

IN THE MATTER OF

WEIN PRODUCTS, INC., ET AL.

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

Docket C-3160, Complaint, Aug. 13, 1985—Decision, Aug. 13, 1985

This consent order requires four California firms and two individuals engaged in the advertising, sale and distribution of "DECIMATE", an ultrasonic pest control product, among other things, to cease representing that DECIMATE or any other ultrasonic pest control product will eliminate cockroaches, rats, mice, or other such pests from a home or place of business; will eliminate them within a specified period of time; will protect a home or place of business from rodent and insect infestations or cause any area to be free of such pests; and will serve as an effective alternative to the use of conventional pest control products. The firms are also barred from making any performance or effectiveness claims for ultrasonic pest control devices unless they possess and rely upon proper substantiating evidence when making those claims.

Appearances

For the Commission: *Harrison J. Sheppard.*

For the respondents: *Joseph W. Price, Price, Gess & Ubell*, Newport Beach, 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 Wein Products, Inc., a corporation, El Mar Trading Corporation, a corporation, El Mar Corporation, a corporation; Stanley Weinberg, individually and as an officer and director of Wein Products, Inc.; and Allen Schor, individually and as an officer and director of El Mar Trading Corporation and El Mar Corporation, all of which corporate and individual respondents are 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 Wein Products, Inc. is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of California, with its offices and principal place of business located at 115 W. 25th Street, Los Angeles, California.

Respondents El Mar Trading Corporation and El Mar Corporation are corporations organized, existing, and doing business under and by virtue of the laws of the State of California, with their offices and principal place of business located at 821 E. Artesia Boulevard, Carson, California.

Respondent Stanley Weinberg is an officer and director of Wein Products, Inc. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

Respondent Allen Schor is an officer and director of El Mar Trading Corporation and El Mar Corporation. He formulates, directs and controls the policies, acts and practices of said corporations, including the acts and practices hereinafter set forth. His address is the same as that of said corporations.

The aforesaid respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents manufacture, advertise, offer for sale, sell and distribute ultrasonic pest control products under the brand name of "DECIMATE". Wein Products, Inc. is the manufacturer of the DECIMATE and El Mar Trading Corporation and El Mar Corporation are the sole distributors for the product.

PAR. 3. Respondents, at all times mentioned herein, have maintained a substantial course of business, including the acts and practices as hereinafter set forth, which are 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 DECIMATE ultrasonic pest control product, respondents have disseminated, directly and through their marketers and distributors, various promotional materials, including suggested advertisements, sales brochures and promotional pamphlets, which contain statements respecting the performance of the DECIMATE ultrasonic pest control product. Examples of such promotional materials are attached hereto as Exhibits A through E.

PAR. 5. Typical statements in said promotional materials, but not necessarily inclusive thereof, are:

A. DECIMATE is the safest, most effective and most economical method yet devised for the control and elimination of common household pests. . . . Now, scientific research has proven that high intensity ultrasonic sound waves are effective in ridding an area of many types of pests, including rats, roaches, mice and mosquitoes.

B. In four to six weeks your home will be free of pests, without the use of possible

C. Say Goodbye to roaches, rodents, mosquitoes, crickets and other household pests without toxic chemicals.

D. Effective—eliminates pests from your home in 4–6 weeks or sooner in an open space up to 2000 sq. ft.

E. Proven effective against rats, roaches, fleas, flies, mice, spiders, and many more pests.

F. Finally! An economical, effective solution to your pest problem. Would you believe it if someone told you you could make one purchase that would keep your home or business free of pests for years to come and yet cost only pennies a day? Believe it—DECIMATE works! And without dangerous poisons or toxic chemicals.

G. . . . will have no effect on your home except to rid it of insects and rodents.

H. DECIMATE THE POWERFUL . . . ULTRASONICALLY ELIMINATES INSECTS AND RODENTS.

PART I

Pest Elimination Claims

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four and Five are incorporated by reference herein.

