith cease and desist from:

- A. Making any representation, in any manner, expressly or by implication:

Decision and Order

1. That, compared to motor oil alone or motor oil treated with any other product, using such product:
 - a. Reduces engine wear;
 - b. Reduces engine wear by any percentage, dollar or other figure;
 - c. Prolongs engine life;
 - d. Reduces emissions;
 - e. Reduces the risk of serious engine damage when oil pressure is lost;
 - f. Improves gas mileage;
 - g. Improves gas mileage by any percentage, miles per gallon, dollar, or other figure;
2. That one or any other number of treatments of such product reduces wear for 50,000 or any other number of miles; or,
3. Regarding the performance, benefits, efficacy, attributes or use of such product,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

- B. Misrepresenting, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Decision and Order

III.

IT IS FURTHER ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that any demonstration, picture, experiment, illustration or test proves, demonstrates or confirms any material quality, feature or merit of such product, or the superiority or comparability of the product in a material respect relative to any other product.

IV.

IT IS FURTHER ORDERED that, respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for use in any motor vehicle, in or affecting commerce, shall cease and desist from representing, directly or by implication, that such product has been endorsed by a person, group or organization that is an expert with respect to the endorsement message, unless:

- A. The endorser's qualifications give the endorser the expertise that the endorser is represented as possessing with respect to the endorsement; and
- B. The endorsement is supported by an objective and valid evaluation or test using procedures generally accepted by experts in that science or profession to yield accurate and reliable results.

Decision and Order

V.

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

- A. All labeling, packaging, advertisements and promotional materials setting forth any representation covered by this order;
- B. All materials that were relied upon to substantiate any representation covered by this order; and
- C. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control, or of which they have knowledge, that contradict, qualify, or call into question such representation, or the basis relied upon for the representation, including complaints and other communications with consumers, third-party dispute mediators, or governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that:

- A. The corporate respondents and their successors and assigns shall notify the Federal Trade Commission at least thirty (30) days prior to any change in the corporate respondents that may affect compliance obligations arising under this order, including but not limited to dissolution, assignment, sale, merger or other action that would result in the emergence of a successor corporation, the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order, the proposed filing of a bankruptcy petition, or a change in the corporate name or address. *Provided, however*, that with respect to any proposed change in the corporation about

Decision and Order

which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as practicable after obtaining such knowledge.

- B. Each of the individual respondents, for a period of ten (10) years after the date of issuance of this order, shall notify the Federal Trade Commission of the discontinuance of his current business or employment, or his affiliation with any new business or employment. The notice shall include the respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities.

All notices required by this Part shall be sent by certified mail to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that the corporate respondents and their successors and assigns and the individual respondents shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of this order. Respondents shall deliver this order to current personnel within thirty (30) days after the service of this order, and to future personnel within thirty (30) days after the person assumes such position and responsibilities.

Decision and Order

VIII.

IT IS FURTHER ORDERED that respondents shall:

- A. Within fifteen (15) days after the date of service of this order, send by first class certified mail, return receipt requested, to each purchaser for resale of Dura Lube with which respondents have done business since January 1, 1994, notice of this order in the form attached as Attachment A. The mailing shall not include any other documents;
- B. By May 15, 2000, send a representative to all facilities operated by each purchaser for resale to which respondents sent Attachment A to replace the Dura Lube labels and packaging with labels and packaging that comply with this order.
- C. In the event that respondents receive any information that subsequent to its receipt of notice of this order any purchaser for resale is using or disseminating any advertisement or promotional material specified in Attachment A, respondents shall: (1) immediately send such purchaser for resale a letter requesting that it stop using or disseminating any item specified in Attachment A and notifying it that the respondents will report its use or dissemination of any item specified in Attachment A to the Commission; and (2) within thirty (30) days notify the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, in writing, of such purchaser for resale's identity and its use or dissemination of any item specified in Attachment A.

Decision and Order

IX.

