

IN THE MATTER OF

SPANISH TELEMARKETING INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3353. Complaint, Dec. 20, 1991—Decision, Dec. 20, 1991*

This consent order prohibits, among other things, three California telemarketing companies and an individual, that produce Spanish-language television advertisements for a weight loss product, from representing that any weight control food, drug, product, device, or service causes weight loss without increased physical activity and/or decreased caloric intake.

Appearances

For the Commission: *Sylvia J. Kundig.*

For the respondents: *Alan Weil, Armato, Gaims, Weil, West & Epstein, Los Angeles, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Spanish Telemarketing Industries, Inc., a corporation, Nickolas Telemarketing Industries, Inc., a corporation, and Sylvia George, Inc., a corporation, and Stewart Brown, individually and as an officer and director of Spanish Telemarketing Industries, Inc., Nickolas Telemarketing Industries, Inc., and Sylvia George, Inc., ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Respondent Spanish Telemarketing Industries, Inc., is a corporation organized, existing and doing business under the laws of the State of California. Its offices and principal place of business is 3219 San Fernando Road, Los Angeles, California.

(b) Respondent Nickolas Telemarketing Industries, Inc., is a corporation organized, existing and doing business under the laws of the State of California. Its offices and principal place of business is 3219 San Fernando Road, Los Angeles, California.

(c) Respondent Sylvia George, Inc., is a corporation organized,

existing and doing business under the laws of the State of California. Its offices and principal place of business is 3219 San Fernando Road, Los Angeles, California.

(d) Respondent Stewart Brown is an individual who has been, and is now, an officer and director of Spanish Telemarketing Industries, Inc., Nickolas Telemarketing Industries, Inc., and Sylvia George, Inc. At all times material to this case, he has formulated, directed, and controlled the acts and practices of the corporate respondents, including the acts and practices alleged in this complaint. His principal place of business is located at 3219 San Fernando Road, Los Angeles, California.

PAR. 2. Respondents have directed, participated in, and assisted others in the offering for sale, sale and distribution of a weight loss regimen ("Faja Fantastica"). Respondents also have directed, participated in, and assisted others in the creation and dissemination to the public of Spanish language advertisements and promotional materials that offer for sale the Faja Fantastica.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Faja Fantastica consists of an approximately seven-inch wide nylon covered rubber belt and a moisturizing cream. In their advertisements, respondents refer to the Faja Fantastica as a "weight-removal plan" and a "fat-removal plan." The respondents refer to the nylon covered rubber belt as a "corset"; and the moisturizing cream is referred to as the "fat-removal cream." As advertised, Faja Fantastica is a "drug" and/or "device" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 5. Typical of respondents' advertising for Faja Fantastica, but not necessarily all-inclusive thereof, are Spanish language commercials aired nationwide on television stations that have foreign language programming ("the commercials"). Translated texts of the commercials are attached to this complaint as Exhibit A.

PAR. 6. The commercials contain, *inter alia*, the following claims:

(a) "Let the Weight-Removal plan go to work for you by ridding you of those undesirable excess pounds and inches."

(b) "Night or day, the Fat-Removal plan helps you achieve that figure you've always dreamed of, without the need for diets or strenuous exercises. With the Fat-Removal plan you lose pounds and inches from where you most need it!"

(c) "Just take a small amount of the Fat-Removal Cream, apply vigorously where you'd like to slim down, allow for your skin to absorb, and then, put on your corset!"

(d) "Lose those extra pounds and inches! Achieve a total reduction [loss] of pounds and inches without starving to death and without strenuous exercises."

(e) "Just apply to those areas where you want to lose inches the fastest. The fantastic Corset's plan works better in the areas where your overweight accumulates the most. It dramatically reduces those extra inches and it helps you lose those undesirable pounds."

PAR. 7. By and through the use of the statement referred to in paragraph six, and others of similar import and meaning in other advertisements or promotional materials not specifically set forth in this complaint, respondents have represented, directly or by implication, that use of Faja Fantastica will cause an individual to lose weight without an increase in physical exercise and/or a decrease in caloric intake.

