

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

MICHIGAN WATCHMAKERS' GUILD, INC.

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

Docket C-3192. Complaint, July 1, 1986—Decision, July 1, 1986

This consent order requires, among other things, a Royal Oak, Mich. trade association to not take any future action to fix or maintain prices or establish suggested prices for cleaning or repair services for watches, clocks, or jewelry.

Appearances

For the Commission: *Seth B. Zimmerman, Johnathan Ferguson and Peter R. Reilly.*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Michigan Watchmakers' Guild, Inc., hereinafter sometimes referred to as respondent or "the Guild," has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

1. Respondent, Michigan Watchmakers' Guild, Inc., is a corporation organized, existing and doing business under the laws of the State of Michigan, with its principal office located at 1202 Catalpa Drive, Royal Oak, Michigan.

2. The Guild, which was incorporated in 1970, is a trade association of approximately 200 members. A majority of the Guild's members are located in Wayne, Oakland, and Macomb Counties in the south-east portion of Michigan. Members of respondent are engaged in the

business of cleaning and repairing watches, clocks, and jewelry for a fee.

3. Except to the extent that competition has been restrained as alleged herein, respondent's members compete among themselves and with other watchmakers.

4. Consumers spend substantial sums each year on the services of respondent's members.

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

6. In the course and conduct of its business, respondent has distributed printed copies of suggested minimum price lists for cleaning and repairing watches, clocks, and jewelry through the United States Postal Service in interstate commerce. In addition, respondent's members conduct business in interstate commerce. The acts and practices herein alleged are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

7. Respondent has acted as a combination of its members, or in conspiracy with at least some of its members, to restrain price competition among watchmakers in Michigan and increase or maintain the price of cleaning and repairing watches, clocks, and jewelry by establishing and distributing suggested minimum price levels.

8. In furtherance of the aforesaid combination or conspiracy, respondent has held annual general meetings at which suggested minimum prices are determined by a majority vote of all present. In this manner, respondent determines suggested minimums both for the prices that retail watchmakers charge consumers and for the prices that "tradeshop" repair firms charge retail watchmakers. Respondent then prepares and distributes suggested minimum price lists for (1) retail watch cleaning and repair; (2) quartz/digital retail watch cleaning and repair; (3) tradeshop watch cleaning and repair; (4) clock cleaning and repair; (5) grandfather clock cleaning and repair; and (6) retail jewelry cleaning and repair.

9. The purpose or effect and the tendency and capacity of the combination or conspiracy described above has been to restrain price competition and increase or maintain the price of cleaning and repairing watches, clocks, and jewelry.

10. The combination or conspiracy described above constitutes an unfair method of competition and an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The combination or conspiracy, or the effects thereof, are continuing and will continue absent the entry of an order against respondent.

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 complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure 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 Michigan Watchmakers' Guild, Inc. (hereinafter "Guild"), is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 1202 Catalpa Drive, Royal Oak, Michigan.

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

ORDER

I.

It is ordered, That respondent Michigan Watchmakers' Guild, Inc., a corporation, its successors and assigns, and respondent's officers, directors, agents, representatives, and employees, directly or indirectly, through any corporation, subsidiary, affiliate, committee, division

or other device, in connection with the conduct of its business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Taking any action the purpose or effect of which is to fix, maintain, stabilize, or increase the price of cleaning or repair services for watches, clocks, or jewelry;

B. Adopting or disseminating suggested prices for the cleaning or repairing of watches, clocks, or jewelry, *provided*, that nothing in this order prohibits the collection or dissemination of information regarding past cleaning or repair prices, so long as such information is aggregated before dissemination in such a way that neither the identity of the parties providing the underlying information nor information relating to specific transactions is disclosed or otherwise reasonably ascertainable.

II.

It is further ordered, That:

A. Within 45 days after this order becomes final, the Guild shall mail to each of its members a copy of this order and a letter in the form shown as Appendix A to this order.

B. For a period of two (2) years after the date of service of this order, the Guild shall also provide a copy of this order and a letter in the form shown as Appendix A hereto to:

1. Each new Guild member at the time the member is accepted into membership; and
2. Each person who makes a request for suggested minimum price lists.

III.

It is further ordered, That, for a period of three (3) years following the effective date of this order, the Guild shall maintain in its files a copy of the minutes of each meeting of its membership and of each meeting of its board of directors and a copy of all correspondence relating to prices for the cleaning or repairing of watches, clocks, and jewelry, and that such copies of minutes and correspondence be made available for inspection by representatives of the Federal Trade Commission upon written request.

IV.

It is further ordered, That, within sixty (60) days after service of this order, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to respondent, require.

V.

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

APPENDIX A

(Respondent's Letterhead)

Dear

As you may be aware, the Federal Trade Commission (FTC) has investigated our practice of annually publishing suggested minimum cleaning and repair prices for watches, clocks, and jewelry.

In all the years we have done our surveys, it was never drawn to our attention that the issuance of such lists is considered illegal. However, under U.S. Supreme Court rulings, the manner in which we have conducted our price surveys could be shown to be an attempt to control prices which, if proven true, would be a violation of the Federal Trade Commission Act.

