

Complaint

105 F.T.C.

IN THE MATTER OF

DESCENT CONTROL, INC.

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

Docket C-3152. Complaint, April 29, 1985—Decision, April 29, 1985

This consent order requires a Fort Smith, Ark. marketer and distributor of the "Sky Genie" and other descent systems that are used for descent, rescue, or escape from high places, among other things, to cease misrepresenting that any descent system provides an automatically-controlled descent or contains long-lasting line. The order requires the company to have a reasonable basis consisting of specified data before making claims concerning the safety and performance characteristics of descent systems; or representations that the products meet or exceed any standard or are used as sold by any government agency or non-government organization. The firm is also required to disclose in catalogs, technical bulletins and operating instructions that the line should be replaced after two uses for rapid descent at speeds exceeding 15 feet per second; and that the line must be replaced immediately if exposed to certain chemicals or used to arrest a free fall of two feet or more. Technical bulletins and operating instructions must warn users that a line that has been used as a utility line should not be used as a safety line; that the safety and speed of descent is dependent upon manual control by the user; and that descent systems should not be used by individuals who are unfamiliar with their use. Additionally, the firm is required to affix a warning label to all descent systems; mail specified safety information to past purchasers; and place advertisements containing the safety information in specified trade publications.

Appearances

For the Commission: *Jeffrey M. Karp.*

For the respondent: *Joseph Weiss, Weiss and Golden, Philadelphia, Pa.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Descent Control, Inc., hereinafter 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 as follows:

PARAGRAPH 1 Respondent Descent Control, 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 3920 Ayers Road, P.O. Box 6405, Fort Smith, Arkansas.

PAR. 2. Respondent is now and for sometime in the past has been engaged in the manufacturing, advertising, marketing, distributing, and selling to the public of "Sky Genie Descent Systems", which are devices for work in, and descent, escape and rescue from, high places. Such devices consist of a nylon line, aluminum shaft, cylindrical shaft cover, and a variety of harnesses, belts, seats and scaffolds.

PAR. 3. In the course and conduct of its business, respondent causes, and in the past has caused, Sky Genie Descent Systems to be offered and sold from its place of business to purchasers located in various States of the United States and the District of Columbia. Respondent maintains and, at all times mentioned herein, has maintained a substantial course of trade in said products in or affecting commerce, as "commerce" is defined by the Federal Trade Commission Act, as amended.

PAR. 4. In the further course and conduct of its aforesaid business, respondent has at all times mentioned herein made numerous statements, orally and in writing, in various advertisements, promotional and packaging materials prepared and/or disseminated by respondent for use in selling respondent's products. Illustrative and typical, but not inclusive of the statements employed as aforesaid, are the following:

1. Descent control device for perfectly controlled descent from high places . . .
2. EASY TO USE systems are preset for the desired rate of descent by the number of line turns made around the shaft . . . Pre-adjustable to a wide range of weight loads and desired speed of descent . . .
3. SKY GENIE LINE . . . special woven, rot and mildew resistant nylon, stronger—many years longer lasting with shock absorbing elasticity built-in . . .
4. All SKY GENIE equipment meets or exceeds O.S.H.A. standards for lifelines, boatswain chairs, escape and rescue use.
5. O.S.H.A. standards met or exceeded where applicable.
6. SKY GENIE DESCENT SYSTEMS ARE IN USE BY . . . Army . . .

PAR. 5. Through the use of the aforesaid statements, respondent has represented and continues to represent, directly or by implication, that:

1. presetting the device by the number of turns of the rope around the shaft provides an automatically controlled descent which does not depend on user control;
2. the nylon line of the Sky Genie descent systems is safe and

durable for long periods of time under repeated use for work, descent, rescue or escape;

3. all Sky Genie descent systems equipment meet or exceed all applicable OSHA standards, and, in particular, OSHA standards for lifelines, boatswain chairs, and escape and rescue; and

4. Sky Genie descent systems are used, in the form such systems are offered for sale, by the U.S. Army.

PAR. 6. In truth and in fact:

1. presetting the device by the number of turns around the shaft does not provide an automatically controlled descent; rather, speed of descent is dependent upon user control;

2. the nylon line of the Sky Genie descent systems is not safe or durable for long periods of time when used for rapid descents or to arrest a free fall. The nylon line of the Sky Genie descent systems is subject to failure or breakage after two uses for descents at speeds in excess of 15 feet per second, or after one use to arrest a free fall of 2 feet or more;

3. Sky Genie descent systems do not meet or exceed all applicable OSHA standards;

4. all lines distributed and sold by respondent do not meet or exceed OSHA standards for lifelines; only the 1/2" line meets OSHA standards for lifelines;

5. the Sky Genie boatswain chair descent system does not meet OSHA standards;

6. no OSHA standards exist for lines used in escape and rescue;

7. The U.S. Army does not use the Sky Genie descent systems in the form such systems are offered for sale by respondent. The U.S. Army uses the Sky Genie descent systems only after modifying them because the Sky Genie descent systems, in the form such systems are offered for sale, do not meet Army standards for escape and rescue devices.

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

PAR. 7. Paragraphs Four, Five and Six are hereby incorporated by reference. In the course and conduct of its business, respondent has represented and continues to represent that the Sky Genie descent systems, when used according to instructions, are safe and effective for work in, and descent, rescue and escape from, high places.

PAR. 8. In truth and in fact, the Sky Genie descent systems, when used according to instructions, are not safe and effective for work in, and descent, rescue and escape from, high places because the instruc-

cerning the safe use and proper maintenance of the Sky Genie descent systems:

1. user control, and not any presetting of the device, determines the speed of descent;
2. the nylon line should be replaced after two uses for rapid descent at speeds in excess of 15 feet per second;
3. the nylon line must be replaced immediately if used once to arrest a free fall of 2 feet or more; and
4. the nylon line must be replaced immediately if exposed to certain chemicals commonly found in and around construction and maintenance sites.

PAR. 9. Respondent's representation, set forth in Paragraph Seven, by reason of its failure to disclose the facts described in Paragraph Eight, is misleading in a material respect in that the disclosure of these facts to purchasers would be likely to affect their purchasing and/or product use decisions. Therefore, the failure to disclose these material facts renders the representation referred to in Paragraph Seven false and misleading.

PAR. 10. The acts and practices of respondent, herein alleged, were and are all to the prejudice and injury of the public and constituted and now constitute 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 respondent, as herein alleged, are continuing.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and hav-

ing 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 Descent Control, 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 3920 Ayers Road, P.O. Box 6405, Fort Smith, Arkansas.
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

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

1. *Descent Control* means Descent Control, Inc., its subsidiaries, successors and assigns, and any other entity continuing the business of Descent Control, Inc., that has actual knowledge of this Order.
2. *descent systems* means all hardware, rope and other components which are marketed and sold for the purpose of work in, or descent, rescue or escape from, high places.
3. *person* means any individual, partnership, corporation, firm, trust, estate, cooperative, association, or other entity.
4. *distributor* means any person who, pursuant to a sales agreement with Descent Control, purchases or receives on consignment descent systems for resale to the public.
5. *owner* means any person who purchased a Sky Genie descent system directly from Descent Control or from a distributor.

I.

It is ordered, That respondent Descent Control, Inc., a corporation, its successors and assigns, and its officers, 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 Sky Genie descent systems, or any other descent systems, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from disseminating, or causing the dissemination of, any advertise-

ment, promotional material, operating instruction, technical manual, label, packaging, or catalog, which represents directly or by implication:

- a. that any such descent systems provide an automatically controlled descent, unless such is the case;
- b. that any nylon line within any such descent systems is long-lasting, unless such is the case;
- c. that any such descent systems meet or exceed a standard of any government agency or non-government organization unless:
 - (i) there is disclosed clearly and prominently, in close conjunction therewith, a description of which standard is met or exceeded and whether all or only part of the descent systems meet or exceed such standard; and
 - (ii) at the time the representation is made Descent Control possesses and relies upon a reasonable basis for the representation.
- d. that any such descent systems are used, in the form such systems are offered for sale, by any government agency or non-government organization, unless, at the time the representation is made, Descent Control possesses and relies upon a reasonable basis for the representation consisting of a verified written statement from the agency or organization which is claimed to use the descent systems attesting to such use; and
- e. any safety or other performance characteristic of any such descent systems, unless, at the time the representation is made, Descent Control possesses and relies upon a reasonable basis for the representation consisting of competent and reliable objective evidence substantiating the representation.