PAR. 8. In truth and in fact, use of Faja Fantastica will not cause an individual to lose weight without an increase in physical exercise and/or a decrease in caloric intake. Therefore, respondents' representation as set forth in paragraph seven was, and is, false and misleading.

PAR. 9. In the commercials, respondents feature the following consumer endorsements or testimonials:

(a) [Unidentified woman] "I already lost my first 12 pounds and without any effort."

(b) [Mrs. Flores] "The more I use my Fat-Removal, the better I look. I've already lost fifteen pounds and four inches from my waist."

PAR. 10. By and through the use of the statements referred to in paragraph nine, and others of similar import and meaning in other advertisements or promotional materials not specifically set forth in this complaint, respondents have represented, directly or by implication, that the consumer endorsements or testimonials are representative of what consumers will generally achieve using Faja Fantastica in actual, although variable, conditions of use.

PAR. 11. In truth and in fact, the consumer endorsements or testimonials are not representative of what consumers will generally achieve with Faja Fantastica in actual, although variable, conditions of use. Therefore, the respondents' representation as set forth in paragraph ten was, and is, false and misleading.

PAR. 12. By and through the use of the statements in paragraphs six and nine and others of similar import and meaning in Exhibit A or in other advertisements or promotional materials not specifically set

forth in this complaint, respondents have represented, directly or by implication, that at the time the respondents made the representations set forth in paragraphs seven and ten, they possessed and relied on a reasonable basis for the representations.

PAR. 13. In truth and in fact, at the time the respondents made the representations set forth in paragraphs seven and ten, respondents did not possess and rely on a reasonable basis for the representations. Therefore, the representation set forth in paragraph twelve was, and is, false and misleading.

PAR. 14. The acts or practices of respondents, as alleged in this complaint, were and are to the prejudice and injury of the public and dissemination by respondents of the aforesaid false and misleading representations constituted and now constitutes unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act and false advertisements in violation of Section 12 of the Federal Trade Commission Act.

Commissioner Yao not participating.

Complaint

114 F.T.C.

EXHIBIT A

Page 1
(START)

Sylvia George
Faja Quita Peso
60 Sec Spot
Job No. C-Quita-60

(Weight Removal Corset)

Spokerson 1 (Ms Pilar Verdes)

Pilar Verdes
Known Colombian
and Commentator

Are you one of those people who has been
arduously trying to lose that excess of inches from
your waist, hips, or thighs?

Fat Removal
Corset

Then, allow me to recommend you something
very, very special designed to remove
that undesirable fat very fast: the
Fat-Removal Corset.

The surprising body-slimmer which helps you to
get rid of that undesirable excess fat!

It helps you to quickly get rid of
excess fat!

EXHIBIT A

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Complaint

Sylvia George
Quita Peso
60 Sec Spot
Job No. C-Quita-60

Page 2

Spokeperson 2

Has already lost 12 pounds

I have already lost my first twelve pounds, with no effort at all!

Spokesperson 1 (Ms Verdes)

Let the Weight-Removal plan go to work for you by ridding you of those undersirable excess: pounds and inches.

The Fat-Removal Courset Plan
helps you be more Slender!

Look and feel much more glamorous!

under jars: FOLLOW THE DIRECTIONS

The Fat-Removal Plan could give you the success you need to be slender + [the "extra-inch"] slimmer.

Call, and order right now!

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Sylvia George
Quita Peso
Job No. C-Quita-60

Page 3

Fat-Removal
Corset

Call Right Now
1-800-829-2111

Voice 2

One-Eight Hundred-Eight-Twenty Nine-Twenty One-Eleven
One-Eight Hundred-Eight-Twenty Nine-Twenty One-Eleven
One-Eight Hundred-Eight-Twenty Nine-Twenty One-Eleven
One-Eight Hundred-Eight-Twenty Nine-Twenty One-Eleven

Sylvia George
Fat Removal Corset
90 Sec Spot
Job No. C-Quita-90

Page 1

Use translation to Job C-Quita-60 as
follows: (i) Page 1 up to

(ii) Then, start from translation A, page 2
follow to end of page 4.

