

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

OGILVY & MATHER INTERNATIONAL INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5
AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9149. Complaint, Feb. 5, 1981—Decision, Jan. 4, 1983

This consent order requires a New York City advertising agency to cease, among other things, employing the name Aspercreme or any other tradename which erroneously implies that aspirin is an active ingredient of the product. The order also bars misrepresentations concerning the validity, conclusions, interpretations or results of any test or study; as well as unsubstantiated claims regarding the mode of action by which a drug treats, eases or cures a symptom, condition or disease. Respondent is further prohibited from representing without reasonable substantiation that any topically applied drug is faster or more effective than aspirin in the treatment of arthritis, tendonitis, bursitis or rheumatism, or that it involves a new scientific or mechanical principle. Additionally, the order requires the company to retain all data that substantiates or contradicts advertised product claims for a period of three years following dissemination of any advertisement subject to the order.

Appearances

For the Commission: *Randell C. Ogg, Teresa A. Hennessy, Mark L. Winerman, and Roberta L. Gross.*

For the respondent: *Leonard Orkin, Davis & Gilbert, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Thompson Medical Company, a corporation, (hereinafter "Thompson"), and Ogilvy & Mather, Inc., a corporation, (hereinafter "Ogilvy"), hereinafter sometimes referred to as respondents, have violated the provisions of the Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Thompson is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its offices and principal place of business located at 919 Third Ave., New York, New York.

PAR. 2. Ogilvy is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 2 East 48th St., New York, New York.

PAR. 3. Thompson is now and has been engaged in the business of manufacturing, advertising, offering for sale, sale, and distribution of various over-the-counter health care products, including the products Aspercreme Creme Rub and Aspercreme Lotion Rub (hereinafter "Aspercreme"), products advertised to treat various disorders. In connection with the manufacture and marketing of Aspercreme, Thompson is now and has been engaged in the dissemination, publication, and distribution of advertisements and promotional material for the purpose of promoting the sale of Aspercreme for human use. As advertised, Aspercreme is a "drug" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. Thompson causes said products when sold to be transported from its places of business in various states to purchasers located in various other states. Thompson maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Ogilvy is now, and for some time past has been, an advertising agency of Thompson. Ogilvy has prepared and placed for publication, advertising material to promote the sale of Aspercreme for human use.

PAR. 6. In the course and conduct of its business, and at all times mentioned herein, Thompson has been and now is in substantial competition in or affecting commerce with corporations, firms, and individuals representing or engaged in the manufacture or marketing of health care products.

PAR. 7. Ogilvy at all times mentioned herein has been and now is, in substantial competition in or affecting commerce with other advertising agencies.

PAR. 8. In the course and conduct of their businesses, respondents have disseminated and caused the dissemination of certain advertisements concerning Aspercreme through the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including the insertion of advertisements in magazines with national circulations and the placement

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Complaint

of advertisements with television stations with sufficient power to broadcast across state lines and into the District of Columbia.

PAR. 9. Typical statements and representations in said advertisements, disseminated as previously described, but not necessarily all-inclusive, are the advertisements attached hereto as Exhibits A through H.

PAR. 10. Through the use of the advertisements referred to in Paragraphs Eight and Nine and others not specifically set forth herein, respondents represented and now represent, directly or by implication that:

- a. Aspercreme contains aspirin.
- b. Aspercreme is a recently discovered or developed drug product.
- c. Valid studies have scientifically proven that Aspercreme is more effective than orally-ingested aspirin for the relief of arthritis, rheumatic conditions, and their symptoms.

PAR. 11. In truth and in fact:

- a. Aspercreme does not contain aspirin.
- b. Aspercreme is not a recently discovered or developed drug product; it has been available for purchase since at least 1971 and its active ingredient has been in existence since at least 1954.
- c. No valid studies have scientifically proven that Aspercreme is more effective than orally-ingested aspirin for the relief of arthritis, rheumatism, and their symptoms.

Therefore, the representations set forth in Paragraph Ten were and are false, misleading, or deceptive; and the advertisements referred to in Paragraphs Eight and Nine were and are misleading in material respects, and constituted and now constitute false advertisements.

PAR. 12. Through the use of the advertisements referred to in Paragraphs Eight and Nine and others not specifically set forth herein, respondents represented, and now represent, directly or by implication that:

- a. Aspercreme is an effective drug for the relief of minor arthritis and its symptoms.
- b. Aspercreme is as effective a drug as orally-ingested aspirin for the relief of minor arthritis and its symptoms.
- c. Aspercreme is a more effective drug than orally-ingested aspirin for the relief of minor arthritis and its symptoms.
- d. Aspercreme is an effective drug for the relief of rheumatic conditions and their symptoms.
- e. Aspercreme acts by directly penetrating through the skin to the site of the arthritic disorder.

f. The use of Aspercreme will result in no side effects.

PAR. 13. At the time of the first and subsequent disseminations of the representations contained in Paragraph Twelve respondents did not possess and rely upon a reasonable basis for making those representations. Therefore, the dissemination of the said representations as alleged constituted, and now constitutes, unfair or deceptive acts or practices in or affecting commerce.

PAR. 14. Through the use of the advertisements referred to in Paragraphs Eight and Nine and others not specifically set forth herein respondents have represented and now represent directly or by implication that they possessed and relied upon a reasonable basis for the representations set forth in Paragraph Twelve at the time such representations were made.

PAR. 15. In truth and in fact, respondents did not possess and rely upon a reasonable basis for the representations set forth in Paragraph Twelve at the time such representations were made. Therefore, the representations set forth in Paragraph Fourteen were and are false, misleading or deceptive.

PAR. 16. Through the use of the trade name "Aspercreme" in advertising, labels and promotional materials, respondents have represented and now represent that the product "Aspercreme" contains aspirin.

PAR. 17. In truth and in fact, "Aspercreme" contains no aspirin. Therefore, the representation in Paragraph Sixteen was and is false, misleading, deceptive or unfair, and the use of the trade name "Aspercreme" to describe a product which contains no aspirin constituted and now constitutes an unfair or deceptive act or practice in or affecting commerce.

PAR. 18. The use by respondents of the aforesaid unfair or deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true.

PAR. 19. The acts and practices of respondents, as herein alleged, including the dissemination of the aforesaid false advertisements, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

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Complaint

OGILVY & MATHER INC.