II.

It is further ordered, That respondent Descent Control, Inc., a corporation, its successors and assigns, and its officers, 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 Sky Genie descent systems, or any other descent systems, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose clearly and prominently in each catalog for such systems the following:

1. that the line should be replaced after two uses for rapid descent at speeds in excess of 15 feet per second;

2. that the line must be replaced immediately if once used to arrest a free fall of 2 feet or more; and

3. that the line must be replaced immediately if exposed to any chemicals listed in the operating instructions.

III.

It is further ordered, That respondent Descent Control, Inc., a corporation, its successors and assigns, and its officers, 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 Sky Genie descent systems, or any other descent systems, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose clearly and prominently in each technical bulletin and operating instruction for such descent systems adequate instructions for safe and proper use, including, but not limited to, the following:

1. that the line which is a component of the descent systems should be replaced after two uses for rapid descent at speeds in excess of 15 feet per second;

2. that the line must be immediately replaced if once used to arrest a free fall of 2 feet or more;

3. that the line must be replaced immediately if exposed to any of the following chemicals [herein Descent Control should identify all chemicals which it knows or has reason to know would adversely affect the line in its descent systems];

4. that the line should not be used as a safety line if it has ever been used as a utility line;

5. that the descent systems are not appropriate or safe for use as personal emergency or self-rescue devices by individuals who are not familiar with the proper use and application of the devices; and

6. that the safety and speed of descent of users of the descent systems is dependent upon manual control by the user.

IV.

It is further ordered, That respondent Descent Control, Inc., a corporation, its successors and assigns, and its officers, 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 Sky Genie descent systems, or any other descent systems, in or affecting commerce, as "commerce" is

defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to affix to each such descent system and to the packaging thereof a permanent white-adhesive label disclosing clearly and prominently in red letters:

WARNING: This line is subject to breakage under certain conditions. See operating manual for details.

V.

It is further ordered, That Descent Control shall within thirty (30) days after the date of service of this order:

1. provide each of its distributors with the labels described in Part IV and with technical bulletins and operating instructions which contain the disclosures required by Part III in sufficient number to cover each distributor's existing inventory of descent systems; and
2. instruct and use its best efforts to ensure that each distributor affixes such labels to each descent system and its packaging and includes such technical bulletins and operating instructions with each descent system in the distributor's inventory.

VI.

It is further ordered, That Descent Control shall send to each owner identified by its records and to each owner identified by its distributors' records, by first class mail, within sixty (60) days after the service of this order, a copy of the letter attached hereto as Appendix A in an envelope clearly stamped on the front with the words "Contains Important Product Safety Information."

VII.

It is further ordered, That Descent Control shall, within thirty days after the date of service of this Order, place or cause to be placed, in the manner described below, the announcement attached hereto as Appendix B, beginning as soon as space is available, in three consecutive issues of *Occupational Hazards*, and *Industrial Safety and Hygiene News*, and *National Safety News*.

The printed announcement shall be no smaller than one quarter page in size, and shall not include any additional text or graphics.

VIII.

It is further ordered, That Descent Control shall distribute a copy of this Order to each present and future officer, employee, agent and representative having sales, advertising, or policy making responsibilities for any descent systems and secure from each such person a signed statement acknowledging receipt of said Order.

IX.

It is further ordered, That Descent Control shall maintain for at least three years and upon request make available to the Federal Trade Commission for inspection and copying the originals of signed statements required by Part VIII of this Order and all test results, data, and other documents or information relied upon for any representation for any descent systems and any information in the possession of Descent Control which contradicts, qualifies or calls into serious question that representation.

X.

