

Complaint

94 F.T.C.

IN THE MATTER OF

LEROY GORDON COOPER, JR. a/k/a GORDON COOPER

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2993. Complaint, Sept. 25, 1979 — Decision, Sept. 25, 1979*

This consent order, among other things, requires an individual from Encino, Calif. engaged in advertising, selling and endorsing a product known, among other names, as the G.R. Valve, to cease representing, without substantiation, that installing the G.R. Valve or any substantially similar automobile retrofit device in a motor vehicle will result in fuel economy improvement. The order further prohibits respondent from using or providing any endorsement or testimonial which has not been properly authorized or which contains unsubstantiated representations; and bars him from misrepresenting an endorser's expertise in a field of knowledge, and the conclusions of tests or surveys relating to the performance of a product or service. Additionally, the order requires that advertising disclose any material economic interest in the sale of a product or service that may exist between endorser and marketer of such product or service.

*Appearances*For the Commission: *Laurence M. Kahn.*For the respondent: *Murray Lertzman, Beverly Hills, Calif.*

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 Gordon Cooper, an individual, hereinafter referred to as "respondent," having violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gordon Cooper is an individual whose address is 5011 Woodley Ave., Encino, California and is a former N.A.S.A. astronaut.

PAR. 2. Respondent, in conjunction with Dan Mar Products, Inc., a California corporation, RR International, Inc., a Delaware corporation, C.I. Energy Development, Inc., a California corporation, and American Consumer, Inc., a Pennsylvania corporation, has been and is now engaged in the marketing and advertising of a product variously known as the G.R. Valve, the Turbo-Dyne Energy Cham-

ber, and by other names, (hereinafter "product") which product is advertised to be a means of improving fuel economy in automobiles. Said product is an automobile retrofit device as "automobile retrofit device" is defined in § 301 of the Energy Policy and Conservation Act of 1975, 15 U.S.C. 2011. Respondent, in conjunction with the other above-named parties and in connection with the marketing of said product, has disseminated, published and distributed and now disseminates, publishes and distributes advertisements and promotional material for the purpose of promoting the sale of said product.

PAR. 3. One of the means that has been used to market and advertise said product has been to use a celebrity endorsement of said product. Respondent has aided the promotion of said product by providing such endorsement. This endorsement appeared in disseminated advertisements and other sales promotional materials for said product. In return for his role in the marketing of said product, respondent has received remuneration from the manufacturer and distributor of the product. The amount of such remuneration was and is dependent upon the number of products sold.

PAR. 4. In the course and conduct of his said business in conjunction with the other parties named in Paragraph Two, respondent has disseminated and caused the dissemination of certain advertisements for said product through the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, the insertion of advertisements in magazines and newspapers with national circulations and the placement of advertisements through television stations with sufficient power to broadcast across state lines and into the District of Columbia; and has disseminated and caused the dissemination of advertisements for said product by various means, including but not limited to the aforesaid media, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product in commerce.

PAR. 5. Among the advertisements and other sales promotional materials are the materials identified as Exhibits A-H which are attached hereto.

PAR. 6. Through the use of advertisements referred to in Paragraph Five and other advertisements and sales promotional materials, respondent, in conjunction with the other parties named in Paragraph Two, represented and now represents, directly or by implication, that

- a. the G.R. Valve when installed in a typical automobile will significantly improve fuel economy;
- b. a typical driver can ordinarily obtain, under normal driving conditions, a fuel economy improvement which will approximate or equal seven miles per gallon when the G.R. Valve is installed in his/her automobile;
- c. competent scientific tests for fuel economy of automobiles in which the G.R. Valve has been installed prove the fuel economy claims made for the G.R. Valve;
- d. Gordon Cooper bears only the relationship of endorser to the marketing of said product;
- e. Gordon Cooper has the education, training, and knowledge necessary to qualify him as an expert in the field of automotive engineering;
- f. results of consumer usage, as evidenced by consumer testimonials, prove that the G.R. Valve significantly improves fuel economy.

PAR. 7. At the time respondent, in conjunction with the other parties named in Paragraph Two, made the representations alleged in Paragraph Six of the complaint, he did not possess and rely upon a reasonable basis for such representations. Therefore, said advertisements are deceptive, misleading, or unfair.

PAR. 8. In truth and in fact, contrary to the representations in Paragraph Six:

- a. the G.R. Valve when installed in a typical automobile will not significantly improve fuel economy;
- b. a typical driver cannot ordinarily obtain under normal driving conditions a fuel economy improvement which will approximate or equal seven miles per gallon when the G.R. Valve is installed in his/her automobile;
- c. no competent scientific tests for fuel economy of automobiles in which the G.R. Valve has been installed prove the fuel economy claims made for the G.R. Valve;
- d. Gordon Cooper bears not only the relationship of endorser to the marketing of said product, but also bears the relationship of principal to the marketing of said product which fact is not disclosed and is material;
- e. Gordon Cooper does not have the education, training, and knowledge to qualify him as an expert in the field of automotive engineering;
- f. results of consumer usage, as evidenced by consumer testimonials, do not prove that the G.R. Valve significantly improves fuel economy.

Therefore, said advertisements are deceptive, misleading, or unfair.

PAR. 9. Exhibits A-H and other advertisements represent, directly and by implication, that respondent had a reasonable basis for making, at the time they were made, the representations alleged in Paragraph Six. In truth and in fact, respondent had no reasonable basis for such representations. Therefore, said advertisements are deceptive, misleading, or unfair.

PAR. 10. In the course and conduct of his said business, in conjunction with the other parties named in Paragraph Two, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of automobile retrofit devices.

PAR. 11. The use by respondent, in conjunction with the other parties named in Paragraph Two, 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 and into the purchase of substantial quantities of products sold by respondent, in conjunction with the other parties named in Paragraph Two, by reason of said erroneous and mistaken belief.

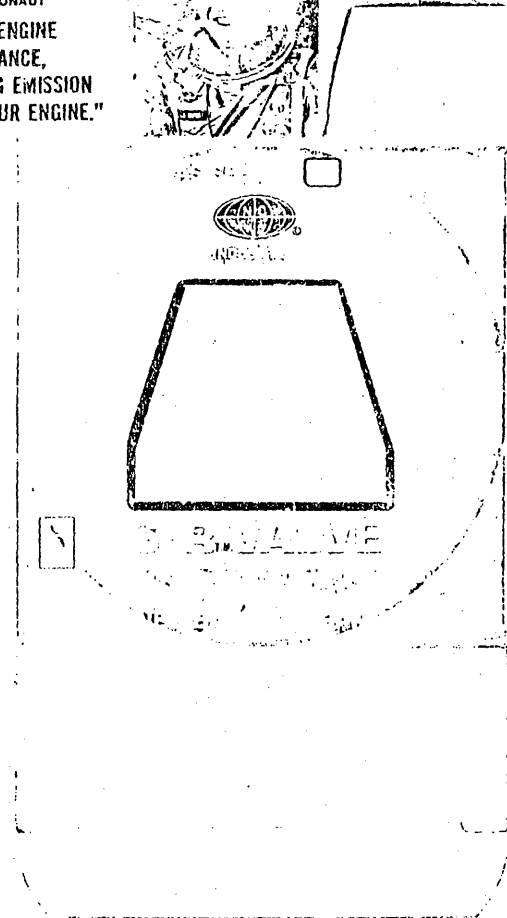
PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of the aforesaid false advertisements, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now constitute, unfair methods of competition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

Ex. A

**"IT'S A FACT!—INCREASES
MILEAGE UP TO 8 MILES
PER GALLON."**

Says GORDON COOPER
GEMINI ASTRONAUT

**"IMPROVES ENGINE
PERFORMANCE,
REDUCES SMOG EMISSION
AND CLEANS YOUR ENGINE."**



Now! Transform air into fuel and increase your mileage up to 28%*



COL. GORDON COOPER
Colonel, United States Air Force

THAT'S WHAT COL. GORDON COOPER, USAF, HAS TO SAY ABOUT THE NEW G.R. VALVE. HE'S THE ONLY MAN IN THE WORLD WHO'S BEEN THROUGH IT ALL. THAT'S YOU TOO! TAKE THE FULL...