(iii) Use Page 3 of C-60.

90 Sec Spot
Job No. C-Quita-90

Page 2

Translation ASpokesperson 3

Affidavits on File

It's a pleasure to wake up every morning feeling more thin and slender, knowing that my Fat-Removal Corset is working!

Spokesperson 2:

Has already lost 12 pounds

I have already lost my first twelve pounds, with no effort at all!

Spokesperson 1: (Ms Verdes)

Night or day, the Fat-Removal plan helps you achieve that figure you've always dreamed of!, without the need for diets or strenuous excersices. With the Fat-Removal plan you lose pounds and inches from where you most need it!

Lose Weight where you most need it!

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Complaint

90 Sec Spot
Job No. C-Quita-90

Page 3

Spokesperson 4

The more I use my "Fat-Removal", the better I look. I've already lost fifteen pounds and four inches from my waist.

Mrs. Flores has already lost
15 pounds

And lost 4 Inches of Waist!

My husband is enjoying watching me
in my new wardrobe!

90 Sec Spot
Job No: C-Quita-90

Page 4

Spokesperson 1 (Ms Verdes):

Let the fat removal plan go to work
for you by ridding you of those
undesireable excess pounds and inches.

Just take a small amount of the Fat-Removal
Cream, apply vigourously where you'd like to
slim down, allow for your skin to absorb, and
then, put on your corset!

The Fat-Removal Corset's Plan helps you be more slender!

Look and feel much more glamorous!

The Fat-Removal plan could give you
the success you need to be slender and slimmer.

Follow the Directions

Call, and order right now!
Page 3 of C-Quita-60 numbers read 3 times.

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Sylvia George
1 Minute Spot
Fantastic Corset
Job No: FRF-RR-SO

Page 1

Voice 1:

This is the miraculous corset that
helps you become slender quickly!

LOSE WEIGHT NOW

It's the Fantastic Corset! The corset can
be used at any time and anywhere because
it's very comfortable.

MARGARITA MORAN

The corset easily adjusts to your body
and automatically shapes (molds) your figure.

SLIM-DOWN 24 HOURS A DAY

The advantage of the Fantastic Corset's
surprising slimming power.

INCREDIBLE SLIMMING POWER

Achieve that beautiful and shapely figure and
that beautiful waist.

Sylvia George
Fantastic Corset
1 Minute Spot
Job No: FRF-RR-SO

Page 2

Achieve that beautiful and
shapely figure!

Lose those extra pounds and inches!
Achieve a total reduction [loss] of pounds
and inches without starving to death
and without strenuous excersices.

Works even better with the
FANTASTIC CREAM

Start to lose inches to achieve a new
and beautiful body almost immediately.

LOSE WEIGHT NOW

And Now! The Corset's [working] plan
works even better with the FANTASTIC CREAM
because it intensifies [strengthens, amplifies]
the corset's incredible slimming powers to help
you become slender, quickly!
And it's so easy to use.

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Complaint

Sylvia George
Fantastic Corset
1 Minute Spot
Job No: FRF-RR-SO

Page 3

Voice 2

Call right now! One-Eight Hundred-Eight-Twenty
nine-Twenty One-Eleven.

One-Eight Hundred-Eight-Twenty, Nine-Twenty One-
Eleven.

Don't lose this opportunity. Call right now!

One-Eight Hundred-Eight-Twenty Nine-Twenty One-
Eleven.

CALL RIGHT NOW!
1-800-829-2111
and receive
two for the price
of one!
* this week only *

Sylvia George
2 Minute Spot
Fantastic Corset
Job No: FRF-RR-120

Page 1

Use pages 1 and 2 completely of
the translation of Job No. FRF-RR-SO

Still Voice 1:

[missing the plural s
in Spanish]

Just apply to those areas where you want to
lose inches the fastest.
The Fantastic Corset's plan works better in the

Works even better with the
FANTASTIC CREAM

areas where your overweight accumulates
the most. It dramatically reduces those
extra inches and it helps you lose those
undesirable pounds.