It is further ordered, That respondent 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.

XI.

It is further ordered, That respondent shall, within ninety (90) days after service upon it of this Order, file with the Commission a report in writing, setting forth in detail, the manner and form in which it has complied with this Order.

APPENDIX A

Dear Customer:

Our records show that you have purchased a Sky Genie descent system. Recently, it has come to our attention that users of this product may not be aware of necessary precautions to ensure safe use. Therefore, as a result of an agreement with the Federal Trade Commission, we are contacting all of our Sky Genie customers to alert them about the following precautions.

1. THE LINE MAY BREAK if used more than 2 times for rapid descents at speed

in excess of 15 feet per second (for example, rappelling or using it as a climbing rope). Replace the line after 2 rapid descents.

2. DO NOT use the rope as a safety line if it has ever been used as a utility line.

3. Replace the line IMMEDIATELY after it has been used to arrest a free fall of 2 feet or more.

4. Replace the line IMMEDIATELY if it has been exposed to any of the following chemicals:

Hydrochloric acid	Acetic acid
Nitric acid	Oxalic acid
Muriatic acid	Phenol
Sulfuric acid	Nitrobenzene

5. The number of turns of the line around the shaft of the Sky Genie will NOT automatically ensure a controlled rate of descent. The user must be prepared to manually control the descent in order to prevent an uncontrolled fall.

6. The durability and life of the line will vary significantly depending on how and where it is used. In order to ensure safe use in an emergency, inspect the line carefully before each use. Look for broken, cut or pulled strands, worn fibers, or any hardening or discoloring of portions of the line. If any of these warning signs are present, the line may break.

If you have any questions on the use and care of the Sky Genie descent system, please write Descent Control, P.O. Box 6405, Fort Smith, Arkansas 72906, or call (800) 643-2539.

Sincerely yours,

President

APPENDIX B

IMPORTANT SAFETY INFORMATION

[insert
company
logo]

For owners of
**SKY GENIE
DESCENT SYSTEMS**

Your SKY GENIE line may break or you may suffer an uncontrolled fall if you don't use it properly—follow these important steps for safe use:

1. REPLACE THE LINE when it's been used to arrest a free fall of 2 feet or more.
2. REPLACE THE LINE when it's been exposed to any of the following chemicals: Hydrochloric, Nitric, Muriatic, Sulfuric, Acetic or Oxalic acids, Phenol or Nitrobenzene.
3. REPLACE THE LINE after two rapid descents at speeds in excess of 15 feet per second.
4. BE PREPARED to manually control the speed of descent. The number of turns of the line around the shaft will not automatically ensure a controlled descent.

* For further information, write: Descent Control, P.O. Box 6405, Fort Smith, Arkansas 72906, or call (800) 643-2539.

IN THE MATTER OF

P. LEINER NUTRITIONAL PRODUCTS CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF SECS. 5
AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9173. Complaint, Jan. 27, 1984—Decision, May 3, 1985*

This consent order requires two California firms engaged in the advertising, labelling, packaging, sale and distribution of nutritional supplements, among other things, to cease representing falsely or without proper substantiation, that Octacol 4 or any similar product can improve human vigor, endurance or other aspects of physical performance or fitness; or that the Octacosano, Triacantanol, Hexacosanol or tetracosanol contained in their products are related to athletic endurance or physical fitness. The firms are also barred from making claims regarding physical benefits to be derived from using such products unless they are properly substantiated; and from misrepresenting the purpose, reliability, results or conclusions of any test, research, article or scientific opinion. Additionally, the companies are required to maintain for a period of three years all materials that substantiate or contradict representations covered by the order.

Appearances

For the Commission: *Cheryl B. Anderson, Teresa A. Hennessy and Brinley H. Williams.*

For respondents: *Henry P. Sailer and Jonathan L. Wiener, Covington & Burling, Washington, D.C.*

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 PLNP Holdings, Inc., a corporation, and P. Leiner Nutritional Products, Inc., a corporation, hereinafter 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 PLNP Holdings, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Respondent P. Leiner Nutritional Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Respondent PLNP