WITH IT CHANGES A SMALL PART IN YOUR CAR'S ENGINE. THAT'S A FACT! ...

Original fuel economy, 18 mpg. Now 24 mpg. That's a 33% increase in mileage. ...

FIGURE MILEAGE, LESS GAS
Colonel G.R. VALVE's action plus double converts air into fuel and gets you 28% more miles per gallon without sacrificing performance!

Test! And maybe the easiest way to understand this is to realize that liquid gasoline has to be mixed with air and exploded before your car's engine can work. The more perfect the mixture is, the more energy the combustion has. ...

Why all the fuss? ...

It's the fact that the new G.R. VALVE and fuel to form the explosive and make your car run. ...

LOOK! YOU SIMPLY FIT IT TO YOUR CAR!

Simply slip the valve into the carburetor and you're done. ...

HOW DOES THE G.R. VALVE WORK?

When you start your car, the pressure in the carburetor is low. ...

Colonel G.R. VALVE's action plus double converts air into fuel and gets you 28% more miles per gallon without sacrificing performance!

Test! And maybe the easiest way to understand this is to realize that liquid gasoline has to be mixed with air and exploded before your car's engine can work. ...

Why all the fuss? ...

It's the fact that the new G.R. VALVE and fuel to form the explosive and make your car run. ...

LOOK! YOU SIMPLY FIT IT TO YOUR CAR!

Simply slip the valve into the carburetor and you're done. ...

HOW DOES THE G.R. VALVE WORK?

When you start your car, the pressure in the carburetor is low. ...

Year	Make	Model	Mileage	Gas	Cost
1954	Oldsmobile	Wildcat	100	10.00	10.00
1955	Oldsmobile	Wildcat	100	10.00	10.00
1956	Oldsmobile	Wildcat	100	10.00	10.00
1957	Oldsmobile	Wildcat	100	10.00	10.00
1958	Oldsmobile	Wildcat	100	10.00	10.00
1959	Oldsmobile	Wildcat	100	10.00	10.00
1960	Oldsmobile	Wildcat	100	10.00	10.00
1961	Oldsmobile	Wildcat	100	10.00	10.00
1962	Oldsmobile	Wildcat	100	10.00	10.00
1963	Oldsmobile	Wildcat	100	10.00	10.00
1964	Oldsmobile	Wildcat	100	10.00	10.00
1965	Oldsmobile	Wildcat	100	10.00	10.00
1966	Oldsmobile	Wildcat	100	10.00	10.00
1967	Oldsmobile	Wildcat	100	10.00	10.00
1968	Oldsmobile	Wildcat	100	10.00	10.00
1969	Oldsmobile	Wildcat	100	10.00	10.00
1970	Oldsmobile	Wildcat	100	10.00	10.00

Results of gas mileage tests performed by your car's owner. ...

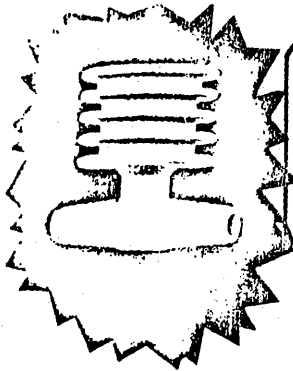
*Fig. based on 1954-1965 figures. ...

...

Ex. B

Copy of ad published 3/19/78 Valley News

Spec 2



Ex. C

It Really Works!
THIS AMAZING DEVICE
CAN INCREASE YOUR GAS MILEAGE
UP TO 8 MILES PER GALLON!

Says GORDON COOPER,
Gemini Astronaut



Yes! Save Gas by the Gallon!

Make Your Car Run Better Too!

New Gas Saver Slips On in Minutes!

If there's one thing an astronaut has no use for, it's a new invention that doesn't do what it's supposed to do! That's why we asked astronaut Gordon Cooper to test the G-R GAS SAVER VALVE in his independent engineering laboratory. Here's what Gordon Cooper told us the G-R GAS SAVER VALVE would do for any carbureted automobile:

- * INCREASE GAS MILEAGE -- UP TO 28% MORE!
- * ACTUALLY IMPROVE ENGINE PERFORMANCE AT THE SAME TIME!
- * CLEAN THE ENGINE OF CRIPPLING CARBON DEPOSITS WHILE DRIVING!
- * REDUCE SMOG EMISSIONS MEASURABLY!

Impressive results? Definitely. But we are particularly fussy about our cars. So, Mr. Cooper's results notwithstanding, we went to the Dept. of Industrial Education at Loma Linda University and gave them a dozen or so G-R GAS SAVER VALVES. We asked them to test this now

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invention in city and highway driving -- use it on different kinds of cars, big and small -- even trucks -- and report the conclusions, good or bad. Here's what the Loma Linda University tests confirmed about the G-R GAS SAVER VALVE:

- * It Cuts Gas Consumption in Every Car Tested -- Up to 28%!
- * It Makes the Engine Run More Efficiently!
- * It Reduces Polluting Exhaust Emissions as Much as 50%!

Then reports came back from our own "seat of the pants" test. That's where ordinary drivers like you and me pop a G-R GAS SAVER VALVE into their car and record the results for themselves. For example:

"...on my Pontiac Le Mans...mileage increased from 10 to 27.2...the improvement is phenomenal."

-Mr. F. v. S.
Newbury Park, Calif.

"...on my Volkswagen Bus, it's mileage increased from 18 to 23 miles per gallon...also have better start in the morning."

-Mr. Otto Geller,
President, Volkswagen Club of America
Ventura, Calif.

We found that a 1966 GMC 66-passenger school bus got 40% better gas mileage! A pickup truck with camper got 38.2% better mileage! A 1973 Ford got 28.7% better mileage! And so it went. Everybody we heard from reported a significant increase in gas mileage and often a noticeable improvement in performance the moment they snapped the G-R GAS SAVER VALVE on their car!

SLIP IT IN PLACE YOURSELF...IN SECONDS!

By now we were thoroughly convinced that there really was an exciting and easy way to save big money at the gas pump. We wanted a G-R GAS SAVER VALVE on every company car as fast as possible! But we still wondered if installing this fascinating money saver was as simple as it was cracked up to be. Instead of going to a mechanic we handed the

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device and its simple instructions to three people:

1. A young lady who is so mechanically minded she really needed help opening the hood.
2. A self-admitted fumble-fingers copy chief who shies away from a pair of pliers.
3. A guy who spends his weekends tinkering with the innards of his imported English sports car.