IT IS FURTHER ORDERED that respondents 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 signed statements obtained from persons or entities pursuant to part VII of this order;
- B. Copies of all notification letters sent to purchasers for resale pursuant to subparagraph A of part VIII of this order; and
- C. Copies of all communications with purchasers for resale pursuant to subparagraph C of part VIII of this order.

X.

IT IS FURTHER ORDERED that:

- A. Not later than five (5) days after the date this Order becomes final, respondents shall deposit by electronic funds transfer into an escrow account to be established by the Federal Trade Commission for the purpose of receiving the payment due under the provisions of this order, the sum of two million dollars (\$2,000,000). In the event of any default on any obligation to make payment under this Part, interest, computed pursuant to 28 U.S.C. § 1961(a) shall accrue from the date of default to the date of payment. In the event of default, respondents shall be jointly and severally liable for the two million dollar (\$2,000,000) payment required by this paragraph and any interest on such payment.

Decision and Order

- B. The funds paid by respondents pursuant to subpart A above, together with accrued interest, less any amount necessary to pay the costs of administering the redress program herein, shall be used by the Federal Trade Commission or a Redress Administrator designated by the Federal Trade Commission to provide refunds to Dura Lube purchasers. Payment to such persons represents redress and is intended to be compensatory in nature, and no portion of such payment shall be deemed a payment of any fine, penalty, or punitive assessment. A consumer shall have the right to participate in the redress distribution only upon signing a waiver of rights and release of all claims against respondents. The Federal Trade Commission has sole discretion to determine how any redress funds are administered and distributed. Respondents shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Federal Trade Commission. The Federal Trade Commission, or its designated Redress Administrator, shall in its sole discretion select the escrow agent.
- C. Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds shall vest in the Treasurer of the United States unless and until such funds are disbursed to the designated purchasers of Dura Lube. Respondents shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any respondent, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.
1. Not later than the date this Order becomes final, respondents shall, to the extent available, provide to the Federal Trade Commission, in computer readable form (standard MS-DOS diskettes or IBM-mainframe

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compatible tape) and in computer print-out form, a list of the name and address of all consumers in the United States who purchased Dura Lube from January 1, 1994, to December 31, 1999.

- D. The Redress Administrator shall destroy all records relating to this matter six (6) years after the transfer of any remaining redress funds to the U.S. Treasury or the closing of the account from which such funds were disbursed, whichever is earlier, provided that no records shall be destroyed unless and until a representative of the Federal Trade Commission has received and approved the Administrator's final accounting report. Records shall be destroyed in accordance with disposal methods and procedures to be specified by the Federal Trade Commission. The Federal Trade Commission may, in its sole discretion, require that such records, in whole or in part, be transferred, in lieu of destruction, to the Federal Trade Commission.

XI.

IT IS FURTHER ORDERED that respondents shall, within sixty (60) days after service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied or intend to comply with this order.

XII.

IT IS FURTHER ORDERED that this order will terminate on May 3, 2020, 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 later occurs;

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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 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 had never been filed, except that the order will not be terminated 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.

By the Commission.

ATTACHMENT A

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

[To be printed on respondents' letterhead]

[date]

Dear [purchaser for resale]:

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As you may be aware, on April 29, 1999, the Federal Trade Commission ("FTC") issued a complaint against Dura Lube Corporation, American Direct Marketing, Inc., Howe Laboratories, Inc., Crescent Manufacturing, Inc., National Communications Corporation, The Media Group, Inc., Herman S. Howard, and Scott Howard.

In its complaint, the FTC alleged that advertisements for Dura Lube Engine Treatment have made unsubstantiated claims that, compared to motor oil alone or motor oil treated with any other product, using Dura Lube Engine Treatment: (1) Reduces engine wear; (2) Reduces engine wear by more than 50%; (3) Prolongs engine life; (4) Reduces emissions; (5) Reduces the risk of serious engine damage when oil pressure is lost; (6) Improves gas mileage; and (7) Improves gas mileage by up to 35%. In addition, the FTC alleged that Dura Lube Engine Treatment advertisements made an unsubstantiated claim that one treatment of Dura Lube Engine Treatment continues to protect the engine for up to 50,000 miles.

