

Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order. Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a consent order from Jordan, McGrath, Case & Taylor, Inc. ("Jordan, McGrath"), an advertising agency.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns Doan's, an analgesic for which Jordan, McGrath created and disseminated advertisements. The Commission's proposed complaint alleges that the respondent represented without a reasonable basis in its advertisements that Doan's analgesic products are more effective than other analgesics, including Bayer, Advil, Tylenol, and Aleve, for relieving back pain. The complaint alleges that respondent knew or should have known that the representation lacked a reasonable basis.

The proposed consent order contains provisions designed to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits respondent from making any representation that Doan's or any other over-the-counter analgesic drug is more effective than any other such drug for relieving back pain or any other particular kind of pain, unless it possesses competent and reliable scientific evidence, consisting of at least two adequate and well-controlled, double-blinded clinical studies, that substantiates the representation.

Part II of the proposed order prohibits respondent from making any representation about the efficacy, safety, benefits, or performance of any over-the-counter internal analgesic drug, unless it possesses competent and reliable scientific evidence that substantiates the representation. This Part further provides that it shall be a defense under this Part that respondent neither knew nor had reason to know of an inadequacy of substantiation for a representation.

Part III of the order is a safe harbor provision allowing representations for any drug that are permitted in the

labeling for that drug under any tentative final or final standard promulgated by the Food and Drug Administration ("FDA") or by an approved new drug application.

Parts IV, V, VI, and VII of the order relate to respondent's obligation to maintain records, distribute the order to current and future officers and employees, notify the Commission of changes in corporate structure, and file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty years under certain circumstances.

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

Donald S. Clark,

Secretary.

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[File No. D-9274]

RustEvader Corporation; David F. McCready; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Altoona, Pennsylvania-based former owner and president of RustEvader Corporation to pay \$200,000 in consumer redress and would prohibit him from using the names "Rust Evader" or "Rust Buster" for any device that he markets as reducing corrosion in motor vehicle bodies. McCready is also prohibited from making any claims about the performance, efficacy, or attributes of any product for use in motor vehicles without having appropriate substantiation to back up the claim and from misrepresenting the existence or results of any test or study. The consent agreement settles allegations stemming from advertising for RustEvader's "Rust Evader" device that purportedly reduced corrosion in motor vehicle bodies.

DATES: Comments must be received on or before September 9, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Milgrom, Federal Trade Commission, Cleveland Regional Office, 668 Euclid Avenue, Suite 520-A, Cleveland, OH 44114. (216) 522-4210.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b) (6) (ii) of the Commission's Rules of Practice (16 CFR 4.9(b) (6) (ii)).

AGREEMENT WITH DAVID F. McCready Containing Consent Order to Cease and Desist

The agreement herein, by and between David F. McCready, individually and as an officer of RustEvader Corporation, a/k/a Rust Evader Corporation, sometimes d/b/a/ REC Technologies, a corporation, hereinafter sometimes referred to as respondent, and his attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. RustEvader Corporation, a/k/a Rust Evader Corporation, sometimes d/b/a REC Technologies (REC) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1513 Eleventh Avenue, Altoona, Pennsylvania 16603.

Respondent David F. McCready has been an owner, officer and director of said corporation. At times material to the complaint herein, he formulated, directed, and controlled the policies, acts, and practices of said corporation. His address is RD 4 Box 92 B, Altoona, Pennsylvania 16601.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging him with violations of Section 5(a) of the Federal Trade Commission Act (15 U.S.C. § 45(a)) and of Section 102(c) of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (15 U.S.C. § 2302(c)), and has filed an

answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;
(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint, or that the facts as alleged in the complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right he might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not

contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

* * * * *

Definitions

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

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

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

C. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence, based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of the Rust Evader, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from representing, in any manner, directly or by implication, that such product is effective in preventing or substantially reducing corrosion in motor vehicle bodies.

II

It is further ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in

connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from making any representation, directly or by implication, concerning the performance, efficacy or attributes of such product unless such representation is true and, at the time such representation is made, respondent possesses and relies upon competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence, that substantiates the representation.

III

It is further ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, interpretations or purpose of any test, study, or survey.

IV

It is further ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that any demonstration, picture, experiment or test proves, demonstrates or confirms any material quality, feature or merit of such product.

V

It is further ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising,

promotion, offering for sale, sale, or distribution of the Rust Evader in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from employing the terms Rust Evader or Rust Buster in conjunction with or as part of the name for such product or the product logo.

VI

It is further ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any consumer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act and actually costing the consumer more than five dollars (\$5.00), shall forthwith cease and desist from conditioning any written or implied warranty of such product on the consumer's purchase or use, in connection with such product, of any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name.

VII

It is further ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, his successors and assigns, shall be liable for consumer redress in the amount of two hundred thousand dollars (\$200,000.00) as provided herein:

A. Not later than five (5) days from the date this Order becomes final, respondent shall deposit into an escrow account to be established by the Commission for the purpose of receiving payment due under this Order ("Commission escrow account"), the sum of two hundred thousand dollars (\$200,000.00).