1 EAST 48 STREET, NEW YORK 10017
MURRAY HILL 6 6100

Client: THOMPSON MEDICAL
Product: ASPERCREME
Title: "RUB VERSION/NO MORTICE"
Commercial No.: QTAI 9013
Date Approved: 10/26/78



1. PRESENTER: (OC) When you suffer from arthritis,



2. imagine being able to put ...the strong relief of aspirin



3. right where you hurt most.



4. Now, with amazing Aspercreme,



5. you can get the strong relief...of aspirin directly at the point.



6. of minor arthritis pain.



7. (OC) Strong, penetrating relief which lasts for hours



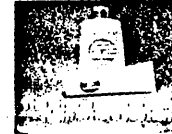
8. ...with none of aspirin's possible side effects.



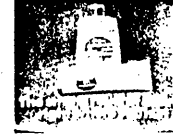
9. Aspercreme. Fast-acting.



10 No embarrassing odor.



11. (VO) The strong relief of aspirin right...



12. where you hurt. Remarkable.

Exhibit A

Complaint

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OGILVY & MATHER INC.

1 EAST 48 STREET, NEW YORK 10017
MURRAY HILL 8-8100

Client:
Product:
Title:
Commercial No.:
Date Approved:

THOMPSON MEDICAL
ASPERCREME
"VISIBLE MEN"
QTAI 9033
3/20/79



1. PRESENTER: (OC) When you suffer from arthritis,



2. Imagine putting the strong relief of aspirin right where you hurt.



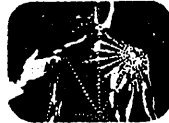
3. Aspircreme is an odorless rub



4. which concentrates the relief of aspirin.



5. When you take regular aspirin,



6. It goes throughout your body like this.



7. But, in seconds,



8. Aspircreme starts concentrating all the temporary relief of two aspirin



9. directly at the point of minor arthritis pain.



10. Strong, concentrated relief.



11. VO: Aspircreme..



12. The strong relief of aspirin right where you hurt.

Exhibit B

Complaint

Radio TV Reports

41 East 42nd Street New York, N.Y. 10017
(212) 697-5100

PRODUCT: ASPERCREME
PROGRAM: NEWS 1/23/80 80-01116
WNBC-TV (NEW YORK) 7:24PM 30 SEC.

REVISION OF COMMERCIAL # 7V9635-



1. WOMAN: When you suffer from arthritis,



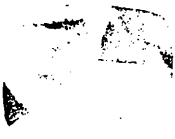
2. imagine being able to put the strong relief of aspirin right where you hurt most.



3. Now with amazing Aspercreme,



4. you can get the strong relief of aspirin



5. Directly at the point of minor arthritis pain.



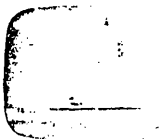
6. Strong penetrating relief which lasts for hours.



7. With none of aspirin's possible side effects.



8. Aspercreme. Fast acting, no embarrassing odor.



9. The strong relief of aspirin right where you hurt. Remarkable.

*"contains no aspirin"
super*

Exhibit C

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

OGILVY & MATHER INC.

1 EAST 48 STREET, NEW YORK 10017
MURRAY HILL 6-8100

Client:
Product:
Title:
Commercial No.:
Date Approved:

THOMPSON MEDICAL
ASPERCREME
"VISIBLE MEN"
QT AI 9033
3/30/79



1. PRESENTER: (OC) When you suffer from arthritis,



2. Imagines putting the strong relief of aspirin right where you hurt.



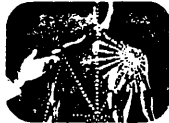
3. Aspircreme is an odorless rub



4. which concentrates the relief of aspirin.



5. When you take regular aspirin,



6. It goes throughout your body like this.



7. But, in seconds,



8. Aspircreme starts concentrating all the temporary relief of two aspirin



9. directly at the point of minor arthritis pain.



10. Strong, concentrated relief.



11. VO: Aspircreme.



12. The strong relief of aspirin right where you hurt.

"relief without aspirin" super

OGILVY & MATHER INTERNATIONAL INC.

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Complaint

Radio TV Reports

41 East 42nd Street New York N.Y. 10017
(212) 697-5100

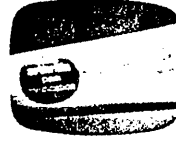
PRODUCT: ASPERCREME CREME RUB OH80-08742
PROGRAM: STATION BREAK 5/14/80 30 SEC.
WVKW-TV (L (CLEVELAND) 10:59 AM



ANNCR: Listen to what these people say about Aspercreme for temporary relief of minor arthritis pain.



2. 1ST WOMAN: I really felt like I was rubbing the pain away.



3. ANNCR: Aspercreme.



4. 1ST MAN: The Aspercreme gives me relief without upsetting my stomach.



5. ANNCR: Aspercreme is free.



6. 2ND WOMAN: It doesn't stain my clothes.



7. 3RD WOMAN: There's no odor.



8. 4TH WOMAN: And look, it's greaseless.



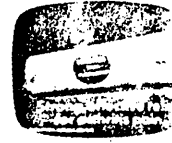
9. ANNCR: Aspercreme.



10. 2ND MAN: I'm saying that I am really pleased with the relief I got from Aspercreme.



11. 5TH WOMAN: The relief lasts for hours.



12. ANNCR: Aspercreme Strong, effective relief for arthritis pain. 6TH WOMAN: It really works.

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

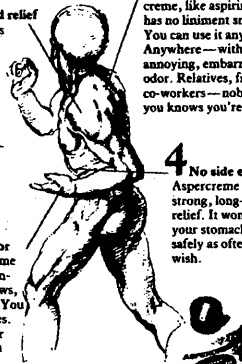
Exhibit E

At last! A remarkable breakthrough for arthritis pain: Aspercreme.

Aspercreme is an effective arthritis medicine which concentrates all the strong relief of aspirin directly at the point of pain.

1 Strong concentrated relief
Aspercreme™ pinpoints relief where you hurt. Aspirin tablets go throughout your body. But Aspercreme concentrates the relief of an analgesic like aspirin directly at the point of arthritis pain—where you need it the most.

2 Fast relief for minor arthritis pain. Aspercreme penetrates deep into painful areas—fingers, elbows, knees, back, shoulders. You get deep relief in minutes. Aspercreme works faster than aspirin because you rub it in right where you hurt.



3 No embarrassing liniment odor. Aspercreme, like aspirin itself, has no liniment smell. You can use it any time. Anywhere—without any annoying, embarrassing odor. Relatives, friends, co-workers—nobody but you knows you're using it!