Therefore, in order to avoid lengthy and costly litigation with the FTC, we have voluntarily entered into an agreement with the Commission which resulted in the issuance by the Commission of a Complaint and the entry of a Consent Order. The Order requires that you be sent a copy of the Order and this letter.

Under the terms of the FTC's Order, the Guild is required to refrain from taking any action whose purpose or effect is to fix, maintain, stabilize, or increase the price of cleaning or repair services for watches, clocks, or jewelry. The Guild is also required to cease and desist from publishing suggested cleaning or repair prices for watches, clocks, and jewelry, but the Order does not prohibit the Guild from publishing statistical information on historical prices.

The agreement is for settlement purposes only and does not constitute an admission by the Guild that the law has been violated as alleged in the Complaint.

A copy of the Order is enclosed.

Yours truly,

Marx E. Cooper
President

Enclosure

IN THE MATTER OF

ELECTRO TECH MANUFACTURING, INC., ET AL.

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

Docket 9202. Complaint, Nov. 1, 1985—Decision, July 9, 1986

This consent order requires a Norcross, Ga. manufacturer and marketer of home energy controlling devices, and its corporate officer, among other things, to cease making claims of energy savings associated with the product "The Energy Computer", or any other energy-control device, without competent and reliable substantiation. Additionally, respondents are prohibited from representing that consumers are eligible for a federal income tax credit with the purchase of their products, unless that is true.

Appearances

For the Commission: *Michael Dershowitz and Sandra N. Hammer.*

For the respondents: *Joseph A. Carragher, Jr., Norcross, Ga.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Electro Tech Manufacturing, Inc., a corporation, and Donald Raposo, individually and as an officer of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Electro Tech Manufacturing, Inc. is a Georgia corporation with its principal office and place of business at 7001 Peachtree Industrial Boulevard, Norcross, Georgia.

(b) Donald Raposo is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporation.

(c) Respondents cooperate and act together in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents manufacture, advertise, offer for sale, sell and distribute energy control devices for residential or small commercial use.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce.

PAR. 4. In advertisements, respondents have made various statements about the energy savings capability of their energy control devices sold under the brand name "The Energy Computer." Typical and illustrative of these statements, but not all-inclusive thereof, are the following from the advertisements attached hereto as Exhibits A and B:

You'll SAVE 20% on your heating and air conditioning energy bills.

The Energy Computer will . . . save you at least 20% in energy costs.

You realize actual savings, up to 20%, 35%, and even more in some instances.

Pays for itself in less than 2 years.

Qualified for energy tax credits.

PAR. 5. Through the use of the above statements, and other statements in advertisements not specifically set forth herein, respondents have made the following material representations, directly or by implication:

(1) Use of The Energy Computer energy control device will save consumers at least 20% and possibly, as much as 35% or more on their annual small commercial or home heating and cooling bills.

(2) It will take less than two years for consumers to save enough money on their small commercial or home heating and cooling bills by using The Energy Computer energy control device to recoup the retail cost of The Energy Computer.

(3) The Energy Computer is a qualified energy conservation product according to the U.S. Tax Code, thereby permitting purchasers of the product to obtain a tax credit and reduce their federal income tax liability.

PAR. 6. In truth and in fact:

(1) Consumers will not save 20%, or close to 20%, on their annual small commercial or home heating and cooling bills as a result of using The Energy Computer energy control device.

(2) Few, if any, consumers will save enough money on their small commercial or home heating and cooling bills by using The Energy Computer energy control device to recoup the retail cost of The Energy Computer within two years, or close to two years.

(3) The Energy Computer is not a qualified energy conservation product according to the U.S. Tax Code. Therefore, purchasers of The Energy Computer cannot obtain a tax credit or reduce their federal income tax liability by purchasing the product.

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

PAR. 7. Through the use of the statements set forth in Paragraph Four, and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time of making the representations set forth in Paragraph Five, they possessed and relied upon a reasonable basis for those representations.

PAR. 8. In truth and in fact, at the time of the initial dissemination of the representations and each subsequent dissemination, respondents did not possess and rely upon a reasonable basis for making those representations because, *inter alia*, respondents' test protocols and calculations were not designed or conducted in a manner to produce competent, reliable and statistically meaningful results. Therefore, respondents' representations, as set forth in Paragraph Seven, were, and are, false and misleading.

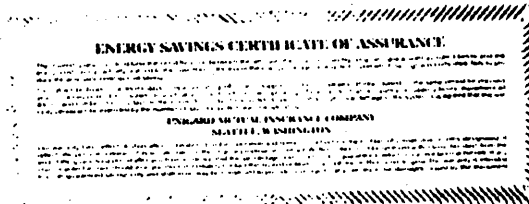
PAR. 9. The acts or practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

EXHIBIT A

THE ENERGY COMPUTER IS...

- A deductible business expense.
- Qualified for energy tax credits.
- A factor in increasing the resale value of your residence or building.