Voice 2

For this week, and this week only you'll
receive two corsets with their creams for
the price of one. This fabulous offer is
only valid this week.

CALL RIGHT NOW!
1-800-829-2111
and receive
two for the price of one
* this week only *

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Complaint

Sylvia George
2 Minute Spot
Fantastic Corset
Job No: FRF-RR-120

Page 2

Spokesperson:

If you seriously want to look real good,
then you can't be left without your
Fantastic Corset!

The Fantastic Corset guarantees
surprising results starting from day one!

All my family wears it! My best friends
[female gender: amigas] wear it!
I wear it! You, too, should wear it!

Voice 2:

CALL RIGHT NOW!
1-800-829-2111

and receive
two for the price
of one!
* this week only *

Don't forget to order it to receive two
corsets with their creams for the price
of one! But, call right now, because
this offer is valid this week only!

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Sylvia George
Fantastic Corset
2 Minute Spot
7-15-80 FDR-DD-120

Page 3

Spokesperson:

The Fantastic Corset's plan
is guaranteed

Order your Fantastic Corset's plan right now! And, if for any reason whatsoever you're not completely satisfied with your corset, send it back and keep your cream with no further obligations.

Voice 2:

CALL RIGHT NOW!
1-800-829-2111
and receive
two for the price
of one!
• this week only •

Call right now! One-Eight Hundred-Eight-Twenty Nine-Twenty One-Eleven. One-Eight Hundred-Eight-Twenty Nine-Twenty One-Eleven. Don't lose this opportunity. Call this minute One-Eight Hundred-Eight-Twenty Nine-Twenty One-Eleven.

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 San Francisco Regional Office 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 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, and no comments having been filed thereafter by interested parties pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. a. Spanish Telemarketing Industries, Inc., is a corporation organized, existing, and doing business under the laws of the State of California. Its offices and principal place of business is 3219 San Fernando Road, Los Angeles, California.

b. Nickolas Telemarketing Industries, Inc., is a corporation organized, existing, and doing business under the laws of the State of California. Its offices and principal place of business is 3219 San Fernando Road, Los Angeles, California.

c. Sylvia George, Inc., is a corporation organized, existing, and doing business under the laws of the State of California. Its offices and principal place of business is 3219 San Fernando Road, Los Angeles, California.

d. Stewart Brown is an individual who is, and at all material times

was, an officer and director of Spanish Telemarketing Industries, Inc., Nickolas Telemarketing Industries, Inc., and Sylvia George, Inc. His principal place of business is located at 3219 San Fernando Road, Los Angeles, California.

2. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. 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 corporate respondents, their successors and assigns and their officers; and Stewart Brown, individually and as an officer of corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Faja Fantastica, a moisturizing cream and/or girdle, any substantially similar products, devices, or combination of such products or devices in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that the product will cause an individual to lose weight without increased physical activity and/or decreased caloric intake.

II.

It is further ordered, That corporate respondents, their successors and assigns and their officers; and Stewart Brown, individually and as an officer of corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, marketing, or other promotion of any weight control product, device or service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication the performance or efficacy of any weight control product, device or service. For purposes of this order, weight control product, device, or service shall

include any food, drug, product, device, or service designed or used to prevent weight gain or to produce weight loss, reduction or elimination of fat, slimming, or a caloric deficit in a user of the food, drug, product, device, or service.

III.

It is further ordered, That corporate respondents, their successors and assigns and their officers; and Stewart Brown, individually and as an officer of corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any food, drug, product, device, or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that the food, drug, product, device, or service will cause an individual to lose weight without a prominent disclosure that weight loss can only be obtained through increased physical activity and/or decreased caloric intake. The disclosure shall be in the same language as the advertisement or commercial for the food, drug, device, product, or service and in close proximity to the representation.

IV.