4 No side effects. Aspercreme gives you strong, long-lasting relief. It won't upset your stomach. Use it safely as often as you wish.

Available in creme and lotion

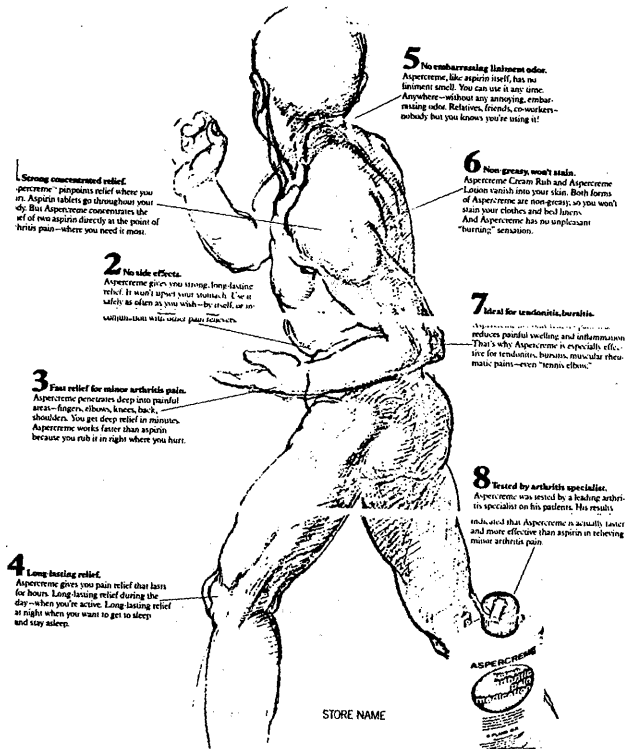


Exhibit F

Complaint

At last! A remarkable breakthrough for arthritis pain: Aspercreme.

Aspercreme is an effective arthritis medicine which concentrates all the strong relief of aspirin directly at the point of pain.



1 Strong concentrated relief.
Aspercreme[®] penetrates relief where you are. Aspirin tablets go throughout your body. But Aspercreme concentrates the relief of one aspirin directly at the point of your pain—where you need it most.

2 No side effects.
Aspercreme gives you strong, long-lasting relief. It won't upset your stomach. It's as safe as often as you wish—by itself, or as you wish—with other pain relievers.

3 Fast relief for minor arthritis pain.
Aspercreme penetrates deep into painful joints—fingers, elbows, knees, back, shoulders. You get deep relief in minutes. Aspercreme works faster than aspirin because you rub it in right where you hurt.

4 Long lasting relief.
Aspercreme gives you pain relief that lasts for hours. Long lasting relief during the day—when you're active. Long lasting relief at night when you want to get to sleep and stay asleep.

5 No embarrassing halitosis odor.
Aspercreme, like aspirin itself, has no halitosis smell. You can use it any time. Anywhere—without any annoying, embarrassing odor. Relatives, friends, co-workers—nobody but you knows you're using it!

6 Non greasy, won't stain.
Aspercreme Cream Rub and Aspercreme Lotion vanish into your skin. Both forms of Aspercreme are non-greasy, so you won't stain your clothes and bed linen. And Aspercreme has no unpleasant "burning" sensation.

7 Ideal for tendonitis, bursitis.
Aspercreme reduces painful swelling and inflammation. That's why Aspercreme is especially effective for tendonitis, bursitis, muscular rheumatic pain—even "tennis elbow."

8 Tested by arthritis specialists.
Aspercreme was tested by a leading arthritis specialist on his patients. His results indicated that Aspercreme is actually faster and more effective than aspirin in relieving minor arthritis pain.

STORE NAME



Aspirin is a registered trademark of Bayer AG.

Exhibit G

DECISION AND ORDER

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

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

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

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Ogilvy & Mather International Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal offices and place of business located at 2 East 48th St., New York, New York.

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

ORDER

Part I

It is ordered, That respondent Ogilvy & Mather International Inc., its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any "drug", as that term is defined in the Federal Trade Commission Act, in or affecting commerce, as "com-

merce” is defined in the Federal Trade Commission Act, do cease and desist from:

A. Employing the trade name “Aspercreme” for any such drug or any other tradename or terms that represents, directly or by implication, that an active ingredient of such drug is aspirin, unless such drug contains aspirin in therapeutically significant quantities.

B. Employing any trade name for any such drug which represents, directly or by implication, that such drug contains an active ingredient which it in fact does not.

C. Representing, directly or by implication, that any such drug is new, or involves a new mechanical or scientific principle, when such drug or one involving such principle has been nationally available for purchase in the United States for more than one year.

D. Representing, directly or by implication, that any such drug has an ingredient when in fact it does not have that ingredient.

E. Misrepresenting the contents, validity, results, conclusions or interpretations of any test or study.

F. Representing, directly or by implication, the mode of action by which any such drug treats, mitigates, or cures any symptom, disease, or condition unless respondent possesses and relies upon a reasonable basis substantiating the representation.

Part II

It is further ordered, That respondent Ogilvy & Mather International Inc., its successors and assigns, and its officers, representatives, agents and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any topically applied drug in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, cease and desist from:

A. Representing, directly or by implication, that any such topically applied drug is effective for the treatment or relief of the symptoms of any musculoskeletal disorder (such as arthritis, tendonitis, bursitis, or rheumatic disorders) or any other disease or condition;

B. Representing, directly or by implication, that any such topically applied drug is as fast or faster, or is as effective or more effective, than aspirin in the treatment or relief of the symptoms of any musculoskeletal disorder (such as arthritis, tendonitis, bursitis, or rheumatic disorder) or any other disease or condition;

C. Representing, directly or by implication, that any such topically applied drug will not result in any side effect;

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Decision and Order

D. Representing, directly or by implication, that any such topically applied drug will result in fewer side effects than any other drug or device;

unless at the time of the dissemination of any such representation respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific or medical evidence substantiating that representation. For the purposes of this Order, competent and reliable scientific or medical evidence shall include at least two well-controlled, double blinded clinical studies which meet the requirements set forth in 21 C.F.R. 314.111(a)(5)(ii) and 21 C.F.R. 330.10(a)(4)(ii), and are conducted by different persons, independently of each other. Such persons shall be qualified by training and experience to conduct such studies. *Provided, however,* with respect to any representation covered by this Part, if the Food and Drug Administration promulgates any final standard which establishes conditions under which such product is safe and effective, then in lieu of the above, respondent may possess and rely upon scientific evidence which fully conforms to such final standards as a reasonable basis for said representation. *Provided further, however,* where the evidence relied upon by respondent was not directly or indirectly conducted or controlled by respondent, it shall be an affirmative defense to an alleged violation of this Part for respondent to prove that it reasonably relied on the expert judgment of its client or of an independent third party in concluding that a reasonable basis exists which meets the requirements of this Part. Such expert judgment shall be in writing signed by a person qualified by education or experience to render the opinion. The written opinion shall describe the contents of the evidence upon which the opinion is based and shall set forth the qualifications of the person to render the opinion.