Care to guess the outcome of the race?

Frankly, it was a dead heat! (Subtracting the time it took the young lady to get the hood open). Mechanical skill just isn't required! Nearly everybody can follow the one-two-three step instructions and be saving gas by the gallon in minutes! (Susan Cooper, Gordon's lovely wife, popped a G-R GAS SAVER VALVE into her '74 Vega in a mere 30 seconds!)

BUY THOSE SPECIAL THINGS YOU WANT WITH WHAT YOU SAVE ON GAS!

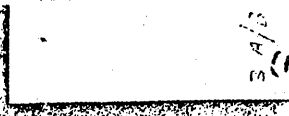
Now, instead of spiraling gasoline prices stealing money from your pocket (even on short trips), you'll put the brakes to this money drain! You'll do it effortlessly in minutes -- and your insatiably thirsty carburetor will be under control at last! Certainly we all have plenty of things to do with our hard-earned money and pouring it into the gas tank isn't one of them!

FEEL YOUR ENGINE RUN BETTER--AND CLEAN ITSELF TOO!

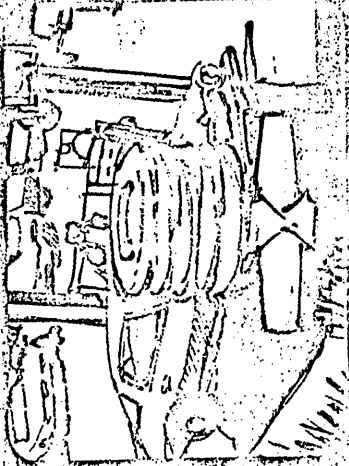
The G-R GAS SAVER VALVE makes your carburetor work with optimum efficiency AT ALL SPEEDS. (Most carburetors are really efficient only at about 35 mph.) It makes your carburetor breathe freely, perfectly mixing, with almost computer accuracy, the precise ratio of gas and air needed at $\frac{1}{4}$ given split second. Not a drop more gas than necessary -- just $\frac{1}{4}$ you really need and no more. Better yet, the G-R GAS SAVER VALVE

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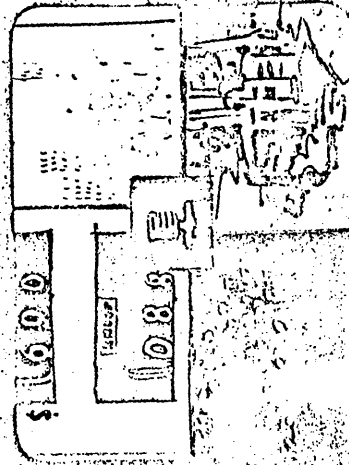


3 A/B
Ex. D
(frames only)



TO PUT THE GRRRRR IN YOUR CAR. CARS
TESTED WITH G. R. VALVES IMPROVE THEIR
GAS MILEAGE

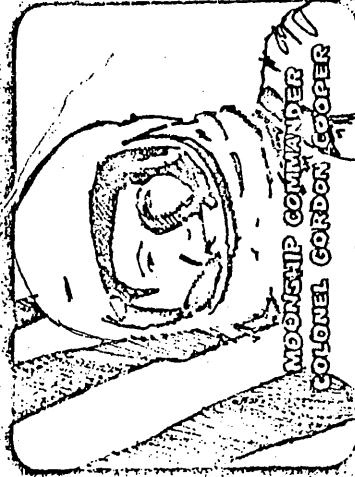
2 A/B



IN THESE DAYS OF RISING GAS PRICES
AND REDUCED AUTOMOTIVE PERFORMANCE,
WE INTRODUCE THE G. R. VALVE.

1 A/B

Spec. 2



MEMBERSHIP COMMANDER
COLONEL GORDON COOPER

AND IT'S A FACT. THE G. R. VALVE IS A
CO SYSTEM.

U/A



UP TO 284

S R/D

UP TO \$150 SAVINGS PER YEAR

AND SAVE UP TO \$150 DOLLARS PER YEAR

3

UP TO 28% MORE MILEAGE

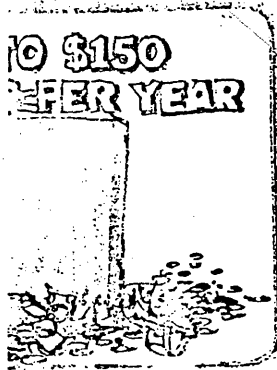
7 cars tested by professors at a leading California university ramped in mileage increases of 14% to 28%

THAT'S RIGHT. GET UP TO 28% MORE MILEAGE

4 B

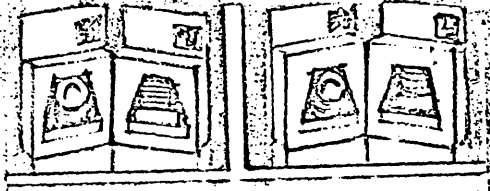
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\$150 DOLLARS PER YEAR

22
1/2/62



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Ex. E

ALEXANDER HAMILTON CO., LTD.
 7700 Shoreham Drive
 West Hollywood, CA 90069
 (215) 652-2396

SAM NASSI CC.
 G.R. Valve
 One Minute Commercial TV

VIDEO

OPEN CU COPDC^W COOPER

SLOW ZOOM OUT TO SEE WOMAN
 IN THE PG WORKING ON A CAR.

HE HOLDS UP G.R. VALVE, DOESN'T
 GESTURE TO IT....

AS HE DOES GESTURE TO VALVE CUT
 TO XCU VALVE HELD IN HIS HAND.

CUT TO CU 2/SECT, COOPER'S FACE
 AND VALVE....

MISS. TO ROLLING FOOTAGE, CAR
 DRIVING DOWN PRETTY ROAD, PROFILE

SUPER "INCREASE AUTO MILEAGE UP
 TO 28%"

CHANGE SUPER TO "IMPROVE
 PERFORMANCE" AND WIDEN SHOT
 ALLOWING CAR TO PULL AHEAD INTO
 A 3/4 REAR TO FRONT SHOT.....

CHANGE SUPER TO "CLEAN YOUR ENGINE"

LET CAP PULL IN FRONT AND ZOOM
 IN ON MCU TAIL RIPE FEATURING
 LACK OF SMOKE, CHANGE SUPER TO
 "REDUCE SMOG EMISSIONS & ENGINE
 WEAR".

CUT BACK TO COOPER, MCU HOLDING
 VALVE (IN PACKAGE)

AUDIO

1. Hi, I'm Gordon Cooper. As you may know I was selected to be one of the first
2. astronauts to explore space due to my extensive engineering background. At the present time I'm actively heading my own engineering company, where we are engaged in the design and testing of products for industry.
4. The G.R. VALVE I am holding has been tested and retested by leading independent laboratories
5. along with my own tests. And it's a fact....this G.R. Valve will increase
6. your auto mileage
7. up to twenty eight per cent....
8. improve your car's performance,
9. clean your engine.....
10. ^{And} reduce smog emissions ~~and improve your~~
11. In short, the G.R. VALVE will save you money...and save precious fuel...while helping to clean the air for everyone.