PAR. 6. Through the use of statements referred to in Paragraph Five and others not specifically set forth therein, respondents have represented, and are now representing, directly or by implication, that use of the DECIMATE:

1. Eliminates rats, mice, cockroaches, and other pests from a purchaser's home or place of business.

2. Eliminates rodent and insect problems from a purchaser's home or place of business within four to six weeks or sooner.

3. Prevents rodents and insects from remaining in or entering an area in a purchaser's home or place of business where the DECIMATE device is in use.

PAR. 7. In truth and in fact, use of the DECIMATE does not:

1. Eliminate unwanted rats, mice, cockroaches, or other pests from a purchaser's home or place of business.

2. Eliminate rodents or insects from a purchaser's home or place of business within four to six weeks or sooner.

3. Prevent rodents or insects from remaining in or entering an area in a purchaser's home or place of business in which such product is in use.

Therefore, the representations set forth above were, and are, false and misleading.

PART II

Claims of Ability To Control Pests

Alleging further violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four and Five are incorporated by reference herein.

PAR. 8. Through the use of the statements referred to in Paragraph Five, and others not expressly set out therein, respondents have represented, and are now representing, directly or by implication, that use of the DECIMATE:

1. Effectively controls rats and mice in the home or place of business.
2. Effectively controls insects, such as cockroaches, in the home or place of business.
3. Eliminates the need to use, in the home or place of business, alternative rodent or insect control products such as traps, powders, sprays or other chemicals.

PAR. 9. In truth and in fact, use of the DECIMATE:

1. Is ineffective for controlling rodents in the home or place of business. Any reaction by rodents to the DECIMATE would, at best, only be of short duration. Rodents habituate to ultrasound and will return to their chosen nesting or feeding habitats even in the presence of such ultrasonic products.
2. Is ineffective for controlling insects in the home or place of business.
3. Does not eliminate the need to use alternative pest control products such as chemicals, sprays, powders, or traps in the home or place of business.

Therefore, the representations set forth above were, and are, false and misleading.

PART III

Area Coverage Claims

Alleging further violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four and Five are incorporated by reference herein.

PAR. 10. Through the use of the statements referred to in Paragraph Five, and others not expressly set out therein, respondents have represented, and are now representing, directly or by implication, that use of the DECIMATE will effectively cover an area of up to 2000 to 3500 square feet in the home or a place of business.

cover areas of up to 2000 to 3500 square feet in the home or place of business because, among other reasons, ultrasound:

1. loses intensity as it travels;
2. is absorbed by soft objects such as carpeting, curtains and drapes;
3. is reflected by hard surfaces such as partitions, appliances, furniture, cabinets and shelving, creating sound "shadows;" or
4. is unable to penetrate to places of nesting and feeding that are behind and within recesses of walls, under floors or within cracks or crevices.

Therefore, the representations set forth above were, and are, false and misleading.

PART IV

Reasonable Basis—Substantiation

Alleging further violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One, Two, Three, Four and Five are incorporated by reference herein.

PAR. 12. Through the use of the statements referred to in Paragraph Five, and others not expressly set out therein, respondents have represented and are now representing, directly or by implication, that at the time of making the representations respondents possessed and relied upon a reasonable basis for those representations.

PAR. 13. In truth and in fact, at such times, respondents did not possess and rely upon a reasonable basis for making those representations.

Therefore, the representations set forth above were, and are, false and misleading.

PAR. 14. The use by respondents of the aforesaid representations as set forth in Parts I-IV, and the placement in the hands of distributors and retailers of promotional materials through which others may have conveyed those representations have had the tendency and capacity to mislead consumers and to induce the purchase of respondents' ultrasonic pest control products.

PAR. 15. The acts and practices of respondents, as herein alleged, 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 respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

Complaint

106 F.T.C.

APPENDIX A

DECI-MATE

ULTRASONIC PEST REPELLE

INTRODUCTION

DECI-MATE is the safest, most effective and most economical method yet devised for the control and elimination of common household pests.

