

IN THE MATTER OF
EMERGENCY DEVICES, INC., ET AL.

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

Docket C-3123. Complaint, Nov. 3, 1983—Decision, Nov. 3, 1983

This consent order requires a San Francisco, Ca. corporation and two corporate officers, among other things, to cease disseminating advertisements which represent that the "Extra Margin Emergency Escape Mask" provides protection from carbon monoxide gas; will permit a person to breathe normally, or for an express amount of time; or has been endorsed or approved by any municipal, state or federal agency, unless such claims are true and are substantiated by competent and reliable scientific evidence. Any representation that an emergency escape mask will protect a person from the hazards associated with fire must be accompanied by the statement, "The mask does not filter carbon monoxide—a lethal gas associated with fire." Additionally, should the company continue to market any emergency escape mask in its current packaging, it is required to affix to such packaging a permanent adhesive label advising users of the mask's inability to filter out lethal carbon monoxide gas. Further, respondents must retain documentation substantiating or contradicting advertising claims for a period of three years; notify the Commission of any change in their business status; and provide all present and future sales, advertising and policy-making personnel with a copy of the order and an acknowledgement form.

Appearances

For the Commission: *Wendy Kloner.*

For the respondents: *Richard B. Satz, Lurie and Satz, San Francisco, Ca.*

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 Emergency Devices, Inc., a corporation, Steven Weiss, individually and as an officer of said corporation, and Michael Weiss, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Emergency Devices, Inc., is a corpora-

tion organized, existing and doing business under and by virtue of the law of the State of California, with its offices and principal place of business at 3132 Laguna Street, San Francisco, California.

Respondent Steven Weiss is President of Emergency Devices, Inc. ("EDI"). He directs and controls the acts of EDI, including the acts and practices hereinafter set forth. His business address is the same as that of said corporation.

Respondent Michael Weiss is Vice President of EDI. He directs and controls the acts of EDI, including the acts and practices hereinafter set forth. His business address is the same as that of said corporation.

PAR. 2. Respondents are now, and for sometime past have been, engaged in the purchasing, offering for sale, sale and distribution to the public of the "Extra Margin Emergency Escape Mask", an over-the-head mask with a built-in air filter. The mask is manufactured under the name Nakagawa Escape Mask by Nihon Saibohgu Company, Ltd., of Japan.

PAR. 3. In the course and conduct of their said business, respondents are now causing, and for sometime in the past have caused, the Extra Margin Emergency Escape Mask, when sold, to be shipped from their place of business to purchasers thereof located in the various States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said Extra Margin Emergency Escape Mask in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of the Extra Margin Emergency Escape Mask, respondents have at all times mentioned herein made numerous statements, orally and in writing, in various promotional and advertising materials prepared and/or disseminated by respondents for use in selling respondents' product. Illustrative and typical but not inclusive of the statements employed as aforesaid are the following:

(1) The Extra Margin Emergency Escape Mask "provides filtered breathing for up to 20 minutes or more in dense, poisonous smoke."

(2) "With the Extra Margin Emergency Escape Mask you breathe safely even in choking smoke."

(3) The Extra Margin Emergency Escape Mask enables you to "breathe normally for 20 minutes."

(4) The Extra Margin Emergency Escape Mask "protects your nose, throat and lungs from noxious gases and low concentrations of lethal gases most frequently associated with fires—hydrogen chloride, hydrogen cyanide and carbon monoxide."

(5) Tests by a chemical testing laboratory "re-confirm the device's

excellent gas-filtering capabilities and lifesaving value in a fire disaster."

(6) "Tested and Approved! In the U.S. and Canada, the mask has undergone vigorous testing by fire officials."

(7) "The filtering system was evaluated by an independent chemical testing lab, approved by OSHA and the California State Health Department."

PAR. 5. Through the use of the aforesaid statements, and others of similar import and meaning not expressly set out herein, respondents have represented and continue to represent, directly or by implication, that:

(1) The Extra Margin Emergency Escape Mask provides twenty (20) minutes escape time in the event of fire.