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SLOW ZOOM TO CU COOPER

12. Before I say a system is "go" I check it and recheck it...and the G.R. VALVE is a "go" system.

COOPER STEPS OUT OF SHOT. RACK FOCUS TO MRS SUSAN COOPER JUST CLOSING THE HOOD ON HER CAR. SHE TURNS TOWARD CAMERA A SMILES A SELF SATISFIED SMILE AS WE ZOOM WCU.....

13. In the time I've taken to tell you this about this important technological breakthrough, ~~XXXXXXXXXX~~

COOPER WALKS INTO SHOT, PUT ARM AROUND WIFE....PUTS G.R. VALVE PACKAGE ON HOOD OF CAR....ZEEK
~~XXXXXXXXXX~~

14. My wife Susan installed

CUT TO XCU PACKAGE ON HOOD OF CAR
HOLD

15. the G.R. VALVE on her car.

HOLD ON END SHOT, EXCU PACKAGE FOR LIVE SLIDE SUPER AT STATION

16. STATION ANNCR., VC.: TAG FOR LOCAL
X SECRETS.

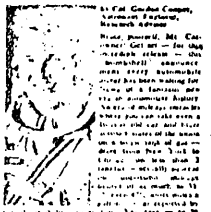
Ex. F

ASTRONAUT GORDON COOPER ANNOUNCES:

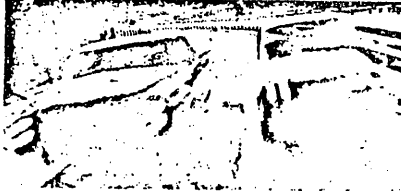
Now! CONVERT AIR INTO ENERGY—EXPLODE IT LIKE FUEL—and GET UP TO 7 MORE MILES PER GALLON!

Yes, save up to \$18 a month, save up to 350 gallons of gas each year, save up to 2 full gallons every 60 minutes you drive — ALL FREE — because air costs you not one single penny!

THIS ONE GALLON GETS BETTER GAS MILEAGE THAN THIS TINY FOREIGN "ECONOMY" CAR... THE CANON 1000 CUBIC INCH... THE NEW 1000 CUBIC INCH... THE NEW 1000 CUBIC INCH... THE NEW 1000 CUBIC INCH...



STOP BURNING YOUR CAR ON THE EXPLOSION! Right now your car runs on a very simple principle... You may not know the details and many of the details... There is much more to this than you know... The details of your car... The details of your car... The details of your car...



THIS ONE GALLON GETS BETTER GAS MILEAGE THAN THIS TINY FOREIGN "ECONOMY" CAR... THE CANON 1000 CUBIC INCH... THE NEW 1000 CUBIC INCH... THE NEW 1000 CUBIC INCH... THE NEW 1000 CUBIC INCH...

AT THE GORDON COOPER... THE NEW 1000 CUBIC INCH... THE NEW 1000 CUBIC INCH... THE NEW 1000 CUBIC INCH... THE NEW 1000 CUBIC INCH...

WHAT DO YOU EXPECT FROM A... THE NEW 1000 CUBIC INCH... THE NEW 1000 CUBIC INCH... THE NEW 1000 CUBIC INCH... THE NEW 1000 CUBIC INCH...

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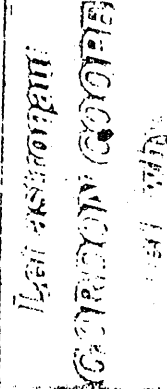
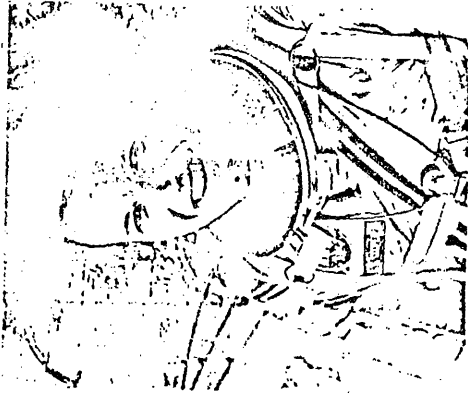
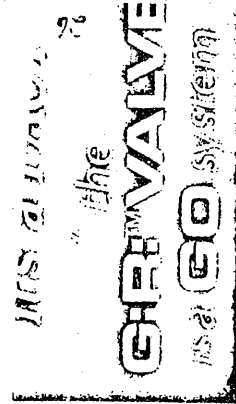
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National Engineer. JTD-58 25

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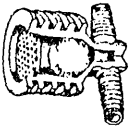
COMPARE THE G:R VALVE

Similar devices are on the market, but the G:R Valve operates on the time-proven, durable, trouble-free principle of the spring loaded ball-and-seat. Unlike "poppet" or "reed" type valves, the ball and seat has three distinct features:

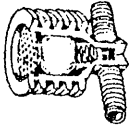
- * Continuous positive seating because the ball will always adjust to its seat.
- * Self-cleaning action due to the constant rotation of the ball in its seat.

Look at the diagrams below and BUY THE VERY BEST for your car.

VALVE CLOSED



VALVE OPEN



AT IDLING AND UP TO 35 MPH

OVER 35 MPH

100% UNCONDITIONAL MONEY-BACK GUARANTEE

NCI guarantees that with proper installation of the G:R VALVE on your automobile will result in instant improvement in fuel economy, 10% increase in horsepower and significant improvement in the performance of the device after installation. If you do not like the G:R VALVE to the dealer from whom it was purchased, within 30 days and the full price will be cheerfully refunded.

N.C. Industries

Dan Norman, President

Pursuant to Executive Order 021, the G:R VALVE may be used on any automobile registered in California in accordance with the provisions of the Vehicle Code 21556, with the exception of VW, diesel, fuel injection or super-charged engine vehicle.

TECHNICAL DESCRIPTION

The G:R VALVE is a precision engineered air induction valve which fits into the hose between the PCV valve and the carburetor. It is automatically controlled by the amount of vacuum produced by the engine under varying speeds and loads. The ideal mixture of air-to-fuel in an automobile engine is approximately 15:1. However, most normal carburetors are unable to provide this ideal mixture at all times. Normal carburetors are set when in the idle position with the correct mixture. This is efficient only until about 2000 rpm. Under acceleration, heavy loads and grades, this efficiency is lost because there is not enough air to properly mix with the added fuel being pumped into the combustion chamber. The G:R VALVE is precision calibrated to help remedy this situation by shutting down when the mixture is correct and opening up when the mixture is air-starved. Its valve action is controlled by the constantly changing vacuum in the PCV hose as the engine makes it demands for air. An added feature of the G:R VALVE is the re-energizing of dead gases as they return to the carburetor from the crankcase. As the PCV valve releases these gases, they are mixed with oxygen in the G:R VALVE, thus making these gases a combustible fuel. Since the G:R VALVE works in perfect harmony with the engine, carburetor and smog device, THERE ARE ABSOLUTELY NO TUNING ADJUSTMENTS TO MAKE. Since it is always working to provide the correct (lean) air-to-fuel mixture, IT CANNOT DAMAGE YOUR ENGINE IN ANY WAY. On the contrary, it will give it cleaner, longer-lasting life. That is why the G:R VALVE is covered with full product liability insurance.