In recent years, many giants of the Food Preparation Industry have come to rely on the power of Ultrasonic Sound Waves as the solution to the enormous pest problems they face. Now, because of technological breakthroughs in design and manufacturing techniques, this method is available to everyone at affordable prices.

Until very recently, the primary way man has dealt with pests has been through the use of chemical poisons. While chemical eradication can be immediately effective, it can also be toxic to humans and animals. Now, scientific research has proven that high intensity ultra-

sonic sound waves are effective in ridding an area of many types of pests, including rats, roaches, mice and mosquitoes.

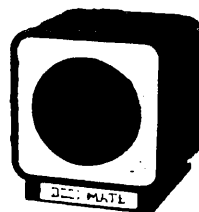
This non-toxic but slower method of eradication has no effect on humans, but in a few short weeks, will effectively repel many types of pests from a given area. The constant pulsing of DECI-MATE will force these pests to give up their source of food, water and shelter. It must be stressed that the effect is a gradual one as the creature will withstand tremendous nervous system abuse before leaving.

NOTE: Certain pests are more susceptible to ultrasound during specific stages of their life cycle. Eggs and larvae are not affected.

HOW IT WORKS

DECI-MATE's solid state circuitry delivers a tremendous blast of power to a special ultrasonic driver that produces 150 decibels of ultrasound pressure level. The circuitry then sweeps the ultrasonic waveform from 25KHz to 65KHz. This tremendous blast of ultrasonic energy dramatically disturbs pests' eating, sleeping and reproducing patterns. Because the waveform is continuously and automatically variable, pests have no way to develop immunity to ultrasound. In four to six weeks your home will be free of pests, without the use of possible cancer-causing chemicals and pesticides. This is an ideal method for allergy sufferers or anyone who wants an environmentally safe method of eradication.

Do not expect pests to leave on first exposure but rely on the tremendous power of your DECI-MATE to produce what scientists refer to as "NEGATIVE PHONO-



TAXIS" in the pest. Pests will suffer from continual discomfort while the DECI-MATE is turned on.

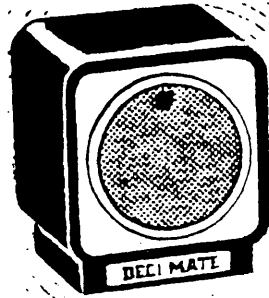
INSTALLATION

Installation is simple. Just plug DECI-MATE into any convenient 110 volt household outlet and it begins to work immediately.

MAINTENANCE

DECI-MATE's Solid State Circuitry is designed to give you years of maintenance-free operation at less than a penny a day. Just take care that the unit does not come into contact with water. Total power consumed by DECI-MATE is less than half of a nite lite.

APPENDIX B



FINALLY!

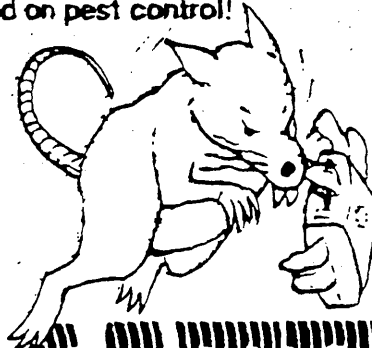
An Economical, Effective Solution To Your Pest Problem.

Would you believe it if someone told you you could make one purchase that would keep your home or business free of pests for years to come and yet cost only pennies a day? Believe it — DECIMATE works! And without dangerous poisons or toxic chemicals. The amazing DECIMATE is completely safe for your family and most domestic and commercial animals. This could be the last dollar you spend on pest control!

Proven Effective Against:
Rats, Roaches, Fleas, Flies, Mice,
Spiders, and many more pests.

Guaranteed

Each unit is warranted for a full year against defects and has a 30 day money-back guarantee.