It is further ordered, That corporate respondents, their successors and assigns and their officers; and Stewart Brown, individually and as an officer of corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any food, drug, product, device, or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication that the food, drug, product, device, or service will, can, or may provide or help provide any health-related benefit, unless, at the time of making the representation, respondents possess and rely on a reasonable basis consisting of competent and reliable scientific evidence that substantiates the representation. For purposes of this order, scientific evidence shall mean tests, analyses, research, studies, or other evidence,

conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results.

V.

It is further ordered, That corporate respondents, their successors and assigns and their officers; and Stewart Brown, individually and as an officer of corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Using, publishing, or referring to any endorsement (as endorsement is defined in 16 CFR 255(b)) unless respondents have good reason to believe that at the time of the use, publication, or reference, the endorsement reflects the honest opinions, findings, beliefs, or experience of the endorser and contains no representation which would be false or unsubstantiated if made directly by respondents; and

B. Representing, directly or by implication, that any endorsement of the product or service represents the typical or ordinary experience of members of the public who use the product or service, unless that is the case.

VI.

It is further ordered, That respondents are jointly and severally liable for consumer redress in the amount of one hundred thousand dollars (\$100,000) and shall, within five (5) days of the date that this order becomes final, deposit the sum of one hundred thousand dollars (\$100,000) into an escrow account established and managed by the Commission. These funds shall be used to provide redress to consumers who were injured by respondents or others in connection with the acts and practices alleged in the complaint, and to pay any attendant costs of administration. The final determination of eligibility for, and amount of, refunds to be paid to consumers shall rest with the Commission. If the Commission determines that the direct payment of said funds to eligible consumers is wholly or partially impracticable, then, in lieu of making direct consumer redress, the Commission shall

cause said funds to be paid to the United States Treasury. Respondents shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein described shall be deemed a payment of any fine, penalty, or punitive assessment.

VII.

It is further ordered, That respondents shall, for at least three (3) years after the date of service of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying, at a place designated by the Commission, complete records regarding respondents' compliance with this order, such records to include, but not be limited to:

A. All advertisements, promotional materials, documents, or other materials covered by this order;

B. All materials relied on to substantiate any claim or representation covered by this order;

C. All materials in their possession, custody, or control that contradict, qualify, or call into question such representation or the basis on which respondents relied for such representation; and

D. All materials that demonstrate respondents' compliance with this order.

VIII.

It is further ordered, That the respondents shall, for three (3) years from the date of entry of this order, distribute a copy of this order to each present and future managerial employee.

IX.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to the proposed change, of any proposed change in the corporate respondents 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 that may affect compliance obligations arising out of the order.

X.

It is further ordered, That respondent Stewart Brown shall, for a period of five (5) years from the date of service of this order, promptly notify the Commission, in writing, of his discontinuance of his affiliation with any corporate respondent, or his new affiliation with any other business or employment that engages in any acts or practices covered by any provision of this order. For each such new affiliation, the notice shall include the name and address of the new business or employment, and a description of respondent's duties and responsibilities.

XI.

It is further ordered, That respondents shall, within one hundred and twenty (120) days after the date of service of this order upon them and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Yao not participating.

IN THE MATTER OF
KREEPY KRAULY USA, INC.

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

Docket C-3354. Complaint, Dec. 20, 1991—Decision, Dec. 20, 1991

This consent order prohibits, among other things, a Florida manufacturer of automatic swimming pool cleaning devices from engaging in or enforcing any agreement with any dealer to establish or maintain the dealer's resale prices. In addition, the respondent is required to rescind the paragraph of its dealer agreements that requires dealers to agree to maintain resale prices, to refrain from maintaining resale prices, and to notify its officers, sales personnel, dealers, and distributors that dealers are allowed to determine their own selling prices.

Appearances

For the Commission: *Michael E. Antalics* and *Karen A. Mills*.

For the respondent: *Steven B. Feirman* and *Arthur I. Cantor*,
Brownstein, Zeidman & Schomer, 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 Kreepy Krauly USA, Inc., a corporation, 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:

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

- (1) "*Respondent*" means Kreepy Krauly, U.S.A., Inc., its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Kreepy Krauly USA, Inc., and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.
- (2) "*Product*" means any swimming pool cleaning device or part for such device.