(Typical Responses on File From Satisfied Customers)

	Miles Per Gallon		Percent Increase
	Without G:R:V	With G:R:V	
1972 V.W. BUS	18	23	27.78%
1974 MARK IV CONTINENTAL	10	12.25	22.5%
1973 FORD	10.1	13.0	28.7%
1966 CAC SCHOOL BUS (66 passenger)	4.0	5.6	40%
1972 DODGE	15.3	18.5	17.1%
1965 CHEVROLET PICKUP WITH CAB	11	15.2	38.2%

Complaint

94 F.T.C.

the facts are...

1. **THE G:R: VALVE SAVES MONEY** by giving your car, boat, truck, or motor home up to 8 more miles per gallon. That could mean a savings of up to 30¢ per gallon of gasoline. In a year this could amount to several hundred dollars, depending on how much you drive.

2. **THE G:R: VALVE IMPROVES PERFORMANCE** by allowing additional air to reach your engine only when it is needed. Most normal carburetors cannot meet the entire range of engine demands for air, so they are set for idle and speeds under 35 mph. This means your engine is air-starved when accelerating, climbing hills and pulling loads, but your car can reach its full horsepower every time you "step-on-it."

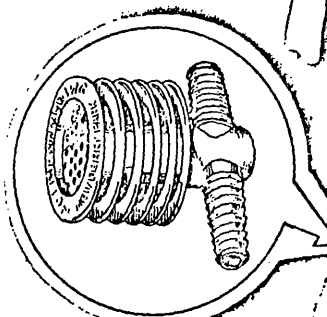
3. **THE G:R: VALVE FIGHTS POLLUTION** by insuring a more complete combustion of gasoline elements. It also re-energizes particles from the smog device so they can be burned. We call this process "Gas Re-energizing" (G:R:). Smog tests* have shown you can expect up to 50% decrease in air pollutants with this device on your present car.

4. **THE G:R: VALVE INCREASES ENGINE LIFE** by reducing the amount of carbon build up on valves and pistons. When gasoline burns more efficiently, it leaves less harmful by-products to clog and wear out your engine.

* Tests conducted at Loma Linda University at engine idle utilizing Marquette Exhaust Gas Analyzer: 42-151 Infra Red tube, used in testing exhaust emissions.

As demonstrated on TV

SUSAN ROOPER and her 1974 Vega!



A TYPICAL LAB TEST RESPONSE:
"We have tested the G:R: Valve in our university auto lab on a number of vehicles differing in size and make. The results have shown a significant overall increase in gas mileage, and reduced smog emissions. I am convinced that with normal driving habits, the G:R: Valve would soon pay for itself in fuel savings, better performance and cleaner engine."

Joe Walker
Professor of Industrial Education
Loma Linda University
*Obtained test data on file at NCI.

YOU TOO can install the G:R: Valve in minutes without special tools or mechanical ability. Just follow the simple 1-2-3 instructions included with each valve.

The unconditional money back guarantee offered by G:R: Valve distributors is positive proof of their confidence in their claim.

Ex. H

REVOLUTIONARY • SPACE AGE • GAS SAVER

OR HOW TO ATTRACT THOUSANDS OF NEW, SATISFIED CUSTOMERS TO YOUR STORE:
INCREASE YOUR SALES AND PROFIT!
LET GEMINI ASTRONAUT GORDON COOPER GIVE YOU THE FACTS...

"IT'S A FACT! The G-R Valve gives you up to 8 more miles per gallon!"
GAS MILEAGE INCREASE UP TO 28% GEMINI ASTRONAUT GORDON COOPER



"IT'S A FACT!—INCREASES MILEAGE UP TO 8 MILES PER GALLON."



How can this \$15.99 valve save hundreds of dollars a year on each car or truck?

The G-R Valve is a precision engineered regulator that is installed into the hose between the PCV Valve and the carburetor. It operates automatically by the amount of vacuum produced by the engine under varying speeds and loads.

The G-R Valve contains a calibrated spring and retaining self-cleaning ball that seats and remains closed at idling and up to 35 mph. It actually shuts off when air/fuel mixture is correct and opens when this mixture is air starved. The seat opens only sufficiently to give the proper fuel/air ratio.

The G-R Valve also re-energizes the unburned fuel from the crankcase through the PCV Valve to the carburetor. The G-R Valve mixes air with the unburned fuel creating a combustible mixture that flows into the carburetor.

The G-R Valve is always operating to provide the proper air/fuel mixture based on RPM and engine load. This metering action saves gas and adds mileage.

The G-R Valve has been tested and retested by leading independent laboratories along with my own tests. It's a fact... the G-R Valve will increase your auto mileage up to 28 per cent — improve your car's performance — clean your engine and reduce smog emissions. In short, the G-R Valve will save money... and save precious fuel while helping to clean the air for everyone. So give it a try... a system is go! check it and recheck it... and the G-R Valve is a go system.

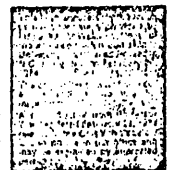
ASTRONAUT GORDON COOPER
Data compiled by independent research on the G-R Valve provide the following proof of increased gas miles per gallon:

LOMA LINDA UNIVERSITY
DEPARTMENT OF INDUSTRIAL EDUCATION

Auto Make Year Engine Size	Type of Driving	Carbon Monoxide in Percent		Hydrocarbons in parts per million		Mileage difference with G-R Valve		Percent Change in gas mileage
		Without G-R Valve	With G-R Valve	Without G-R Valve	With G-R Valve	Without G-R Valve	With G-R Valve	
Ford 1971 351 V8	City	0.8	0.7	140	120	14.1	18.1	14.18
Ford 1973 Freeway	Freeway	3.0	2.8	100	80	10.1	13.0	28.71
Buick 1964 300 V8	City	7.8	5.3	280	200	13.0	15.5	18.23
Poniac 1967	City	2.8	2.2	260	220	12.1	14.2	17.35

Marquette Exhaust Gas Analyser model 42 151 Infrared Tube used in testing exhaust emissions. Note PCV Valve not changed as recommended.
We have tested the G-R Valve on a number of vehicles differing in size and make. The results on the whole are very favorable in both better mileage and also cleaner burning.
Our tests indicate that within the normal driving habit the G-R Valve is a safe device and would soon pay for itself in fuel savings including other benefits, such as cleaner engines, noticeable increase in power, etc.

FITS ANY CAR OR TRUCK
(except Diesel, Fuel Injection, Supercharged) Takes 2 minutes to install.



Persons in charge of tests
John J. Juhl

SOLD WITH UNCONDITIONAL MONEY BACK GUARANTEE
It's worth checking out!