Further, the FTC alleged that Dura Lube Engine Treatment advertisements falsely claimed that tests prove that, compared to motor oil alone, using Dura Lube Engine Treatment: (1) Improves gas mileage; (2) Improves gas mileage by up to 35%; (3) Reduces emissions; (4) Prolongs engine life; (5) Reduces engine wear; and (6) Reduces the risk of serious engine damage when oil pressure is lost. The FTC also alleged that Dura Lube Engine Treatment advertisements falsely claimed that tests prove that one treatment of Dura Lube Engine Treatment continues to protect the engine for up to 50,000 miles. Finally, the FTC alleged that Dura Lube Engine Treatment advertisements set forth two deceptive demonstrations and a deceptive expert endorsement.

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The FTC also alleged that advertisements for Dura Lube Engine Treatment have made false and unsubstantiated claims that: (1) Dura Lube Engine Treatment does not contain any chlorinated compound; and (2) Dura Lube Engine Treatment has been tested by the U.S. Environmental Protection Agency.

On [date] the FTC issued a consent order to cease and desist which prohibits certain claims for Dura Lube Engine Treatment. We consented to the issuance of the order for settlement purposes only and without admitting any of the FTC's allegations that we violated the law. The order requires us to request that our distributors and wholesalers stop using or distributing advertisements or promotional materials containing claims challenged by the FTC. As one of our distributors or wholesalers, we are required to send [purchaser for resale] this letter.

Specifically, the FTC order prohibits us in the future from making false claims that Dura Lube Engine Treatment (1) contains no chlorinated compound; and (2) has been tested by the U.S. Environmental Protection Agency. The order also requires that we have a reasonable basis for any performance claims we make for Dura Lube Engine Treatment or any other product for use in a motor vehicle. Finally, the order prohibits us from disseminating (1) any deceptive demonstrations regarding Dura Lube Engine Treatment or any other product, or (2) any expert endorsements regarding Dura Lube Engine Treatment or any other product for use in a motor vehicle.

We request your assistance by asking you to discontinue using, distributing, or relying on any of your advertising or promotional material for Dura Lube Engine Treatment received from us prior to January 1, 2000. Please also notify any of your customers who resell these products and who may have such materials to discontinue using those promotional materials. Under separate cover, we will be sending you replacement promotional material that you will be able to use. You do not need to dispose of your existing inventory of Dura Lube Engine Treatment because we will send someone to your facility to replace the Dura

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Lube Engine Treatment labels and packaging with labels and packaging that comply with the FTC order shortly. If we receive information that you are continuing to use materials that do not comply with the FTC order, we are required to notify the FTC of your failure to comply with this request.

Thank you very much for your assistance.

Sincerely,

[name]
President
[respondents]

**Analysis of Proposed Consent Order to Aid Public
Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement for entry of a consent order from Dura Lube Corporation, Inc., American Direct Marketing, Inc., Howe Laboratories, Inc., Crescent Marketing, Inc. (d/b/a Crescent Manufacturing, Inc.), National Communications Corporation, The Media Group, Inc., and Herman S. Howard and Scott Howard, the principals who control these corporations (referred to collectively as "Respondents"). The agreement would settle a complaint by the Federal Trade Commission that Respondents engaged in unfair or deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

Analysis to Aid Public Comment

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising representations made about Super Dura Lube Engine Treatment and Advanced Dura Lube Engine Treatment (referred to collectively as "Dura Lube"), engine oil additives. The administrative complaint alleged that Respondents violated the FTC Act by disseminating ads that made unsubstantiated performance claims about Dura Lube. The Complaint alleged that Respondents represented that, compared to motor oil alone or oil treated with any other product, Dura Lube: (1) reduces engine wear; (2) reduces engine wear by more than 50%; (3) prolongs engine life; (4) reduces emissions; (5) reduces the risk of serious engine damage when oil pressure is lost; (6) improves gas mileage; and (7) improves gas mileage by up to 35%. The Complaint alleged that one treatment continues to protect engines for up to 50,000 miles. The Complaint alleged that Respondents represented that they had a reasonable basis for making these claims, but in fact did not possess competent evidence supporting them.