B. Provided however, that if, at the time this Order becomes final, respondent has not completed the sale of respondent's property known as RD 4 Box 92B, Altoona, Pennsylvania 16601, then respondent shall deposit, into the Commission escrow account, not later than five (5) days from the date this Order becomes final, the sum of forty thousand dollars (\$40,000.00). Respondent shall deposit the remaining one hundred sixty thousand dollars (\$160,000.00) into the Commission escrow account upon the sale of respondent's property known as RD 4 Box 92B, Altoona, Pennsylvania 16601

at the time of the sale of said property or six months from the date that this Order becomes final, whichever first occurs. Respondent shall provide security for the one hundred sixty thousand dollars (\$160,000.00) by means of a mortgage on the property known as RD 4 Box 92B, Altoona, Pennsylvania 16601. Such mortgage shall be in a form, and shall be entered into by such date as agreed to by the parties, but no later than five (5) days from the date this Order becomes final.

C. In the event of any default in payment to the Commission escrow account, which default continues for more than ten (10) days beyond the date of payment, respondent shall also pay interest as computed under 28 U.S.C. Section 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

D. The funds deposited by respondent in the Commission escrow account, together with accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of the Rust Evader in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondent shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.

E. At any time after this Order becomes final, the Commission may direct the agent for the Commission escrow account to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

F. Respondent relinquishes all dominion, control and title to the funds paid into the Commission escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondent, respondent acknowledges that the funds are not part of the debtor's estate, nor

does the estate have any claim or interest therein.

VIII

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

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

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

IX

It is further ordered that respondent David F. McCready shall, for a period of ten (10) years from the date of issuance of this Order, notify the Federal Trade Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

X

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

A. Any paragraph in this Order that terminates in less than twenty (20) years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph. Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the

Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XI

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

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order from David F. McCready (McCready).

On August 30, 1995, the Commission issued an administrative complaint in this matter (described below). The administrative complaint was withdrawn from adjudication, with respect to McCready, on April 11, 1996, for the purpose of considering the proposed consent agreement.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertisements and other promotional practices by Rust Evader Corporation (REC) in connection with the promotion and sale of the Rust Evader, a device purported to reduce corrosion in motor vehicle bodies. The complaint alleges that McCready directed, formulated and controlled the acts and practices of REC during the period when the violations occurred.

The complaint alleges that REC and McCready engaged in deceptive advertising in violation of Section 5 of the Federal Trade Commission Act by falsely claiming that the Rust Evader is effective to substantially reduce corrosion in motor vehicle bodies. The complaint also alleges that the advertising implied, falsely, that REC and McCready had scientific substantiation for this claim.

The complaint also alleges that REC and McCready used a product demonstration of the Rust Evader that was deceptive because it used conditions that an automobile would

not encounter in practice and that improved the operation of the device. The complaint also alleges that the respondents used test results to promote the Rust Evader with the representation that such test results constituted scientific proof of the efficacy of the device. In fact, according to the complaint, the test results did not constitute such proof.

The complaint also alleged that REC and McCready violated Section 102(c) of the Magnuson-Moss Warranty Act by using a warranty that was conditioned on the consumer having the Rust Evader inspected every two years and that required the consumer to pay for the inspection.

Finally, the complaint alleged that REC and McCready provided the means and instrumentalities for others to violate Section 5 of the Federal Trade Commission Act.

The proposed consent order contains provisions designed to prevent misrepresentations related to these specific matters and others. Part I of the order prohibits McCready from representing that the Rust Evader is effective in preventing or substantially reducing corrosion in motor vehicle bodies.

Part II prohibits McCready from making any representation concerning the performance, efficacy or attributes of a product intended for use with motor vehicles unless there is competent and reliable evidence to substantiate the representation.

Part III prohibits McCready from misrepresenting the existence, contents, validity, results, conclusions, interpretations or purpose of any test, study, or survey in connection with the sale or advertising of any product for use in motor vehicles.

Part IV prohibits McCready from misrepresenting, in connection with the sale of any product for use in motor vehicles, that any demonstration, picture, experiment or test proves, demonstrates or confirms any material quality, feature or merit of such product.

Part V prohibits McCready from using the names Rust Evader and Rust Buster in connection with future sale of the Rust Evader or any substantially similar product.

Part VI prohibits future violations of Section 102(c) of the Magnuson-Moss Warranty Act.

Part VII requires McCready to pay the sum of \$200,000 to provide a fund for redress of consumers who purchased the Rust Evader. McCready will pay \$40,000 within five days of final issuance of the order by the Commission, and will pay the remaining \$160,000 no later than six

months after final issuance of the order. His obligation to pay the latter sum will be secured by a mortgage on real estate he now owns.

Parts VIII, IX, and XI are compliance and reporting provisions that require McCready to: retain all records that would bear on his compliance with the order, notify the Commission of any changes in his business affiliation, and report to the Commission his compliance with the terms of the order.

Part X provides that the order will terminate automatically twenty years from the date it becomes final unless the Commission has brought an action in federal court alleging a violation of the order. In that case, the order will terminate twenty years from the date that the federal court action is filed.

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

Donald S. Clark,

Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's (AHCPR) intention to request the Office of Management and Budget (OMB) review of a proposed data collection project. In accordance with the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3507(a)(1)(D)), the AHCPR invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by August 8, 1996.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 10235; Washington, D.C.

All comments will become a matter of public record.