To order samples for evaluation, or more information, write to: GEM INDUSTRIES, Dept. CS, 13438 Wyandotte St., No. Hollywood, CA 91606 (213) 745-1498

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DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of such 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 Gordon Cooper is an individual whose address is 5011 Woodley Ave., Encino, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

PART I

It is ordered, That respondent Gordon Cooper, an individual, his agents, representatives, employees, successors and assigns, either jointly or individually, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of the automobile retrofit device, variously known as the G.R. Valve, the Turbo-Dyne Energy Chamber, and by other names, or of any other automobile retrofit device, as "automobile retrofit device" is defined in §301 of the

Energy Policy and Conservation Act of 1975, 15 U.S.C. 2011, having substantially similar properties, 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, that the automobile retrofit device variously known as the G.R. Valve, the Turbo-Dyne Energy Chamber, and by other names, or any other automobile retrofit device having substantially similar properties, will or may result in fuel economy improvement when installed in an automobile, truck, recreational vehicle, or other motor vehicle.

PART II

It is further ordered, That respondent, his agents, representatives, employees, successors and assigns, either jointly or individually, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any automobile retrofit device as "automobile retrofit device" is defined in §301 of the Energy Policy and Conservation Act of 1975, 15 U.S.C. 2011, 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, that such device will or may result in fuel economy improvement when installed in an automobile, truck, recreational vehicle, or other motor vehicle unless (1) such representation is true, and (2) at the time of making such representation, respondent possesses and relies upon written results of dynamometer testing of such device according to the then current urban and highway driving test cycles established by an agency or department of the United States government and these results substantiate such representation, and (3) where the representation of the fuel economy improvement is expressed in miles per gallon or percentage, all advertising and other sales promotional materials which contain the representation expressed in such a way must also contain, in a way that clearly and conspicuously discloses it, the following disclaimer: "REMINDER: Your actual fuel saving may be less. It depends on the kind of driving you do, how you drive and the condition of your car."

PART III

It is further ordered, That respondent, his agents, representatives, employees, successors and assigns, either jointly or individually, directly or through any corporation, subsidiary, division, or other device, in connection with the 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:

a. representing, directly or by implication, that an endorser of such product or service has expertise in a field of knowledge unless the endorser has the education, training, and knowledge necessary to be qualified as an expert in that field;

b. using, publishing, or referring to any testimonial or endorsement from any person or organization for such product or service unless, within the twelve (12) months immediately preceding any such use, publication or reference, respondent has obtained from that person or organization an express written and dated authorization for such use, publication, or reference;

c. failing to disclose a material connection, where one exists, between an endorser of such product or service and respondent. A "material" connection shall mean, for purposes of this order, any direct or indirect economic interest in the sale of the product or service which is the subject of this endorsement other than (1) a fixed sum payment for the endorsement, all of which is paid before any advertisement containing the endorsement is disseminated, or (2) payment for the endorsement which is directly related to the extent of the dissemination of advertising containing it;

d. representing, directly or by implication, any performance characteristic of such product or service unless (1) at the time of making the representation, respondent possessed and relied upon competent and reliable scientific tests substantiating the representation, and (2) respondent possesses a written test report which describes both test procedures and test results. A competent and reliable "scientific test" is one in which one or more persons, qualified by professional training, education and experience, formulate and conduct a test and evaluate its results in an objective manner using testing procedures which are generally accepted in the profession to attain valid and reliable results. The test may be conducted or approved by (a) a reputable and reliable organization which conducts such tests as one of its principal functions, (b) an agency or department of the government of the United States, or (c) persons employed or retained by respondent if they are qualified (as defined above in this paragraph) and conduct and evaluate the test in an objective manner;

e. misrepresenting in any manner the purpose, content, or conclusion of any test or survey pertaining to such product or service;

f. misrepresenting in any manner either consumer preference for

such product or service or the results obtained by consumer usage of such product or service;

g. misrepresenting in any manner the performance, efficacy, capacity, or usefulness of such product or service.

PART IV

It is further ordered. That respondent, his agents, representatives, employees, successors and assigns, either jointly or individually, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, distribution or sale 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:

1. Providing an endorsement which relates directly or by implication to the performance or efficacy of such product or service, or which refers to any characteristic, property, use, or result of use of such product or service, unless:

a. when respondent's endorsement pertains to subject matter falling within respondent's area of expertise, at the time of the first dissemination of such endorsement, respondent possesses and relies upon competent and reliable scientific evidence to substantiate any representation made directly or by implication in the endorsement, or

b. in all other cases, at the time of the first dissemination of such endorsement, respondent has made a reasonable inquiry into the truthfulness of his endorsement, and possesses and relies upon information resulting from such inquiry which substantiates any representation made directly or by implication in the endorsement. "Reasonable inquiry" shall be defined as follows:

(1) obtaining information from at least two competent and reliable sources independent of the advertiser and any other party with an economic interest in the sale of the product or service which is the subject of the endorsement; or

(2) obtaining information from the advertiser or from other parties with an economic interest in the product or service which is the subject of the endorsement and having such information independently evaluated by at least two competent and reliable sources.

2. Failing to disclose a material connection, where one exists, between an endorser of such product or service and its advertiser(s). A "material" connection shall mean, for purposes of this order, any direct or indirect economic interest in the sale of the product or

service which is the subject of this endorsement other than (1) a fixed sum payment for the endorsement all of which is paid before any advertisement containing the endorsement is disseminated, or (2) payment for the endorsement which is directly related to the extent of the dissemination of advertising containing it.

PART V

It is further ordered. That respondent, his agents, representatives, employees, successors and assigns, either jointly or individually, directly or through any corporation, subsidiary, division, or other device, in connection with the 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 failing to maintain the following accurate records which may be inspected by Commission staff members upon fifteen (15) days' notice: copies of and dissemination schedules for all advertisements, sales promotional materials, and post-purchase materials; documents authorizing use, publication, or reference to testimonials or endorsements; documents which substantiate or which contradict any claim which is a part of the advertising, sales promotional material, or post-purchase materials disseminated by respondent directly or through any business entity. Such records shall be retained by respondent for a period of three (3) years from the last date any such advertising, sales promotional, or post-purchase materials were disseminated.

PART VI

It is further ordered. That respondent promptly notify the Commission of the discontinuance of his present business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment where he is responsible, directly or, by his delegation, through any employee or agent, for the dissemination or approval of any advertising claim relating to any product or service. Each such notice shall 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. The terms of this paragraph shall not affect any other obligation arising under this order.

PART VII

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

Interlocutory Order

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IN THE MATTER OF

HASTINGS MANUFACTURING COMPANY

Docket 4437 Interlocutory Order, Oct. 12, 1979

ORDER DENYING F

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 reopen this proceeding.

Respondent's arguments re
 Freedom of Information Act
 presented to the Commission
 the Commission notes that it
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 accordance with Rule 4
 Practice (16 CFR 4.11(a)(

It is ordered That res
 motion for discovery b

¹ If the Commission decides to
 in accordance with Rule 3.72(b)(2) of .
² Compulsory discovery was likewise
 a Commission decision to conduct a new e..