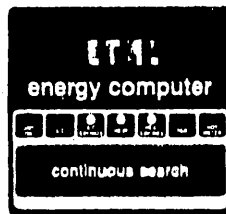
THIS...



THE UNIGARD INSURANCE POLICY

False, misleading, exaggerated claims in energy savings. You've heard them and so has Uncle Sam. So much so that the federal government has had to set up a policing agency! We're all for that. Because The Energy Computer will always do for you what it promises to -- save you at least 20% in energy costs. That's not a claim. It's a fact. The Unigard Mutual Insurance Company guarantees it. And The Energy Computer has it!

AND THIS...



THE ENERGY COMPUTER

Because The Energy Computer is a true computer -- the only one designed for residences and small commercial buildings -- it provides you many advantages. The second most important is the money you save on oil, gas or electric bills. What's the first most important? Comfort. The Energy Computer cuts your costs without cutting your comfort. No "too hot" or "too cold" setback periods. No uncomfortable "cycle off" settings.

HERE'S HOW IT WORKS...

Exhibit "A"

WE JUST DON'T CLAIM YOU'LL
SAVE 20%
 ON YOUR HEATING AND AIR
 CONDITIONING ENERGY BILLS

**WE
 GUARANTEE
 IT!**

WITH...

OTHER FEATURES THAT ADD TO YOUR COMFORT

- Power failure delay. Protects your compressor with an automatic four-minute delay. Also protects against thermostat misuse by children.
- Fail-safe function. In the event of any malfunction, your heating/cooling system will operate normally and safely.
- Hot water heater control capability. Has built-in adjustable controls to duty-cycle your hot water heater for additional efficiency (optional installation required).

**PAYS FOR ITSELF
 IN LESS THAN 2 YEARS.**

FIGURE IT OUT FOR

If Your Monthly Heating and Air Conditioning Bill is...

\$ 85
\$100
\$115
\$130
\$145
\$160
\$175
\$190
\$205

INSTALLED IN 29 MINUTES

Installation is easy and convenient. Our factory-trained electrical contractor installs The Energy Computer in a fast 29 minutes. (Or, to demonstrate exactly how it works, he'll connect it up temporarily in an even faster ten minutes!) Measuring only 8 3/4 inches high by 6 1/2 inches wide by 1 1/2 inches deep, it's installed at the furnace or air handler, between the thermostat and the devices that the thermostat controls: heat relay, air conditioning relay, fan. 100% user satisfaction guaranteed for one year. Warranty for three years on parts.

Complaint

EXHIBIT B

At last!
a computerized energy management system that is a
"thinker" . . . not just a timer.

**INTRODUCING!
THE ENERGY COMPUTER I.M.**

Providing you with:

Continuous Comfort.

No more too-hot or too-cold "set-back" periods.
And no more uncomfortable "cycle-off" settings.
Comfort is *not* sacrificed.

Actual Savings in Energy Costs.

The efficiency of your central heating/cooling system is increased 24 hours each day. You realize *actual* savings, up to 20%, 35%, and even more in some instances. And your savings are not endangered or nullified by "time-of-day" or "demand" billing now being practiced in many utility districts.

Computer based "Continuous Search" Program.

The "secret" of the Energy Computer's advanced effectiveness over timers, set-back thermostats, or cycle selection devices. This amazing capability is explained more fully on the following page.

Many Outstanding Features, including:

- *Power failure delay.* Protects your compressor with an automatic 4 minute delay. (also protects against thermostat misuse.)
- *Fail-Safe.* In the event of any malfunction, your heating/cooling system will operate normally.
- *Hot-water heater control capability.* Has built-in adjustable controls to duty-cycle your hot-water heater for additional efficiency. (Optional installation required.)

Installation.

The Energy Computer operates in series with your existing thermostat, on any applicable 24 volt transformer circuit. The installation and operation manual provided makes it an easy, 30 minute job. No high-voltage dangers. No interference with warranties on your present system.

Guaranteed Satisfaction.

100% user-satisfaction guarantee for a full year.
Conditioned only by product misuse or abuse.

THE ENERGY COMPUTER MONEY BACK GUARANTEE

If after (12) twelve months you do not receive a *Satisfactory Monitored Savings, you may notify the company from which you purchased the unit within (30) thirty days after the (1) one year period, and you will receive a full refund of the purchase price (including cost of installation, monitored savings, and retail price of any promotional items.) The customer agrees to monitor the equipment monthly and make available those results. This guarantee is valid for all energy management systems manufactured by EIM which have not been physically damaged or abused and have been purchased. The Energy Computer is guaranteed for three years on parts and one year on labor.

***Special Note:**

A satisfactory monitored savings will be a minimum combination of (15) fifteen percent KW/EI and MCF reduction during the (12) complete billing cycles after installation using KW/EI, therms, MCF, or gallons, and comparing degree days with the previous year to compare the savings.