Part III

It is further ordered, That respondent Ogilvy & Mather International Inc., its successors and assigns, and its officers, representatives, agents and employees, for a period of three years after respondent last disseminates the advertisements for products covered by this Order, shall retain all test results, data, and other documents or information on which it relied for its representations or any documentation which contradicts, qualifies or calls into serious question any claim included in such advertisements which were in its possession during either their creation or dissemination. Such records may be inspected by the staff of the Commission upon reasonable notice.

Part IV

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

Part V

It is further ordered, That respondent shall distribute a copy of this Order to each of its operating divisions, and to each of its officers who are engaged in the preparation and placement of advertisements for products covered by this Order.

Part VI

It is further ordered, That the provisions of this Order shall not apply to Scali, McCabe, Sloves, Inc.; Cole & Weber, Inc.; and Rogers, Weiss/Cole & Weber Advertising, three subsidiary corporations wholly owned by respondent, unless a product otherwise covered by this Order is assigned or transferred from respondent to one of those corporations. However, respondent shall distribute a copy of this Order to the officers of the aforementioned corporations.

Part VII

It is further ordered, That the respondent shall, within sixty (60) days after this Order becomes final and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by a responsible officer for respondent, setting forth in detail the manner and form in which it has complied with this Order.

BOISE CASCADE CORP.

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Interlocutory Order

IN THE MATTER OF

BOISE CASCADE CORPORATION

Docket 9133. Interlocutory Order, Jan. 12, 1983

ORDER DENYING RESPONDENT'S APPLICATION
FOR INTERLOCUTORY APPEAL

At the conclusion of the presentation of complaint counsel's case in this proceeding, respondent filed with the ALJ a motion to dismiss the complaint. On November 23, 1982, the ALJ issued an order declaring his decision to defer ruling on the motion until after the presentation of respondent's defense and the filing of proposed findings and conclusions of law by the parties. On December 9, respondent filed with the Commission a motion requesting an order directing the ALJ to rule *now* on respondent's motion to dismiss.

Respondent's motion is not permitted by either Commission Rule 3.22(e), which provides specifically for the treatment of motions for dismissal, or by Rule 3.23, which governs interlocutory appeals. The Commission, of course, retains the authority to grant review of an interlocutory ruling where the requirements of Rule 3.23 are not met, but it has said that it will consider doing so only on a showing of a clear abuse of discretion by the ALJ and irreparable harm to the appealing party. *E.g., American Home Products Corp.*, 90 F.T.C. 148 (1977); *General Motors Corp.*, 90 F.T.C. 172 (1977). This occasion does not present such a case.

Even when its standards for review were less stringent, the Commission repeatedly declined to review ALJ determinations denying motions to dismiss or for summary decision. *E.g., Vulcanized Rubber and Plastics Co.*, 52 F.T.C. 533 (1955); *School Services, Inc.*, 72 F.T.C. 1003 (1967); *The Hearst Corp.*, 80 F.T.C. 1011 (1972).¹ As the Commission noted in those cases, denial of such motions does not affect the ultimate outcome of a case. Moreover, a decision whether to continue a proceeding with the presentation of respondent's defense is peculiarly within the grasp of the ALJ.

The ALJ's discretion in ruling on motions to dismiss is broad. Indeed, Rule 3.22(e) expressly provides that the ALJ may defer ruling until the close of the case. Like interlocutory appeals from discovery rulings, appeals from determinations under Rule 3.22(e) merit a par-

¹ These decisions were issued under rules permitting review "upon a showing that the ruling complained of involves substantial rights and will materially affect the final decision, and that a determination of its correctness before conclusion of the hearing is essential to serve the interests of justice." The current rules provide for review only upon certification by the ALJ under Rule 3.23(b) or in narrow circumstances, clearly not applicable here delineated in Rule 3.23(a).

Interlocutory Order

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ticularly skeptical reception. *See, Bristol-Myers Co.*, 90 F.T.C. 273 (1977). It is inappropriate for the Commission to entertain an appeal of such a determination when the factual record is clearly in dispute and the ALJ has concluded that the proceeding should continue.

Accordingly, *it is ordered* that respondent's application for review is denied.

SOUTHERN MARYLAND CREDIT BUREAU, INC.

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Complaint

IN THE MATTER OF

SOUTHERN MARYLAND CREDIT BUREAU, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5(a)
OF THE FEDERAL TRADE COMMISSION ACT AND THE FAIR CREDIT
REPORTING ACT

Docket C-3101. Complaint, Jan. 26, 1983—Decision, Jan. 26, 1983

This consent order requires a La Plata, Md. consumer reporting agency, among other things, to cease failing to require customers, such as private investigative agencies, detectives or attorneys, who do not extend credit in the normal course of their business, to certify the purpose for which information is sought; that use of the data will be restricted to that purpose; and that the customer understands that anyone obtaining credit information under false pretenses is subject to a fine and/or imprisonment under Federal law. Respondent is further required to compile a list of detectives and attorneys from the yellow pages of the telephone book in the area where the requesting party does business, and to consult the list to determine whether certification must be provided. Additionally, the firm must require prospective customers to identify themselves and comply with certification requirements; and to withhold credit reports from parties it has reason to believe would use the information for improper purposes.

Appearances

For the Commission: *Charlyn J. Buss.*

For the respondent: *Robert T. Barbour, Barbour, Zverina & Myer,*
La Plata, Md.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.*, as amended, the Fair Credit Reporting Act, Public Law 91-508, 15 U.S.C. 1681 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, hereinafter referred to as the "Commission," having reason to believe that Southern Maryland Credit Bureau, Inc., a corporation, hereinafter referred to as "respondent," has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its Complaint stating its charges as follows:

PARAGRAPH 1. For the purposes of this Complaint and the accompanying Consent Order to cease and desist, the terms *consumer*, *consumer report*, and *consumer reporting agency* are defined as set forth in Section 603 of the Fair Credit Reporting Act.