(2) The Extra Margin Emergency Escape Mask screens lethal gases associated with fire, including carbon monoxide.

(3) The Extra Margin Emergency Escape Mask permits normal breathing in the event of fire.

(4) The Extra Margin Emergency Escape Mask has been endorsed or approved by state and federal government agencies.

PAR. 6. In truth and in fact:

(1) The Extra Margin Emergency Escape Mask does not provide twenty (20) minutes escape time in the event of fire. The mask user can be overcome by gases associated with fire in less than twenty (20) minutes.

(2) The Extra Margin Emergency Escape Mask is incapable of screening out carbon monoxide.

(3) The Extra Margin Emergency Escape Mask does not permit normal breathing. The mask's filter creates inhalation and exhalation breathing resistance.

(4) The Extra Margin Emergency Escape Mask has not been endorsed or approved by any state or federal agency.

Therefore, the statements and representations set forth in Paragraphs Four and Five were and are unfair, false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, respondents have represented in promotional literature and in the product's packaging the asserted advantages of the Extra Margin Emergency Escape Mask but have failed to disclose that the mask does not filter carbon monoxide, a lethal gas associated with fire.

PAR. 8. In light of the representations described in Paragraphs Four and Five, respondents' failure to disclose the facts described in Paragraph Seven is misleading in a material respect, in that the disclosure of these facts to consumers would be likely to affect their purchase

decisions. Therefore, failure to disclose these material facts renders the sales and packaging materials referred to in Paragraph Seven unfair, false, misleading and deceptive.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as merchandise sold by respondents.

PAR. 10. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose the aforesaid material facts has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and to induce purchases of substantial quantities of respondents' products by reason of said erroneous and mistaken beliefs.

PAR. 11. The acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have 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 Emergency Devices, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3132 Laguna Street, in the City of San Francisco, State of California.

Respondents Steven Weiss and Michael Weiss are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

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

ORDER

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

(1) *The Extra Margin Emergency Escape Mask* shall mean the over-the-head vinyl mask with a built-in mouthpiece and filter manufactured by Nihon Saibohgu Company, Ltd., of Japan.

(2) *Competent and reliable scientific test* shall mean a test in which persons with skill and expert knowledge in the field to which the test pertains conduct the test and evaluate its results in an objective manner using testing, evaluation, and analytical procedures that ensure accurate and reliable results.

I

It is ordered, That respondents Emergency Devices, Inc., a corporation, its successors and assigns, and its officers, and Steven Weiss, individually and as an officer of said corporation, and Michael Weiss, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Extra Margin Emergency Escape Mask or any other emergency escape mask, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Disseminating, or causing or permitting the dissemination of, any advertisement or other representation, express or implied, that an emergency escape mask provides protection from carbon monoxide gas unless at the time the representation is made, the representation is true and respondents possess and rely upon a competent and reliable scientific test substantiating the representation.

2. Disseminating, or causing or permitting the dissemination of, any advertisement or other representation, express or implied, that an emergency escape mask provides twenty (20) minutes of breathable air or that an emergency escape mask provides any express amount of time of breathable air unless at the time the representation is made, the representation is true and respondents possess and rely upon a competent and reliable scientific test substantiating the representation.

3. Disseminating, or causing or permitting the dissemination of, any advertisement or other representation, express or implied, that an emergency escape mask permits normal breathing unless at the time the representation is made, the representation is true and respondents possess and rely upon a competent and reliable scientific test substantiating the representation.

4. Disseminating, or causing or permitting the dissemination of, any advertisement or other representation, express or implied, that an emergency escape mask has been endorsed or approved by any municipal, state or federal agency unless at the time the representation is made, the representation is true and the respondents possess and rely upon a reasonable basis for the claim consisting of a verified statement from the agency that endorsed or approved the mask. When referring to any test conducted by or on behalf of the aforesaid agency as a basis for the agency's endorsement or approval, the results of such test must be fairly and accurately disclosed in conjunction with the representation or claim.