Exhibit "B"

Continuous Search Program**All things considered . . .****Many factors affect your energy efficiency:**

- Coefficient between inside and outside temperatures (insulation, etc.)
- Volume of unrecirculated heated or cooled air in duct work
- Amount of residual heating or cooling in furnace or coil.
- Volume of heated or cooled air in unoccupied rooms
- Thermostat inefficiency (demand range beyond comfort settings)

The Energy Computer is able to "consider" all these factors, many of which are constantly changing. It is a programmed system, capable of a continuous search and test pattern, testing-setting-retesting-resetting, an endless combination of energy out-put and fan run-on possibilities.

A minimum of % test setting combinations!

The Energy Computer is constantly searching for the most efficient energy conserving cycle. For example, every fifteen minutes, it will reduce or increase in one minute increments the running time of your compressor or heating element. Because it stored in its memory what happened in the previous fifteen minutes, it is able to think and constantly make decisions. It is always trying to lower the running time of the compressor or heating element with additional use of fan run on time in air conditioning.

An I.F.D. display for status information.

You can constantly know the status of your system by observing the I.F.D. (light emitting diode) display. It's fun — but unnecessary. This computer based system is busily testing each cycle. Keeping you comfortable. With the least energy use. At the lowest possible cost. So relax and let The Energy Computer do the "thinking."

That's why we say,

All things considered . . .

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violations of Section 5 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 counsel, 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 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 Electro Tech Manufacturing, Inc. is a Georgia corporation with its principal office and place of business at 7001 Peachtree Industrial Boulevard, Norcross, Georgia.

Respondent Donald Raposo is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is 1187 Castle Way, Norcross, Georgia.

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:

Energy-related claim means any general or specific, oral or written representation that, directly or by implication, describes or refers to

energy savings, energy cost savings, efficiency or conservation, "pay-back," or "payback" potential.

A *competent and reliable test* means any scientific, engineering, laboratory, or other analytical report, study or survey prepared by one or more persons with skill and expert knowledge in the field to which the material pertains and based on testing, evaluation and analytical procedures that ensure accurate, reliable and statistically meaningful results.

Small commercial heating and cooling systems are similar to residential, central forced air type systems.

Energy control device (sometimes referred to as *duty-cycler* or *cyclic controller*) means any electronic device which is not a setback thermostat, but which:

(a) functions to interrupt a thermostatically-controlled cycle of any single, residential or small commercial, forced air central heating or air conditioning unit; or which

(b) may be incorporated in any other product, such as a setback thermostat, to function in the manner described in (a) above.

PART I

It is ordered, That respondents Electro Tech Manufacturing, Inc., a corporation, its successors and assigns, and its officers, and Donald Raposo, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any energy control device or any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, in any manner that:

(1) Consumers will save 20%, or close to 20%, on their annual small commercial or home heating and cooling bills as a result of using The Energy Computer, or any other such energy control device, as defined herein.

(2) More than a few consumers may be able to save enough money on their small commercial or home heating and cooling bills by using The Energy Computer to recoup the approximately \$400 retail cost of The Energy Computer within two years, or close to two years.

(3) More than a few consumers may be able to save enough money on their small commercial or home heating and cooling bills by using any energy control device, as defined herein, costing approximately \$400 to recoup such cost within two years, or close to two years.

(4) Consumers can obtain a federal tax credit or reduce their federal income tax liability, by purchasing The Energy Computer or any other such energy control device, as defined herein, unless such is the case.

B. Making any energy-related claim for any energy control device, or any other product or service, unless at the time that the claim is made, respondents possess and rely upon a competent and reliable test or other objective material which substantiates the claim.

PART II

It is further ordered, That respondents Electro Tech Manufacturing, Inc., a corporation, its successors and assigns, and its officers, and Donald Raposo, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any energy control device or any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, for at least three years from the date of the last dissemination of energy-related claims, maintain and upon request make available to Federal Trade Commission staff for inspection and copying, copies of:

1. all materials relied upon to substantiate any energy-related claim; and
2. all test reports, studies, surveys or demonstrations in their possession that contradict, qualify, or call into question any energy-related claim.

PART III

It is further ordered, That respondents shall distribute a copy of this order to each of their operating divisions and to each of their officers, agents, representatives or employees engaged in the preparation or placement of advertisements or other sales materials, and to each of their distributors or dealers: (1) who engaged in the wholesale or retail sale of any energy control device manufactured, offered for sale, sold, or distributed by or for respondents; and (2) who purchased ten or more energy control devices from respondents.

PART IV

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

creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

PART V

It is further ordered, That each individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and that, for a period of three years from the date of service of this order, each individual respondent named herein shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the manufacture, advertising, promotion, offering for sale, sale, or distribution of energy control devices and of his affiliation with any new business or employment in which his own duties and responsibilities involve the manufacture, advertising, promotion, offering for sale, sale, or distribution of energy control devices, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

PART VI

It is further ordered, That respondents shall, within sixty (60) days after this order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order.