PAR. 2. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its sole office and place of business located at 211 North U.S. Route 301, P.O. Box 220, La Plata, Maryland.

PAR. 3. Respondent, in the ordinary course and conduct of business, is and has been regularly engaged in the practice of assembling or evaluating information bearing on consumers' creditworthiness, credit standing, and credit capacity for the purpose of furnishing, for monetary fees, consumer reports to third parties. These reports contain information including but not limited to credit histories obtained from creditors and consumer reporting agencies, public record information, and employment information and records. Creditors and others use the information contained in these reports for the purpose of establishing the consumer's eligibility for credit and other business transactions to be used primarily for personal, family, or household purposes. Respondent is thus a consumer reporting agency, as defined by the Fair Credit Reporting Act.

PAR. 4. Respondent, from its office in La Plata, Maryland, causes consumer reports to be distributed through the mail to its customers located in other States of the United States, and in the ordinary course and conduct of its business regularly sends and receives substantial numbers of communications including consumer reports across state lines through the means and facilities of interstate commerce. Respondent thus maintains a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. Accordingly, the Commission has jurisdiction over the subject matter of this proceeding and over respondent, as provided by Section 621 of the Fair Credit Reporting Act and by the Federal Trade Commission Act.

PAR. 5. All of the acts and practices alleged herein took place in the ordinary course and conduct of respondent's business and have occurred subsequent to April 25, 1971, the effective date of the Fair Credit Reporting Act.

PAR. 6. Subsequent to April 25, 1971,

1. With respect to one or more users of its reporting service as of April 25, 1971, respondent failed to require such user or users to certify the purposes for which the information about consumers was sought and that the information would be used for no other purposes; and

2. With respect to each new prospective user of its reporting service, respondent failed to make reasonable efforts to verify the identity of and the uses certified by each such new user prior to furnishing consumer reports to the user. By and through these practices respondent-

ent failed to maintain procedures required by Section 607(a) of the Fair Credit Reporting Act.

PAR. 7. Subsequent to April 25, 1971,

1. Respondent contracted to provide consumer reports to one or more private investigators, who do not, in the ordinary course of business, regularly extend credit or provide insurance for personal, family or household purposes;

2. Respondent through investigation would have had reasonable grounds for believing that such user or users in such instances may not have had a permissible purpose for receiving consumer reports pursuant to Section 604 of the Fair Credit Reporting Act;

3. Respondent furnished consumer reports to such user or users without obtaining, at the time of each request for a consumer report, a written or oral certification of the specific purpose(s) for which each report was sought and that the report would be used for no other purpose; and

4. In a number of instances, respondent provided consumer reports to a private investigative agency which obtained the information as part of investigations of individuals in connection with divorce cases, child custody proceedings, personal injury litigation, or other circumstances where furnishing consumer reports is impermissible under Section 604 of the Fair Credit Reporting Act.

PAR. 8. Respondent's failures to comply with the provisions of the Fair Credit Reporting Act listed in Paragraphs Six and Seven above constitute violations of that Act and, by virtue of Section 621 of that Act, constitute violations of Section 5(a) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Fair Credit Reporting Act; and

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

such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent Southern Maryland Credit Bureau, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 211 North U.S. Route 301, P.O. Box 220, in the City of La Plata, State of Maryland.

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

ORDER

Definitions: For the purpose of this order the terms *consumer*, *consumer report*, and *consumer reporting agency* are defined as set forth in Section 603 of the Fair Credit Reporting Act, Public Law 91-508, 15 U.S.C. 1681a (1976).

It is ordered, That Southern Maryland Credit Bureau, Inc., a corporation, its successors, assigns, officers, agents, representatives, and employees shall forthwith cease and desist from failing to maintain reasonable procedures required by Section 607(a) of the Fair Credit Reporting Act designed to limit the furnishing of consumer reports to the purposes specified under Section 604 of the Fair Credit Reporting Act. Such procedures shall include but are not limited to those set forth below.

Respondent shall cease and desist from:

1. Failing to require any user such as a private investigative agency or detective, who does not, in the ordinary course of business, regularly extend credit or insurance for personal, family, or household use, to certify either in writing at the time of each request or orally at the time of the request, confirming in writing within ten business days after each oral request:

(a) the specific purpose or purposes for which the reports are sought;

(b) that the information will be used for no other purpose; and
(c) that the user understands that Federal law provides that a person who obtains information from a consumer reporting agency under false pretenses shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

2. Failing to consult a listing of all detectives, private investigative agencies, and attorneys found in the current yellow pages of the telephone book of the area where the user conducts business or a similar listing of detectives, private investigative agencies and attorneys, to determine whether a user should comply with the requirements of Paragraph 1.

3. Failing to require all prospective users of information to identify themselves, and certify the purposes for which the information is sought and that the information will be used for no other purpose.

4. Furnishing a consumer report to any person if the respondent has reasonable grounds for believing that the consumer report will not be used for a purpose listed in Section 604.

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

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

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its officers, agents, representatives and employees.

IN THE MATTER OF
HEATCOOL, INCORPORATED

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

Docket C-3102. Complaint, Feb. 1, 1983—Decision, Feb. 1, 1983

This consent order requires a Eugene, Oregon manufacturer and seller of plastic storm windows, among other things, to cease making false or unsubstantiated representations concerning the insulating properties of Heatcool plastic storm windows or any insulating or energy savings device. Further, the company must: (1) notify its distributors that Heatcool plastic storm windows do not insulate better than comparable glass windows and that the window's insulating value is R-1.93; and, (2) include this information in all advertising and promotional literature for a period of one year. The company must also recall promotional and advertising materials which misrepresent the insulating value of Heatcool storm window systems.

Appearances

For the Commission: *Donald Cooper and Randall Brook.*

For the respondent: *T.R. Russell, Butler, Hush, Gleaves & Swearingin,* Eugene, Ore.

COMPLAINT

The Federal Trade Commission, having reason to believe that Heatcool, Incorporated ("Heatcool") violated Section 5 of the Federal Trade Commission Act, as amended, issues this complaint and alleges:

PARAGRAPH 1. This action is brought in the public interest.

PAR. 2. Heatcool is an Oregon corporation with its principal office and place of business located at Box 2196, Eugene, Oregon.

PAR. 3. Heatcool manufactures and sells storm windows made from a plastic film, LLumar. Sales of the windows are either made directly or through distributors. Heatcool's business is in and affects interstate commerce.