DECIMATE™

ULTRASONIC PEST REPELLER

APPENDIX C

DEE-MATE

ULTRASONIC PEST REPELLER

**SAY GOOD BYE TO ROACHES,
RODENTS, MOSQUITOS, CRICKETS
AND OTHER HOUSEHOLD PESTS
WITHOUT TOXIC CHEMICALS**



**SAFE, CLEAN,
ELECTRONICALLY
ULTRASONICALLY**

- Safe for people, dogs and cats.
- Uses less energy than a nite lite.
- Ideal for home, apartment, hospital, store, warehouse: wherever pests can find food or shelter.
- Up to 100 times more powerful than any other comparable product on the market today. Covers up to 2,000 sq. ft.

EL MAR TRADING CORP.

Carson, CA 90746

Complaint

APPENDIX D

DECI-MATE™

SAFE—Not harmful to your health, your family, or your home.

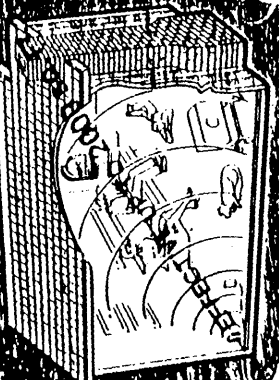
EFFECTIVE—Eliminates pests from your home in 4-6 weeks or sooner, in an open space up to 2,000 sq. ft.

ECONOMICAL—DECI-MATE™ is a one time investment that protects your home year round while saving less than half the energy of a wife life.

DECI-MATE™—Reduces Exterminator and chemical costs when used in a long term control program.

SAY GOODBYE TO:

- Fleas
- Mosquitoes
- Fleas
- Mice
- Squants & Skunks
- Ants
- Ticks
- Spiders



DECI-MATE™ is a one time investment that protects your home year round while saving less than half the energy of a wife life.

DECI-MATE™—Reduces Exterminator and chemical costs when used in a long term control program.

PERFORMANCE WARRANTY

If you are not completely satisfied with results at the end of 45 days, return unit and proof of purchase to your dealer for a full refund.

EI Mear Corp., 821 E. Arroyo Blvd., Carson, California 90746

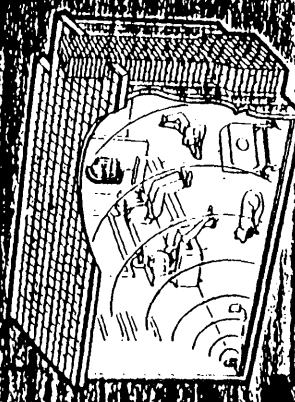
Patent Pending

DEE-MATE™

The POWERFUL

Safe Around Children and Pets

DEE-MATE™ contains no dangerous poisons and produces no offensive odors. And because DEE-MATE™ ultrasonic sound is well beyond the hearing range of people and most common household pets, it will have no effect on them except to rid of insects and rodents.



CAUTION



**AUTOMATIC
VARIABLE
FREQUENCY**

**ULTRASONICALLY ELIMINATES
INSECTS AND RODENTS**

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 the draft 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 attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 also containing 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 Wein Products, Inc., is a California corporation with its offices and principal place of business located at 115 W. 25th Street, Los Angeles, California.

Respondents El Mar Trading Corporation and El Mar Corporation are California corporations with their offices and principal place of business located at 821 E. Artesia Boulevard, Carson, California.

Respondent Stanley Weinberg is an officer and director of Wein Products, Inc.

Respondent Allen Schor is an officer and director of the El Mar corporations.

As such, the individual respondents formulate, direct and control the policies, acts and practices of said corporations, and their business addresses are the same as those for said corporations.

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

I

It is ordered, That respondents Wein Products, Inc., a corporation, El Mar Trading Corporation, a corporation, and El Mar Corporation, a corporation, their successors and assigns, and their officers; Stanley Weinberg, individually and as an officer and director of Wein Products, Inc.; and Allen Schor, individually and as an officer and director of El Mar Trading Corporation and El Mar 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 "Decimate" or any other ultrasonic pest control product 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 the Decimate or any other ultrasonic pest control product will:

- (1) eliminate cockroaches, rats, mice or other pests from a home or place of business;
- (2) eliminate rodents or insects from a home or place of business within two to six weeks, or within any other specified period of time;
- (3) protect an area where said product is in use in a home or place of business from rodents or insects, or will cause an area to be free of rodents or insects;
- (4) protect, from rodent or insect infestations areas up to 2000 square feet in a home or place of business, or in any other specified square footage area; or
- (5) serve as an effective alternative to the use of conventional products such as sprays, powders, traps or other chemicals in providing protection from insect and rodent infestation.