Complaint

108 F.T.C.

IN THE MATTER OF

ROY BROG

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

Docket 9197. Complaint, Sept. 10, 1985—Decision, July 15, 1986

This consent order requires a former chief executive officer of a Salt Lake City, Utah manufacturer and distributor of a dry milk substitute, among other things, to cease making any representations concerning the health benefits or expected shelf life for "Meadow Fresh White", a powdered, dairy-based milk substitute, or other food products, without reliable and competent substantiation. Also, respondent is prohibited from excluding some distributors in computing "average" distributor earnings without proper disclosures concerning the method of computation.

Appearances

For the Commission: *Lawrence M. Hodapp.*

For the respondents: *B.H. Harris and Joseph M. Chambers, Harris, Preston, Gutke & Chambers, Logan, Utah.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Roy Brog, individually and as an officer and director of Meadow Fresh Farms, Inc., ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Roy Brog is an officer and director of Meadow Fresh Farms, Inc. He formulates, directs and controls the acts and practices of said corporation, including the acts and practices alleged in this complaint. His principal office or place of business is in Salt Lake City, Utah.

PAR. 2. Respondent manufactures, offers for sale, and sells food products, including Meadow Fresh, a powdered, dairy-based drink, through a multilevel business opportunity.

PAR. 3. Respondent has caused to be prepared, published and disseminated advertising and promotional material, including, but not limited to, the promotional material referred to herein, to promote the sale of Meadow Fresh and membership in a multilevel business opportunity.

PAR. 4. The acts and practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 5. In the course and conduct of his business, respondent has disseminated and caused the dissemination of advertisements and promotional material for food products, including Meadow Fresh, and for a multilevel business opportunity involving the sale of such food products, by various means in or affecting commerce, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products and business opportunities.

PAR. 6. Typical statements in said advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are the following:

(A) Contains over twenty times less "XO"* than the whole version of the other product.

* "XO" is xanthine oxidase, a major contributor to cardiovascular problems.

(B) Meadow Fresh has an expected dry shelf life of 5 to 10 years.

PAR. 7. Through the use of the statements referred to in Paragraphs Six (A) through Six (B), and other statements contained in other advertisements and promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that:

(A) The use of Meadow Fresh instead of milk will reduce the incidence of cardiovascular disease due to reduced levels of xanthine oxidase.

(B) Xanthine oxidase is a major contributor to cardiovascular problems.

(C) Meadow Fresh has an expected storage life of up to 10 years under reasonable storage conditions.

PAR. 8. Through the use of the statements referred to in Paragraph Six (A) through Six (B), and other statements contained in other advertisements and promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that at the time of initial dissemination of the statements and of each subsequent dissemination, he possessed and relied upon a reasonable basis for the representations set forth in Paragraphs Seven (A) through Seven (C).

PAR. 9. In truth and in fact, at no time has respondent possessed and relied upon a reasonable basis for making the representations set forth in Paragraphs Seven (A) through Seven (C). Therefore, respondent's representation as set forth in Paragraph Eight was, and is, false and misleading.

PAR. 10. In the course and conduct of his business, respondent has disseminated, as previously described, promotional flipcharts upon

which the current average monthly income of each level in the distributor hierarchy is to be entered. (A copy of this flipchart is attached to this complaint as Exhibit A.) These flipcharts are headed "CURRENT AVERAGE INCOMES FOR EACH BONUS LEVEL" and contain blanks following the terms "ADVISOR . . . ; COORDINATOR . . . ; MANAGER . . . ; AMBASSADOR . . ." for income figures to be entered. These flipcharts have represented, and now represent, directly or by implication, that the income figures shown thereon reflect an average which is computed by taking into account the total number of distributors who have advanced to the specified bonus level and the amount of money earned by each of them during the month in question.

PAR. 11. In truth and in fact, the income figures shown on the flipcharts do not reflect an average which is computed by taking into account the total number of distributors who have advanced to the specified bonus level and the amount of money earned by each of them during the month in question. Respondent provides distributors with monthly income figures for use on the flipchart which are computed by taking into account only those distributors who earn some income during the month in question, and the total amount of money earned by them. Because the large majority of distributors earn no income during a given month, this manner of computation results in average income figures which are substantially larger than would be the case if the figures were computed by the method set forth in Paragraph Ten. Therefore, respondent's representation as set forth in Paragraph Ten was, and is, false and misleading.

PAR. 12. The acts or practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

**CURRENT AVERAGE INCOMES
FOR EACH BONUS LEVEL**

- _____
- _____
- _____
- _____
- ADVISOR
- COORDINATOR
- MANAGER
- AMBASSADOR

NOTE: The amounts listed here only reflect rebates, overrides and bonuses, not retail profits.

DECISION AND ORDER

The Federal Trade Commission having issued its complaint charging Roy Brog ("respondent") with violation of Section 5 of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, his 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 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 Roy Brog is a former officer and director of Meadow Fresh Farms, Inc. His address is 1320 East 2300 North, Logan, Utah.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent Roy Brog, individually and as a former officer and director of Meadow Fresh Farms, Inc., and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale, or distribution of a powdered, dairy-based drink called "Meadow Fresh" or any other food product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, unless at the

time of such representation respondent possesses and relies upon reliable and competent scientific evidence that substantiates any such representation: (a) any benefit in preventing cardiovascular or other disease through the use of such product; (b) any nutritional or other health related attribute of such product; or (c) any expected shelf life of such product.