PAR. 4. Heatcool sells its storm windows based on their thermal insulating value, or "R-value." The R-value is a measure of resistance to heat flows, with higher R-values indicating greater insulating power. A value of R-1 means that the material insulates as well as one inch of wood. A value of R-9 means that the material insulates as well as 9 inches of wood. Standard scientific references indicate that a system of a glass window together with a glass storm window has an insulating value of R-1.93.

COUNT I—*Misrepresentations*

PAR. 5. From October of 1979 until the present, Heatcool has advertised its storm windows as a superior energy saving device. Heatcool has claimed: that its magnetic sealing windows have an insulating value of R-9.17; that its storm windows are approximately four times more effective than glass storm windows; and that its storm windows can reduce heat loss of single glaze windows by a factor of 10.

PAR. 6. Heatcool's representations concerning the insulation value and effectiveness of its storm windows are false. In April 1981, Dynatherm Engineering tested Heatcool's storm windows. Dynatherm is an independent testing laboratory which is accredited for the purpose of testing the insulating value of plastic storm windows. 45 FR 75542, 75544-47 (1980). It found the insulating value of the system consisting of a window and a Heatcool storm window to be R-1.93. A copy of Dynatherm's test result is attached to this complaint as Exhibit A.

PAR. 7. Respondents' false claims have the capacity and tendency to mislead members of the public into believing the claims are true and into purchasing substantial quantities of Heatcool products. The claims are false and deceptive and violate Section 5 of the Federal Trade Commission Act.

COUNT II—*Lack of Substantial Basis*

PAR. 8. Heatcool purchases the basic component of its storm windows—LLumar—from Martin Processing, Incorporated. Martin Processing makes LLumar by impregnating plastic film with an ultraviolet resisting substance. It rates the insulating value of LLumar at R-0.9. By a letter dated June 27, 1979, Martin Processing informed Heatcool that its tests found the insulating value of LLumar to be R-0.9. By applying standard engineering formulae, the expected value for a LLumar storm window plus a regular window would be less than R-2.

PAR. 9. Heatcool refused to accept Martin Processing's insulating value or standard engineering formulae. Instead, it determined to conduct its own tests. For this purpose, Heatcool contracted with Northwest Testing Laboratories, an independent testing lab located in Portland, Oregon. Northwest Testing Laboratories is not accredited for purposes of testing the thermal insulation value of storm windows. See 45 FR 75542, 75544-47 (1980).

PAR. 10. Northwest Testing Laboratories tested Heatcool's storm windows in October 1979. It found the insulating value of a window and a Heatcool storm window to be R-9.17. Although Northwest Testing Laboratories released this result to Heatcool, it advised the

company that the result could not be used to advertise the storm windows under normal conditions because the test conditions were abnormal.

PAR. 11. The test result of R-9.17 obtained by Northwest Testing conflicted with earlier studies of plastic storm windows conducted by the Department of Energy. The DOE studies found the insulating value of glass window together with a storm window similar to Heatcool's could not be greater than R-2. These test results were published and were available to the general public as of October 1, 1979.

PAR. 12. By March of 1980, Heatcool possessed persuasive evidence that its LLumar storm windows were not superior to comparable glass storm windows. As part of an attempt to sell Heatcool storm windows to the Salt Lake School District, Heatcool had its windows tested by a second testing laboratory, Terralab. Terralab found Heatcool's storm windows did *not* insulate better than comparable glass storm windows. It released the test result to Heatcool in March 1980.

PAR. 13. Heatcool's representations concerning the insulating value and effectiveness of its storm windows were made without a reasonable basis in competent scientific tests. Moreover, respondents knew that the single Northwest Testing Laboratories' test was unreliable, for the reasons stated in Paragraphs 10-12. The practice of making energy savings claims without a reasonable basis in competent scientific tests is unfair and deceptive and violates Section 5 of the Federal Trade Commission Act.

COUNT III—*False Demonstrations*

PAR. 14. In conjunction with its false and unsubstantiated claims, Heatcool put on, or encouraged its distributors to put on, phony demonstrations ostensibly showing that its plastic storm windows were superior to conventional glass storm windows. Appearing at home shows throughout the United States, Heatcool's representatives covered one-half of an open refrigerator with LLumar and the other half with glass. They then invited potential purchasers to touch both the glass and the LLumar. When potential customers found the glass colder to the touch, Heatcool's representatives claimed that this proved that LLumar insulated better than glass. In actuality, the demonstration illustrated that glass has a higher specific heat than LLumar but does not prove anything about the insulating properties of the two materials. Therefore, Heatcool's practice of using, or encouraging the use of, this demonstration is false and deceptive in violation of Section 5 of the Federal Trade Commission Act.

HEATCOOL, INC.

Complaint

DYNATHERM ENGINEERING

595 MARSHAN LANE LINO LAKES, MINNESOTA 55014 612/786-1853



Accredited by the Department of Commerce, National Voluntary
Laboratory Accreditation Program for Performance of ASTM C-236 Guarded
Hotbox Tests



PROJECT: 5 mil Clear Film and
2x2 Aluminum Window

DATE: April 9, 1981

LABORATORY NO. 412

REPORTED TO: Metropolitan Denver DA
Consumer and Economic Clime
625 South Broadway
Denver, Colorado 80209
Attention: Energy Fraud Project

COPIES TO:

THERMAL TRANSMITTANCE TEST OF WINDOW WITH INTERIOR FILM

GENERAL:

This report presents the results of one thermal transmittance test made upon nominal 2'x2' single glazed aluminum window unit with 5 mil clear film installed about 4 1/2" interior to the window. It was the purpose of the testing to measure the thermal resistance ("R" value) of the entire system. The window unit and film materials were submitted to the laboratory by CFH Enterprises of Denver, Colorado.

TEST PANEL DESCRIPTION:

Window unit - Nominal 2'x2' single glazed aluminum window unit which was actually about 23-7/16" wide and 23-7/8" high. The unit was manufactured by Croft Metals, Inc. and was Series 10 horizontal sliding window with 2020 mill finish. As seen from the window interior, the left sash was single glazed and fixed, with the right sash also single glazed and moveable horizontally. The sash contained sashlock which was kept in the locked position during the testing. A screen was present on the exterior side of the moveable sash only. The moveable sash was weatherstripped. Both fixed and moveable sash were single glazed, and the frame appeared not to contain any thermal break.