II

It is further ordered, That respondents Emergency Devices, Inc., a corporation, its successors and assigns, and its officers, and Steven Weiss, individually and as an officer of said corporation, and Michael Weiss, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Extra Margin Emergency Escape Mask or any other emergency escape mask, 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 an emergency escape mask protects the user from the hazards associated with fire without disclosing in close conjunction therewith the following statement in print at least as large as the print in which the representation is made, with nothing to the contrary or in mitigation of this statement:

The mask does not filter carbon monoxide—a lethal gas associated with fire.

III

It is further ordered, That should respondents Emergency Devices, Inc., a corporation, its successors and assigns, and its officers, and Steven Weiss, individually and as an officer of said corporation, and Michael Weiss, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, continue to market the Extra Margin Emergency Escape Mask, or any other emergency escape mask, in its current packaging, the respondents shall affix a white permanent-adhesive label to all its current packaging. This label shall remove all references on the current packaging relating to the emergency escape mask's ability to provide protection from carbon monoxide and its effectiveness for up to twenty (20) minutes. The first line of this label shall state "The mask does not filter carbon monoxide—a lethal gas associated with fire." As shown in Attachment A of this Order, this sentence shall appear on the label in ten-point bold type.

IV

It is further ordered, That respondents distribute a copy of this Order to all present and future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this Order and that respondents secure from each such person a signed statement acknowledging receipt of said Order.

V

It is further ordered, That respondents, for a period of three year after respondents last disseminate the advertisements for product covered by this Order, shall retain all test results, data, and other documents or information on which they relied for their representations or any documentation which contradicts, qualifies or calls in serious question any claim included in such advertisements which

were in their possession during either their creation or dissemination. Such records may be inspected by the staff of the Commission upon reasonable notice.

VI

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

VII

It is further ordered, That the individual respondents promptly notify the Commission of the discontinuation of their present business or employment. In addition, for a period of five (5) years from the date of service of this Order, the respondents shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the offering for sale, sale or distribution of emergency escape masks or of their affiliation with a new business or employment in which their duties and responsibilities involve the offering for sale, sale or distribution of emergency gas masks. Each such notice shall include the respondents' new business address and a statement of the nature of the business or employment in which the respondents are newly engaged, as well as a description of the respondents' duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

VIII

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

EMERGENCY

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Decision and Order

ATTACHMENT A

**THE MASK DOES NOT FILTER
CARBON MONOXIDE—A LETHAL
GAS ASSOCIATED WITH FIRE.**

Complaint

102 F.T.C.

IN THE MATTER OF

MONTE PROULX

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3124. Complaint, Nov. 3, 1983—Decision, Nov. 3, 1983*

This consent order requires Monte Proulx to, among other things, cease disseminating advertisements which represent that the "Extra Margin Emergency Escape Mask" provides protection from carbon monoxide gas; will permit a person to breathe normally, or for an express amount of time; or has been endorsed or approved by any municipal, state or federal agency, unless such claims are true and are substantiated by competent and reliable scientific evidence. Any representation that an emergency escape mask will protect a person from the hazards associated with fire must be accompanied by the statement, "The mask does not filter carbon monoxide—a lethal gas associated with fire." Additionally, should he continue to market any emergency escape mask in its current packaging, he is required to affix to such packaging a permanent adhesive label advising users of the mask's inability to filter out lethal carbon monoxide gas. Further, respondent must retain documentation substantiating or contradicting advertising claims for a period of three years; notify the Commission of any change in his business status; and provide all present and future sales, advertising and policy-making personnel with a copy of the order and an acknowledgement form.

*Appearances*For the Commission: *Wendy Kloner.*For the respondent: *Pro se.*

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

PARAGRAPH 1. Respondent Monte Proulx is an individual; his address is 50300 Highway 245, Badger, California.

PAR. 2. Respondent is now, and for sometime past has been, engaged in the purchasing, offering for sale, sale and distribution to the public of the "Extra Margin Emergency Escape Mask", an over-the-head