Reliable and competent shall mean for purposes of this order those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

II.

It is further ordered, That respondent Roy Brog, individually and as a former officer and director of Meadow Fresh Farms, Inc., and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing as an "average," directly or by implication, any computation of income levels, earnings, sales or other payments received by distributors as a whole or by a specified distributor category which is based on less than all distributors in the stated category, unless the fact that some distributors are excluded and the basis for any such exclusion are clearly and prominently disclosed in close proximity to such representation.

Distributor as used in this order shall refer to any person, partnership or corporation which is granted the right to offer, sell or distribute goods or services manufactured, processed, distributed, offered or sold by respondent or to recruit other persons, partnerships or corporations to be distributors of respondent's goods or services.

III.

It is further ordered, That respondent shall, for at least three years after the date the representation is last disseminated, maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials relied upon to substantiate any representation covered by this order; and
2. All test reports, studies, surveys, or demonstrations in his posses-

sion or control, or of which he has knowledge, that contradict any representation covered by this order.

IV.

It is further ordered, That respondent shall promptly notify the Commission of the discontinuance of his present business or employment and that, for a period of four years from the date of service of this order, respondent shall promptly notify the Commission of each affiliation with a new business or employment, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

V.

It is further ordered, That respondent shall forthwith distribute a copy of this order to all distributors of products manufactured or marketed by respondent.

VI.

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

IN THE MATTER OF
AMERICAN ACADEMY OF OPTOMETRY, INC.

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

Docket C-3193. Complaint, July 21, 1986—Decision, July 21, 1986

This consent order, among other things, prohibits a Washington, D.C.-based professional association from restricting or declaring unethical any truthful advertising, solicitation of patients or choice of a location to practice.

Appearances

For the Commission: *George R. Bellack.*

For the respondent: *John W. Hazard, Jr., Webster, Chamberlain & Bean, Washington, D.C.*

COMPLAINT

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

PARAGRAPH 1. Respondent American Academy of Optometry, Inc., is a corporation formed pursuant to the laws of the District of Columbia with its mailing address at 5530 Wisconsin Avenue, N.W., Suite 950, Washington, D.C.

PAR. 2. Respondent is a professional association of optometrists. Respondent has approximately 2,700 members.

PAR. 3. Most members of respondent are engaged in the business of providing optometric health care services for a fee and selling eye-care products. Except to the extent that competition has been restrained as herein alleged, members of respondent have been and are now in competition among themselves and with other eye care providers.

PAR. 4. By virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 5. In the conduct of their business, members of respondent

receive and treat patients from other states, receive substantial sums of money from the federal government and from other third party payers for providing optometric services and products, which monies flow across state lines, and use supplies and equipment and sell products that are shipped across state lines. The acts or practices described below are in interstate commerce, or affect the interstate activities of respondent's members, third-party payers, other third parties, and some patients of respondent's members, and are in or affect commerce within the meaning of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

PAR. 6. In selecting an optometrist or purchasing optical products, consumers consider factors such as price and other terms of sale, quality of the service or product offered, convenience, reputation, and experience.

PAR. 7. Most optometric services have traditionally been provided by optometrists practicing from a single, private office location. Most optometrists practicing in this manner also have sold optical products from the same location. Most have engaged in little or no advertising regarding their services or products. Some optometrists do not conduct business in a traditional, private office setting. They may, for example, locate their practices in shopping centers or other locations customarily considered "commercial" in nature. They may practice in, or in proximity to, retail optical stores or retail stores for which optometric services and optical products are not the main line of business. Such practices can increase consumer access to optometric care and achieve operating efficiencies that may lower costs of many optometric services and optical products. These optometrists, or firms with which some of them affiliate, typically engage in more advertising than traditional practitioners. Advertising enables optometrists to inform consumers about factors important to their choice of an optometrist, and can benefit consumers by increasing the information available to them and promoting competition among optometrists.

PAR. 8. Respondent has combined or agreed with at least some of its members to restrain or lessen competition among themselves and with other eye care providers by:

A. Restricting truthful advertising by AAO members or prospective members concerning their prices, products, services, and qualifications;

B. Inducing or attempting to induce individual members or prospective members to cease advertising their prices, products, services, or qualifications, or otherwise cease seeking to solicit patients' business;

C. Withholding membership from prospective members who truthfully advertised their prices, products, services, or qualifications; and

D. Restricting the types of practice locations AAO members or prospective members may use.

PAR. 9. Respondent has engaged in various acts or practices in furtherance of this combination or agreement, including:

A. Enacting and adopting ethical restrictions, standards of conduct, policy statements, and guidelines that, among other things:

1. Require members' public statements, announcements of services, and promotional activities to "emphasize professional services" and prohibit all "direct solicitations" of patients; and

2. Require members to "practice in locations consistent with the majority of other health professionals in the area"; and