B. Representing, directly or by implication, any performance characteristic of any ultrasonic pest control product, unless at the time of making such representation respondents possess and rely upon competent and reliable evidence which substantiates the representation. Evidence in the form of tests, experiments, analyses, research studies, or other evaluations shall be competent and reliable only if they are conducted in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant professions or sciences to yield accurate, reliable, and reproducible results.

C. Representing, directly or by implication, that any ultrasonic pest control product is effective in providing protection from insect or rodent infestation in a home or place of business unless at the time

of making such representation respondents possess and rely upon competent and reliable evidence which either directly relates to such home or place of business use conditions, or which can properly be applied to such conditions. Evidence in the form of tests, experiments, analyses, research studies, or other evaluations shall be competent and reliable only if they are conducted in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant professions or sciences to yield accurate, reliable, and reproducible results.

II

It is further ordered, That for a period of three (3) years after the last date of dissemination of any representation concerning the performance characteristics or efficacy of any product covered by this order, respondents shall maintain and upon request make available to the Commission for inspection and copying copies of all materials relied upon to substantiate the representation, and copies of all documents in respondents' possession that contradict, qualify, or otherwise call into question said representation, including complaints from consumers.

III

It is further ordered, That respondents shall for a period of three (3) years distribute, or cause to be distributed, a copy of this order to all present and future managerial employees, distributors, independent sales agents, and direct purchasers.

IV

It is further ordered, That for a period of ten years:

A. Corporate respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents that may affect compliance obligations arising out of this order, such as dissolution, assignment of the ultrasonic pest control business, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

B. Respondent Allen Schor shall promptly notify the Commission of the discontinuance of his present business or employment in connection with the marketing of ultrasonic pest control products and of his affiliation with any new business or employment in the ultrasonic pest control business, stating the nature of the business or employ-

ment in which he is newly engaged, as well as a description of his duties and responsibilities in connection with such new ultrasonic pest control business or employment and the address of such new business or employment.

V

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.

IN THE MATTER OF
LOUISIANA STATE BOARD OF DENTISTRY

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

Docket 9188. Complaint, Oct. 29, 1984—Decision, Aug. 26, 1985

This consent order requires the Louisiana State Board of Dentistry (the Board), the sole licensing authority for dentists in Louisiana, among other things, to cease adopting or maintaining any rule, regulation, policy or course of conduct that would tend to prevent or hinder the advertising or publishing of pricing discounts for dental products and services. The Board is also barred from prohibiting any dentist or dental organization from advertising the availability of a discounted price; taking or threatening to take disciplinary action against advertisers of such prices; declaring the publication of discounted prices to be illegal, unethical, unprofessional or otherwise improper; and inducing or encouraging any individual or organization to take any of the actions prohibited by the order. The Board is additionally required to distribute a copy of the order and an explanatory announcement to all dentists licensed to practice in Louisiana; and provide such material to all those applying for a license for a period of two years.

Appearances

For the Commission: *Elizabeth R. Hilder* and *Oscar M. Voss*.

For the respondent: *John Gallagher, Jr.* and *Guy Wootan, Wootan, Hennen, Pelayo & Gallagher*, New Orleans, Louisiana and *Phillip A. Wittmann* and *Stephen G. Bullock, Stone, Pigman, Walther, Wittmann & Hutchinson*, New Orleans, Louisiana.

COMPLAINT

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

Respondent

1. Respondent Louisiana State Board of Dentistry (hereinafter "the Board") is organized, exists, and transacts business under the laws of the State of Louisiana (Louisiana Revised Statutes Section 37:751 *et seq.*), with its principal office at Ten-O-One Howard Avenue, Suite