Interior film - The film used was identified as 5 mil clear film by HeatCool Weather Windows of General Purpose Dyed and Weatherized Polyester Films. The actual thickness of a typical section was measured as 4.9 mil and the film had a very slight smoky color. The film was mounted 4 1/2" away from the interior face of the aluminum window unit. Magnetic tape was used to secure the film in place. The film was installed by representative of CFH Enterprises.

As a mutual protection to clients, the public and ourselves, all reports are submitted as the confidential property of clients and our written authorization is necessary to publish any statements, conclusions or extracts from or regarding our reports.
This laboratory is accredited by NVLAP of the U.S. Department of Commerce as having the competence to perform ASTM C-236 guarded hotbox tests in accordance with prescribed test methods and accreditation criteria.

FEDERAL TRADE COMMISSION DECISIONS

Complaint

101 F.T.C.

**DYNATHERM
ENGINEERING**

395 MARSHAN LANE
LINO LAKES, MINNESOTA 55014
612 / 786-1853



page 2 (2x2 alum. window w/interior film)
April 9, 1981
Laboratory No. 412

TEST METHOD:

The thermal transmittance testing was performed using the ASTM C-236 guarded hotbox equipment. The equipment can accept test assemblies up to 7'-2" high and 6'-0" wide and has a centrally located metered area with dimensions of 48" wide and 60" high. Since the test window was smaller than the metered area it was necessary to perform a preliminary test upon a nominal 5" thick expanded polystyrene filler board. The preliminary testing was made under about the same temperature conditions as the testing of the window. The preliminary test was necessary to determine the thermal transmission properties of the filler board. After completion of the preliminary test, a hole was cut in the board just sufficient to install the aluminum window into the opening. Caulking was used to seal the window to the exterior face of the board, and duct tape was also applied to further assure an airtight installation. Representative of CFH Enterprises then installed the magnetic tape and film to the interior face of the filler at the opening. A 4½" space existed between the film and interior face of the window unit.

The testing was performed with the above described test assembly in the vertical orientation, with heat flow horizontal. Very slow moving airflow was used on the interior side with the velocity being about 60 fpm and applied in a downward direction as would occur with natural convection conditions. A nominal 15 mph wind was applied to the exterior side of the window, in an upward direction.

30 gage copper-constantan thermocouples were affixed to various sections on the exterior side of the window, and to various sections of the interior surface of the window. Airspace thermocouples were also used to measure the airspace temperature during test. Surface thermocouples were also installed on the interior side of the film.

After construction of the assembly and attachment of the thermocouples, the assembly was allowed to condition under selected warm and cold air temperatures until steady state heat flow and temperature conditions were achieved. Test data were then taken.

Thermocouple locations were those agreed upon by laboratory personnel and representatives of CFH Enterprises.

As a mutual protection to clients, the public and ourselves, all reports are submitted as the confidential property of clients and our written authorization is necessary to publish any statements, conclusions or extracts from or regarding our reports.
This laboratory is accredited by NVLAP of the U.S. Department of Commerce as having the competence to perform ASTM C-236 guarded hotbox tests in accordance with prescribed test methods and accreditation criteria.

HEATCOOL, INC.

Complaint

DYNATHERM
ENGINEERING595 MARSHAN LANE
LINO LAKES, MINNESOTA 55014
612 / 786-1853

page 3 (2x2 alum. window w/interior film)
April 9, 1981
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TEST RESULTS:

Following is a summary of the test results obtained:

| <u>Item</u> | <u>Test Results</u> |
|---|---------------------|
| Heat flow rate, Btu/hr.-sq. ft. | 33.78 |
| Warm air temperature, F | 102.1 |
| Cold air temperature, F | 47.8 |
| Thermal transmittance, U as tested, Btu/hr.-sq. ft.-F | 0.622 |
| Overall thermal resistance $R_t = 1/U$ as tested | 1.61 |
| Average warm surface temperature, F (film) | 86.2 |
| Average cold surface temperature, F | 50.7 |
| Mean temperature, F | 68.45 |
| Inside surface conductance coefficient, f_i | 2.12 |
| Outside surface conductance coefficient, f_o | 11.6 |
| Panel conductance, C, Btu/hr.-sq. ft.-F | 0.952 |
| Panel resistance, R = 1/C (window-airspace-film only) | 1.05 |
| Thermal transmittance corrected to ASHRAE design with 15 mph wind outside, still air inside | 0.526 |
| Overall thermal resistance corrected to above ASHRAE conditions | 1.9 |

Sketches showing the locations of surface thermocouples, and the airspace thermocouples are attached. The average measured temperature at each location is also presented.

REMARKS:

The average warm and cold surface temperatures reported above were calculated by "weighting" the measured surface temperatures with the area each represented. The average outside temperature is the outside of the window, and the average warm surface temperature is that of the film interior surface. The mean temperature, inside and outside surface conductance, panel conductance and resistance values were calculated using these average surface temperatures. The overall thermal resistance as tested is the overall thermal resistance, including air films actually developed during testing. The panel resistance is the measured thermal resistance only of the window, airspace, and film without any air films included. The overall thermal resistance corrected to ASHRAE conditions with still air inside and 15 mph wind outside is calculated using the above reported and measured panel

As a mutual protection to clients, the public and ourselves, all reports are submitted as the confidential property of clients and our written authorization is necessary to publish any statements, conclusions or extracts from or regarding our reports.
This laboratory is accredited by NVLAP of the U.S. Department of Commerce as having the competence to perform ASTM C 236 guarded hotbox tests in accordance with prescribed test methods and accreditation criteria.

FEDERAL TRADE COMMISSION DECISIONS

Complaint

101 F.T.C.

**DYNATHERM
ENGINEERING**

898 MARSHAN LANE
LINO LAKES, MINNESOTA 55014
612 / 786-1833



page 4 (2x2 alum. window w/interior film)
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REMARKS (cont'd):

conductance (resistance) and published surface resistances for a vertical, nonreflective surface with heat flow horizontal. A surface resistance of 0.17 was used for the 15 mph wind condition, and a surface resistance of 0.68 was used for the still air condition. The actual surface conductances were higher than the nominal ASHRAE values resulting in a lower overall measured thermal resistance.

The warm and cold air temperatures used in testing, and the application of the exterior 15 mph wind were specified to be used in testing. A nominal 3½" airspace between film and window was desired, but a space of 4½" was used due to availability of 5" beadboard material in the laboratory and to the lack of immediate availability of a 4" filler which would have provided the requested airspace. From various published sources, the difference in thermal resistance between a 3½" airspace and a 4½" airspace would be negligible.