B. Interpreting and implementing the above ethical restrictions, standards of conduct, policy statements, and guidelines so as to, among other things:

1. Restrict truthful advertising by its members or prospective members of, among other things, their prices, fees, or charges, types of methods of treatment, professional training and experience, special expertise, and products, such as contact lenses, offered for sale; and

2. Prevent members or prospective members from practicing in commercial locations.

PAR. 10. The purposes or effects, and the tendency and capacity, of the combination or agreement and acts or practices of respondent as described above have been and are to unreasonably restrain competition and affect consumers in one or more of the following ways, among others:

A. Consumers are being deprived of the benefits of vigorous price and service competition among optometrists;

B. Consumers are being deprived of truthful information about optometrists' prices, products, services, and qualifications;

C. Optometrists are being prevented from disseminating truthful information about their prices, products, services, and qualifications; and

D. Consumers may have been deprived of the potential cost savings, convenience, and efficiency benefits of optometric practices located in commercial settings in their purchases of optometric services and optical products.

PAR. 11. The combination or agreement and the acts and practices described above constitute unfair methods of competition and unfair acts or practices which violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Such combination or agreement is continuing and will continue absent the entry against respondent of appropriate relief.

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 Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional allegations 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 American Academy of Optometry, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 5530 Wisconsin Avenue, N.W., Suite 950, in the City of Washington, District of Columbia.

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

ORDER

I.

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

A. AAO means respondent American Academy of Optometry, Inc., its officers, councils, committees, representatives, agents, employees, successors, and assigns.

B. *Adverse action* means the revocation or suspension of, or refusal to grant, membership in AAO, or the disciplining or penalizing of any optometrist.

II.

It is ordered, That AAO, directly or indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Restricting, regulating, impeding, declaring unethical, interfering with, or advertising against the truthful, non-deceptive advertising or publishing by any person of the prices, terms, or conditions of sale of optometric services or optical products, or of information about optometrists' services that are offered for sale or made available by optometrists or by any organization with which optometrists are affiliated;

B. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the solicitation, through truthful, non-deceptive advertising or by any other means, of patients, patronage, or contracts to supply optometric services or optical products, by any optometrist or by any organization with which optometrists are affiliated;

C. Restricting, regulating, or interfering with any optometrist's choice of a location at which the optometrist will practice; and

D. Inducing, urging, encouraging, or assisting any optometrist, group of optometrists, or any other non-governmental organization to take any of the actions prohibited by Part II of this order.

Nothing contained in Part II of this order shall prohibit AAO from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that AAO reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients, who, because of their particular circumstances, are vulnerable to undue influence.

III.

It is further ordered, That AAO shall cease and desist from:

A. Taking any adverse action against a person alleged to have violated any rule, policy, guideline, or ethical standard without first

providing such person with written notice of any such allegation, and without providing such person a reasonable opportunity to respond. The notice required by this part shall, at a minimum, clearly specify the rule, policy, guideline, or ethical standard alleged to have been violated, the specific conduct that is alleged to have violated the rule, policy, guideline, or ethical standard, and the reasons the conduct is alleged to have violated the rule, policy, guideline, or ethical standard; and

B. Failing to maintain for five (5) years following the taking of any action referred to in this part, in a separate file segregated by the name of any person against whom such action was taken, any document that embodies, discusses, mentions, refers, or relates to the action taken and any allegation relating to it.

IV.

It is further ordered, That AAO shall:

A. For a period of three (3) years, commencing on the date this order becomes final, provide each applicant for membership in AAO with a copy of the synopsis, attached hereto as Attachment A, of the complaint and this order at the time the applicant files his or her application for membership in AAO;

B. Within sixty (60) days after this order becomes final, send by first-class mail the letter attached hereto as Attachment B, together with a copy of the synopsis, attached hereto as Attachment A, of the complaint and this order to every optometrist who applied for membership in AAO within the last five (5) years but was not accepted for membership, and during whose application review process AAO or any committee or member of AAO raised an issue regarding any practices that are the subject of this order;

C. Within sixty (60) days after this order becomes final, publish the synopsis, attached hereto as Attachment A, of the complaint and this order in the *American Journal of Optometry and Physiological Optics*, or in any successor publication, with the same prominence as regularly published feature articles, and distribute a copy of that issue to each optometrist who is a member of AAO at the time this order becomes final;

D. Within ninety (90) days after this order becomes final, remove from its constitution, bylaws, and any other existing policy statements or guidelines of AAO, any provision, interpretation, or policy statement that is inconsistent with Part II of this order, and within one hundred and twenty (120) days after this order becomes final, publish and distribute, in the manner described in Part IV.C. of this

order, a copy of the revised versions of such documents, statements, or guidelines to each of its members;

E. Within one hundred and twenty (120) days after this order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied and is complying with this order;

F. For a period of five (5) years after this order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II and III of this order, including but not limited to any advice or interpretations rendered with respect to advertising or solicitation involving any optometrist or any entity with which optometrists are affiliated; and

G. Annually for a period of five (5) years after this order becomes final, and commencing twelve (12) months after this order becomes final, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with the activities covered by Parts II, III, and IV of this order, including but not limited to any advice or interpretations rendered with respect to advertising or solicitation involving any optometrist or any entity with which optometrists are affiliated.