The Complaint also challenged, as false, claims that tests prove that, compared to motor oil alone, Dura Lube: (1) reduces engine wear; (2) prolongs engine life; (3) reduces emissions; (4) reduces the risk of serious engine damage when oil pressure is lost; (5) improves gas mileage; and (6) improves gas mileage by up to 35%. The Complaint also challenged as false claims that tests prove that one treatment continues to protect engines for up to 50,000 miles. Additionally, the Complaint challenged, as false, claims that Dura Lube: (a) has been tested by the U.S. Environmental Protection Agency; and (b) contains no chlorinated compound.

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The Complaint alleged that Respondents represented that product demonstrations in their advertising proved, demonstrated, or confirmed that, (a) compared to motor oil alone, Dura Lube reduces the risk of serious engine damage when oil pressures is lost, and (b) without Dura Lube, motor oil fails to protect automobile engines under hot running conditions, when in fact the demonstrations do not prove, demonstrate, or confirm these product attributes. Finally, the Complaint alleged that Respondents represented that former astronaut Charles "Pete" Conrad had endorsed the product based on a valid exercise of his expertise in the evaluation of automobile engine lubricants, when in fact Mr. Conrad did not have expertise in the evaluation and testing of automobile engine lubrication.

The Complaint gave notice that the Commission had reason to believe that a proceeding under Section 19 of the FTC Act for consumer redress ultimately might be appropriate, depending upon the adjudicative record and other relevant factors.

The proposed consent order contains provisions designed to prevent Respondents from engaging in acts and practices similar to those alleged in the complaint in the future. Part I of the proposed consent order prohibits Respondents from falsely claiming that Dura Lube contains no chlorinated compound or that it has been tested by the Environmental Protection Agency. It also prohibits them from claiming that Dura Lube meets the requirements or standards of any governmental or standard setting organization unless they possess competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, substantiating the claim.

Part II of the proposed consent order prohibits Respondents from making unsubstantiated representations regarding the performance, benefits, efficacy, attributes or use of any product for use in an automobile, or from misrepresenting the results of

Analysis to Aid Public Comment

any study. It specifically prohibits unsubstantiated claims that, compared to motor oil alone or oil treated with any other product, the product reduces engine wear or reduces it by any percentage, dollar or other figure; prolongs engine life; reduces emissions; reduces the risk of serious engine damage when oil pressure is lost; or improves gas mileage or improves it by any percentage, miles per gallon, dollar or other figure. It also prohibits unsubstantiated claims that one treatment reduces engine wear for 50,000 or any other number of miles. The evidence required to substantiate such claims includes competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence.

Part III of the proposed consent order prohibits Respondents from using misleading demonstrations in the sale of any product.

Part IV of the proposed consent order prohibits Respondents from representing that any endorser of any product for use in a motor vehicle is an expert unless the endorser possesses the expertise he or she is represented to have and the endorsement is adequately supported by evidence that would be accepted by experts in the area.

Part X of the proposed consent order requires Respondents to pay \$2 million in consumer redress. The Federal Trade Commission would administer and distribute the redress as the Commission, in its sole discretion, deemed appropriate. Respondents would be required to provide the Commission with the identities of consumers known to have purchased Dura Lube between January 1, 1994, and December 31, 1999. Consumers electing to accept the redress would release any claims against Respondents.

The remainder of the proposed consent order also contains provisions regarding distribution of the order, replacement of product packaging and labeling with compliant packaging and labeling, record-keeping, notification of changes in corporate

Analysis to Aid Public Comment

status, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.