The test results presented are for the window-airspace-film combination, with allowance already made for heat loss through the filler from the results of the preliminary testing. Heat loss through the window alone was calculated as the difference between the total measured with window and that calculated as passing through the filler.

DYNATHERM ENGINEERING

by James P. J. [Signature]

As a mutual protection to clients, the public and ourselves, all reports are submitted as the confidential property of clients and our written authorization is necessary to publish any statements, conclusions or extracts from or regarding our reports.
This laboratory is accredited by NVLAP of the U.S. Department of Commerce as having the competence to perform ASTM C-236 guarded hotbox tests in accordance with prescribed test methods and accreditation criteria.

DECISION AND ORDER

The Federal Trade Commission initiated an investigation of certain acts and practices of the respondent named in the caption above. The Seattle Regional Office furnished the respondent with a draft complaint that, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act.

The respondent, its attorney, and counsel for the Commission then signed an agreement containing a consent order. In this agreement, respondent admitted all the jurisdictional facts set forth in the draft complaint described above. The agreement states that its signing is for settlement purposes only and does not constitute an admission that the law has been violated as alleged in the complaint. The agreement also contains waivers and other provisions required by the Commission's Rules.

The Commission determined that it has reason to believe that the respondent has violated the Federal Trade Commission Act and that the complaint should be issued. The Commission then accepted the consent agreement and placed it on the public record for 60 days. Pursuant to Section 2.34 of its Rules, the Commission now issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Heatcool, Inc. is an Oregon corporation with its office and principal business address at P.O. Box 2196, Eugene, Oregon.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent. The proceeding is in the public interest.

ORDER

Applicability of the Order

References in this order to Heatcool apply to any of Heatcool's successors, assigns, officers, agents or employees. The order applies to any subsidiary, division, or other entity related to Heatcool and to Heatcool's advertising, displaying, offering for sale, sale or distribution of Heatcool plastic storm windows or other insulating or energy saving device.

Order Provisions

- I. *It is ordered*, That Heatcool cease and desist from representing, directly or by implication, that:

A. Heatcool's plastic storm windows have an insulating value of R-9.17.

B. Heatcool's plastic storm windows insulate approximately four times better than comparable glass storm windows.

C. Demonstrations relating to specific heats show relative insulating values.

II. *It is further ordered*, That Heatcool cease and desist from: making any representation, directly or by implication, regarding the insulating properties of its plastic storm windows or other insulating or energy saving device, unless, at the time the representation is made, it has a reasonable basis in competent scientific tests to believe that the representation is true. For purposes of testing storm windows, a reasonable basis shall consist of tests performed by an accredited lab and shall take into account any information that contradicts or qualifies the tests.

III. *It is further ordered*, That Heatcool immediately recall from all persons or entities that have engaged in advertising, promotion, sale or distribution of its storm windows in the last six months all advertising and promotional materials which represent that Heatcool storm window systems have a total insulating value in excess of R-1.93 or that represent that Heatcool storm windows insulate better than comparable glass storm windows.

IV. *It is further ordered*, That Heatcool prepare and send to all distributors who may reasonably be expected to have purchased Heatcool storm windows within the last six months a clear statement that Heatcool storm windows have an insulating value of R-1.93 and that the windows do not insulate better than comparable glass storm windows.

V. *It is further ordered*, That Heatcool include in its advertising and promotional materials, for the twelve month period after the order becomes effective, a clear and conspicuous statement that Heatcool storm window systems have an insulating value of R-1.93 and do not insulate better than comparable glass storm windows.

VI. *It is further ordered*, That Heatcool maintain complete business records of its compliance with this order. Heatcool shall retain each record for at least three years. Records which provide a reasonable basis for representations of the insulating or energy saving properties of Heatcool products shall be retained for at least two years after the last dissemination of any representation which relies on the records. Heatcool shall make these records, or a photocopy of these records, available to any authorized representative of the Federal Trade Commission within fourteen days after the representative requests the documents.

VII. *It is further ordered*, That Heatcool deliver a copy of this order

to each of its distributors, operating divisions, and affiliated businesses.

VIII. *It is further ordered*, That Heatcool notify the Commission at least thirty days prior to any change in its corporate structure or in its ownership which may affect compliance obligations under this order.

IX. *It is further ordered*, That Heatcool, within 60 days after service of this order, file with the Commission written reports setting forth in detail the manner of its compliance with this order.

IN THE MATTER OF
AMERICAN DENTAL ASSOCIATION

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

Docket 9093. Final Order, Sept. 6, 1979—Modifying Order, Feb. 7, 1983

This order reopens the proceeding and modifies the Commission order issued on Sept. 6, 1979 (94 F.T.C. 403), *modified* Aug. 3, 1982 (100 F.T.C. 448), by relieving respondent of its obligation under Paragraph III(A) of the order, to send by first-class mail a copy of Appendix A to the Final Order to each of its current members, and by reducing the number of years that Paragraphs III(A), IV(C), and IV(D) require the association to provide new members with notice of the order; make particular records available to the Commission; and file compliance reports.

MODIFICATION OF DECISION AND ORDER

The American Dental Association ("ADA") has requested that the Commission modify its Final Order in Docket No. 9093 to (1) relieve ADA of its obligation under Paragraph III(A) of the order to send by first-class mail a copy of a letter, Appendix A to the Final Order, to each of its present members, and (2) reduce the number of years ADA is required by Paragraphs III(B), IV(C), and IV(D) to provide new members with notice of the Final Order, make certain records available to Commission staff, and file reports of compliance.

As an alternative to the requirement of Paragraph III(A) that it send separate notice of the Final Order to each of its present members, ADA has proposed that it include an explanatory article when, as required by Paragraph IV(A) of the Final Order, it publishes a copy of the Final Order in the *Journal of the American Dental Association* and *ADA News*. Because under a temporary order ADA provided separate notice to each of its members that it was subject to a Commission order that, except under certain circumstances, prohibited ADA from restricting the advertising of dentists' services, and because with respect to individual members of ADA the Final Order prohibits essentially the same conduct, the Commission has determined that the alternative to separate notice ADA has proposed is in the public interest. The Commission has also determined that it is in the public interest to modify the Final Order to reduce the number of years ADA is required to provide new members with notice of the Final Order, make records available to the Commission, and file compliance reports. Accordingly,

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That the Final Order be, and it hereby is,