V.

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

Chairman Oliver did not participate.

ATTACHMENT A

SYNOPSIS OF CONSENT AGREEMENT BETWEEN AMERICAN ACADEMY OF OPTOMETRY AND FEDERAL TRADE COMMISSION

The American Academy of Optometry ("Academy") has agreed to comply with the terms of a Consent Order issued by the Federal Trade Commission. A Complaint, setting forth the Commission's allegations against the Academy, has also been issued by the Commission. The Academy's agreement to the Consent Order is for settlement purposes only, and does not constitute an admission by the Academy of a law violation. In December 1981, the Academy adopted a set of guidelines that allow advertising by its members, but such guidelines require further amendment.

The Complaint alleges that the Academy maintained and enforced ethical standards

and guidelines and interpreted and implemented standards and guidelines which restricted truthful advertising and solicitation by members or prospective members, and prevented members or prospective members from practicing in commercial locations.

The Consent Order requires that the Academy not restrain advertising of prices, products and services, and other forms of solicitation by any optometrist, or any optometrist's choice of practice location. However, the Consent Order does not prohibit the Academy from adopting reasonable ethical guidelines to prevent false or deceptive advertising or uninvited, in-person solicitations of patients whose particular circumstances make them vulnerable to undue influence. The Consent Order also does not restrict the Academy from maintaining standards on the competency of its members.

The Consent Order requires that the Academy not revoke, suspend, or refuse to grant Academy membership, or discipline or penalize any optometrist, without first providing him or her with written notice of any allegations, and a reasonable opportunity to respond to them.

The Consent Order also requires the Academy to remove from its constitution, bylaws, policy statements, and guidelines any provision that is inconsistent with the Consent Order.

This synopsis is not intended to constitute an official interpretation of the Consent Order or Complaint, or to modify in any way their terms.

ATTACHMENT B

Dear Dr. _____:

This letter is to inform you of a Consent Order entered by the Federal Trade Commission. (A synopsis of the Order and the Complaint issued by the Commission is enclosed.) Under the terms of this Order, the American Academy of Optometry has agreed, without admitting to the non-jurisdictional factual or legal allegations in the Complaint, that we will not prevent or impede any optometrist from engaging in any form of truthful, non-deceptive advertising or solicitation, or interfere with any optometrist's choice of practice location. The Order does not prohibit the Academy from adopting and enforcing reasonable guidelines to prevent advertising that the Academy reasonably believes is false or deceptive, or uninvited, in-person solicitation of patients whose particular circumstances make them vulnerable to undue influence.

Under the Consent Order, we must ensure that our Constitution, Bylaws, policy statements and other ethical guidelines comply with the terms of the Order. In addition, if we take adverse action against a person alleged to have violated any of our ethical standards, we must provide that person with written notice of the allegations and a reasonable opportunity to respond to them.

We are sending copies of the enclosed synopsis of the Consent Order and Complaint, as it is published in the American Journal of Optometry and Physiological Optics, to you as an optometrist who applied for membership in the Academy within the last five years, but were not accepted for membership. Transmittal of this notice to you does not reflect an admission by the Academy that your non-acceptance for membership in the Academy was the result of any activity of the Academy now prohibited by the Consent Order. However, you are free, if you desire, to contact the Academy regarding either the submission of a new application for membership, or reconsideration of a previous application.

A copy of the Complaint and Consent Order are freely available upon request.

Sincerely,

(Name and Title)
American Academy of Optometry

Enclosure

IN THE MATTER OF
LITHIUM CORPORATION OF AMERICA

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

Docket C-3194. Complaint, July 22, 1986—Decision, July 22, 1986

This consent order prohibits, among other things, a Gastonia, North Carolina chemical company from entering into any agreements fixing prices or restricting sales of any lithium product. Additionally, respondent is prohibited from acting as an agent for any lithium producer when such action might unreasonably restrain competition.

Appearances

For the Commission: *Allee A. Ramadhan.*

For the respondent: *David L. Foster, Willkie, Farr & Gallagher,*
New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that Glithco Energy Corporation (Glithco), formerly Lithium Corporation of America, a wholly owned subsidiary of Gulf Resources and Chemical Corp., a corporation subject to the jurisdiction of the Commission has violated the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

I. DEFINITION

1. *Lithium product(s)* means any lithium chemical mined, extracted or milled from a natural resource including but not limited to: (a) lithium ore (petalite, lepidolite or spodumene); (b) lithium carbonate; (c) lithium hydroxide; (d) lithium chloride; and (e) lithium sulfate.

II. RESPONDENT

2. Lithium Corporation of America (LCA) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware maintaining its principal place of business at 449 North Cox Road, Gastonia, North Carolina.

3. On or about July 19, 1985, LCA acquired substantially all of the