*10/12/79
 June 11, 1986*

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 F.R. 40635,
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Manufacturing Company's

will conduct any necessary evidentiary hearing
 40635, 40637 (July 12, 1979).
 predecessor rule, 16 CFR 3.72(b)(2)(1979), prior to

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Complaint

IN THE MATTER OF
THE AMERICAN MEDICAL ASSOCIATION, ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED
VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 9064. Complaint, Dec. 19, 1975 — Final Order, Oct. 12, 1979

This order, among other things, requires a Chicago, Ill. medical association to cease engaging in any action that would restrict its members' solicitation of patients by advertising, submission of bids, or otherwise; interfere with the amount or form of compensation exchanged for a member's professional services; characterize as unethical the use of close panel or other health care delivery plans that limit patient's choice of a physician; or characterize as unethical the participation by non-physicians in the ownership or management of health care organizations that provide physical services. The American Medical Association ("AMA") is further required to mail to each of its members a letter setting forth the terms of the order; amend its *Principles of Medical Ethics* and the Judicial Council's *Opinions and Reports* to conform with those terms; and publish the revised documents in specified medical journals. Additionally, AMA is required to terminate, for one year, all ties with any medical society that engages in prohibited conduct.

Appearances

For the Commission: *L. Barry Costilo, George J. Wright, Daniel R. Barney, Arthur N. Lerner and Ann Malester.*

For the respondents: *Newton N. Minow, Jack R. Bierig and Robert E. Youle, Sidley & Austin, Chicago, Ill. for respondent The American Medical Association, Bernard D. Hirsh and B.J. Anderson, Chicago, Ill., Of Counsel, American Medical Association and Grant N. Nickerson, William J. Doyle and Linda L. Randell, Wiggin & Dana, New Haven, Conn. for respondents The Connecticut State Medical Society and The New Haven County Medical Association, Inc.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents The American Medical Association, The Connecticut State Medical Society, and The New Haven County Medical Association, ("AMA", "CSMS", and "NHCMA", respectively), have violated and are violating Section 5 of the Federal Trade Commission Act, and that this proceeding is in the public interest, issues this complaint.

PARAGRAPH 1. Respondent American Medical Association ("AMA") is a non-profit Illinois corporation with its principal place of business at 535 North Dearborn St., Chicago, Illinois. Its member-

ship consists of approximately 170,000 individual medical doctors, most of whom are members of state and local medical societies, including CSMS and NHCMA. AMA's affairs, including those complained of, are directed by delegates from state medical societies, including CSMS.

PAR. 2. Respondent Connecticut State Medical Society ("CSMS") is a non-profit Connecticut corporation with its principal place of business at 160 St. Ronan St., New Haven, Connecticut. CSMS is a constituent society of AMA. Delegates from CSMS participate in directing the activities of AMA, including those complained of. CSMS has approximately 4400 medical doctor members. [2]

PAR. 3. Respondent New Haven County Medical Association, Inc. ("NHCMA") is a non-profit Connecticut corporation with its principal place of business at 362 Whitney Ave., New Haven, Connecticut. NHCMA is a component society of CSMS. Delegates from NHCMA participate in directing the affairs of CSMS, including those complained of. NHCMA has approximately 1200 medical doctor members, which members direct the affairs of NHCMA, including those complained of.

PAR. 4. Most members of respondents are engaged in the business of providing medical care for a fee. In 1974, the fees earned by such physicians exceeded one billion dollars.

PAR. 5. Members of AMA are located in every state. In the conduct of their business, members of AMA and members of CSMS and NHCMA:

- (A) Receive and treat patients from other states and countries;
- (B) Receive substantial sums of money from the federal government and from private insurers for rendering medical services, which money flows across state lines;
- (C) Prescribe medicines which are shipped in interstate commerce;
- (D) Act in continuing association and cooperation with state and county medical associations, and with individual doctors, in every state, in furthering the agreements described below, in the course of which association and co-operation they use the mails and other media of interstate commerce;

As a result of which conduct, the acts and practices of respondents complained of are in or affect interstate commerce, within the meaning of the Federal Trade Commission Act.

PAR. 6. Respondents and others have agreed to prevent or hinder competition between medical doctors. This agreement has included agreements to prevent or hinder their members from:

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Memorandum of Chairman Pertschuk

- (A) Soliciting business, by advertising or otherwise; [3]
- (B) Engaging in price competition; and
- (C) Otherwise engaging in competitive practices.

PAR. 7. Respondents and others have:

- (A) Caused the agreements described above to be published and circulated in a publication called the *Principles of Medical Ethics*;
- (B) Abided by the restrictions contained in the *Principles of Medical Ethics*; and
- (C) Enforced, and have the power to enforce, adherence to the restrictions contained in the *Principles of Medical Ethics*.

PAR. 8. As a result of the acts and practices alleged above:

- (A) Prices of physician services have been stabilized, fixed, or otherwise interfered with;
- (B) Competition between medical doctors in the provision of such services has been hindered, restrained, foreclosed and frustrated; and
- (C) Consumers have been deprived of information pertinent to the selection of a physician and of the benefits of competition.

PAR. 9. The acts, practices and methods of competition described above are unfair and constitute violations of Section 5(a) of the Federal Trade Commission Act.

MEMORANDUM OF CHAIRMAN PERTSCHUK IN RESPONSE TO
MOTIONS FOR HIS RECUSAL IN THIS PROCEEDING

APRIL 18, 1979

Respondents American Medical Association, Connecticut State Medical Society, and New Haven County Medical Association have filed motions asking that I withdraw from this proceeding, or that the Commission disqualify me from further participation. For the reasons stated below, I believe my participation in this case is proper and decline to recuse myself.

The ground for disqualification asserted by respondents is that in three specified instances—testimony to Congress and speeches before the American Enterprise Institute and the Consumer Assembly—my remarks reflected prejudgment of “key issues in the case,” or gave the appearance of such prejudgment. In [2] fact, I have not, in advance of an appropriate consideration of the record, reached any determination on the specific issues involved in this case, nor do

I believe that my public statements created an appearance of such prejudgment.

In each instance in which a court has disqualified an agency decisionmaker, that action has been based on comments showing what would appear to a disinterested observer as a viewpoint on specific controverted factual issues (e.g., *American Cyanamid Co. v. FTC*, 363 F.2d 757, 767 (6th Cir. 1966)), or the ultimate issue of liability (e.g., *Texaco, Inc. v. FTC*, 336 F.2d 754, 760 (D.C. Cir. 1964), *vacated on other grounds*, 381 U.S. 739 (1965); *Cinderella Career & Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 590 (D.C. Cir. 1970)) in a pending adjudicative matter.¹ My comments, when considered in context (see, e.g., *Kennecott Copper Corp. v. FTC*, 467 F.2d 67, 80 (10th Cir. 1972), *cert. denied*, 416 U.S. 909 (1974)), demonstrate that no such appearance has been created here. [3]

The speeches and congressional statements cited by respondents can only be read as reflecting an underlying philosophy concerning broad policy issues such as the role of professionals and professional licensing in our society, competition in the health care sector of the economy, and the problem of rising health care costs. These are subjects currently of great interest to the public, and I believe that open expression of my views to Congress and the public is an entirely proper and essential part of my duties as Chairman. Cf. *FTC v. Cement Institute*, 333 U.S. 683, 701 (1948); 15 U.S.C. 46(f). The expression of views on such issues of policy which are, at most, only generally related to the specific factual and legal issues involved in a proceeding is not ground for disqualification. See, e.g., *Hortonville Joint School Dist. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482, 493 (1976); *Laird v. Tatum*, 409 U.S. 824, 831 (1972) (memorandum of Rehnquist, J.); *United States v. Morgan*, 313 U.S. 409, 421 (1941); *Skelly Oil Co. v. FPC*, 375 F.2d 6, 18 (10th Cir. 1967), *modified on other grounds sub nom. Permian Basin Area Rate Cases*, 390 U.S. 747 (1968). [4]

The statements cited by respondents also contain brief references to previous actions taken by the Commission which were relevant to issues on which I had been asked to testify.² I consider the presentation to Congress and the public of information about the nature and status of Commission activities to be one of the principal responsibilities of the Chairman, and see nothing in my recitation of such information which would constitute an appearance of prejudg-

¹ *In Association of Nat'l Advertisers, Inc. v. FTC*, No. 78-1421 (D.D.C. 1978), *appeal docketed*, No. 79-1117 (D.C. Cir. Jan. 29, 1979), the district court reaffirmed the legal standards governing disqualification in adjudicative proceedings and adopted them in the context of a Commission rulemaking proceeding.

² See, e.g., Statement Before Subcommittees of the Senate Committees on Human Resources and the Judiciary, October 10, 1977, at 5.

ment of this case. See *Cinderella Career & Finishing Schools, Inc. v. FTC*, *supra* at 590.

At no time have I commented on the merits of the specific issues raised in the pleadings in this adjudication. Rather, as part of a catalogue of Commission activities in the health care field, I advised the Congress that a complaint had issued challenging portions of the AMA and ADA codes of ethics which "may unduly restrain information about physician and dentist services."³ I then stated: [5]

Since these matters are currently in litigation, I hope you will understand why it would not be appropriate for me to comment further about them.⁴

Respondents cite no statements in which I have expressed a view on the merits of specific issues presented in this adjudication, such as whether the respondent medical societies unlawfully restrict advertising, solicitation, or other practices of their members.⁵

I reiterate that I have not arrived at any conclusion regarding the specific factual and legal questions involved in this case, nor have I expressed any opinion as to ultimate liability. Rather, I am reserving judgment until I have completed review of the record properly before me. Accordingly, I decline to recuse myself from further participation in the proceeding.

I will of course not participate in the Commission's consideration and ruling on the alternative motion addressed to the Commission.

INITIAL DECISION BY ERNEST G. BARNES, ADMINISTRATIVE
LAW JUDGE

Nov. 13, 1978

PRELIMINARY STATEMENT

On December 19, 1975, the Federal Trade Commission issued its complaint in this matter charging the American Medical Association (AMA), the Connecticut State Medical Society (CSMS), and the New Haven County Medical Association, Inc. (NHCMA) with violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by restricting the ability of their members to advertise for and solicit patients and to enter into various contractual arrangements in connection with the offering of their services to the public. Specifically, the complaint charges that respondents have agreed with others to prevent or hinder their members from:

³ *Id.* (emphasis added).

⁴ *Id.*

⁵ Nor has AMA identified any statement I have made that respondents are "subject to the jurisdiction of the Commission," despite its effort to attribute such a conclusion to me, at page 7 of the motion.

- (1) Soliciting business, by advertising or otherwise;
- (2) Engaging in price competition; and
- (3) Otherwise engaging in competitive practices.

The complaint alleges that respondents and others have caused the agreements to be published and circulated in a publication entitled Principles of Medical Ethics, and they have enforced and abided by the restrictions set forth therein. It is further alleged that, as a result of these acts and practices:

- (1) Prices of physician services have been stabilized, fixed, or otherwise interfered with;
- (2) Competition between medical doctors in the provision of such services has been hindered, restrained, foreclosed and frustrated; and
- (3) Consumers have been deprived of information pertinent to the selection of a physician and of the benefits of competition.

The aforesaid acts, practices and methods of competition are alleged to be unfair and to constitute violations of Section 5 of the Federal Trade Commission Act. [2]

On January 23, 1976, respondent AMA filed an answer admitting that it has published and circulated a publication entitled the Principles of Medical Ethics, but denying that it or its members are engaged in business, and further denying it has otherwise violated Section 5, as alleged. AMA also raised as an affirmative defense a claim that AMA is not subject to the jurisdiction of the Federal Trade Commission. On January 26, 1976, respondents CSMS and NHCMA filed answers making generally the same admissions and denials as did AMA, and also raising the affirmative defense of lack of jurisdiction.

Complaint counsel stated at the first prehearing conference in this proceeding that the complaint had issued without any formal precomplaint investigation. As a result, extensive discovery was conducted with respondents and with state and local medical societies located throughout the United States. On May 11, 1976, and June 22, 1976, complaint counsel filed memoranda identifying respondents' ethical restrictions on contract practice, advertising, and solicitation being challenged in the complaint. At a voluntary meeting with respondents' counsel on November 8, 1976, complaint counsel further detailed the restrictions being challenged. The transcript of that meeting was made a part of the record of the prehearing conference held on November 18, 1976. Complaint counsel has asserted that the complaint charges respondents with an

agreement or conspiracy with others to restrict or restrain competition. Respondents deny there was an agreement or conspiracy, and further deny that their acts and practices have prevented or hindered competition. Respondents have also contended throughout this proceeding that their ethical interpretations have changed in recent years to comport with changing legal considerations so that this proceeding is no longer in the public interest and should be dismissed.

On March 24, 1976, AMA filed a Motion for Summary Decision Dismissing the Complaint for Lack of Jurisdiction. CSMS and NHCMA filed a similar motion on April 26, 1976.¹ These motions were denied on April 26, 1976, and May 20, 1976, respectively, for the reason, *inter alia*, that the facts involved were complex, many were in dispute, and others were capable of any of several varying inferences, making summary decision inappropriate. Requests for interlocutory appeals were likewise denied.

On January 14, 1977, respondent AMA filed a Motion for Certification to the Commission of AMA's Motion to Reconsider Issuance of the Complaint because of changed circumstances. [3] Respondents CSMS and NHCMA filed a similar motion on January 24, 1977. On February 15, 1977, respondents' motions were certified to the Commission. The Commission, on April 26, 1977, denied said motions for reconsideration.

Pretrial conferences were held on February 25, September 15 and November 18, 1976, and August 2, and September 6, 1977. Adjudicative hearings began September 7, 1977, and were concluded May 4, 1978, with 57 days of actual trial. Presentation of the case-in-chief in Washington, D.C., took 20 trial days, running from September 7 through October 19, 1977. Complaint counsel called 25 witnesses. AMA's defense, which was heard in Chicago, Illinois, Los Angeles, California and Washington, D.C., began on November 28, 1977, and ended on January 20, 1978. During AMA's defense, 27 days of hearings were held, and 52² witnesses testified. CSMS and NHCMA called eight witnesses during the four days of their defense case, which took place in New Haven, Connecticut, from January 23 through 26, 1978. Complaint counsel called three witnesses in their rebuttal case, which ran from April 3 through 5, 1978. During the surrebuttal hearings, which took place in Chicago, Illinois, from May 2 through 4, 1978, respondent AMA called seven witnesses.

On October 8, 1976, a subpoena duces tecum was issued to

¹ Respondents contended they were exempt from Federal Trade Commission jurisdiction as nonprofit corporations, not organized for their own profit or that of their members.

² Dr. William Ruhe, Senior Vice President, American Medical Association, a defense witness, was recalled as a witness at surrebuttal hearings on May 2, 1978.

