

IN THE MATTER OF

PYRAPONIC INDUSTRIES II, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3386. Complaint, July 30, 1992--Decision, July 30, 1992*

This consent order prohibits, among other things, a San Diego-based company and its owner from making false or unsubstantiated representations that the Phototron indoor greenhouse, or any air cleaning device, removes or reduces indoor air contaminants.

Appearances

For the Commission: *Linda Badger, Matthew Gold, Jeffrey Klurfeld and Barry Cutler.*

For the respondents: *Richard Circuit, Circuit, McKellogg, Kinney & Ross, La Jolla, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Pyraponic Industries II, Inc., a corporation, and Jeffery Julian DeMarco, individually and as an officer of said corporation ("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) Pyraponic Industries II, Inc. is an Illinois corporation. It has its principal office and place of business at 15090 Avenue of Science, P.O. Box 27809, Carmel Mountain Ranch, San Diego, CA.

(b) Jeffery Julian DeMarco is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices

alleged in this complaint. His principal office and place of business is the same as that of the corporate respondent.

(c) Respondents cooperate and act together in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents have engaged in the manufacture, promotion, offering for sale, sale, and distribution to the public of a plastic growth chamber or greenhouse for plants, known as the "Phototron," as well as planting materials and other products designed to assist in plant growth (hereinafter collectively referred to as "the Phototron").

PAR. 3. In the course and conduct of their business, respondents have disseminated and caused the dissemination of advertising and promotional materials, including, but not limited to, the advertising and promotional materials referred to herein, to promote the sale of the Phototron.

PAR. 4. Respondents operate in various states of the United States and in the District of Columbia. Respondents' manufacturing, labeling, packaging, offering for sale, promoting, advertising, sale and distribution of the Phototron constitute the maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, respondents have disseminated and caused the dissemination of advertisements and promotional materials for the Phototron by various means in or affecting commerce, including, *inter alia*, the placement of advertisements in magazines distributed through the mail and across state lines. Such advertisements and promotional materials were for the purpose of inducing, and were likely to induce, directly or indirectly, the purchase by the public of the Phototron.

PAR. 6. Respondents' advertisements and promotional materials include, but are not necessarily limited to, the advertisements and promotional materials attached hereto as Exhibits A through F. Specifically, these advertisements and promotional materials have contained the following statements:

(a) "Let's Clear The Air Together ... In the Phototron the natural respiration of plants breathe in all of the in house pollution completely filtering in the air you breathe ... [Y]ou can take action for the health and well being of your family for

only \$39.95 down, with 0% interest and payments over 90 days ... With the Phototron III, you can help save the planet naturally, painlessly, and inexpensively, as over 100,000 people have already realized." (Exhibit A)

(b) "THE NATURAL HOME AIR PURIFIER ... Also, as they breathe in all of the CO₂ the plants also breathe in all of the house pollution, completely purifying the air you breathe." (Exhibit B)

(c) THE PERFECT PRESCRIPTION FOR SICK BUILDING SYNDROME ... The only natural home air purification and fragrance system - The Phototron is designed to vacuum 1,000 cubic ft. of air, 33 times every 24 hours, past fragrant plants such as roses, accelerating and optimizing the plant's natural ability to ... breathe in all of the homes sealed-in air pollutants." (Exhibit C)

(d) "One Phototron can circulate the area (sic) in a 1000 sq. ft. (sic) room 33 times in 24 hours while removing known pollutants that have been proven to exist in the enclosed environments in which we live." (Exhibit D)

(e) "At the same time, your system will replenish oxygen 33 times, along with the fresh scent of the plants of your choice. In addition, the Phototron III will remove other various toxic gases ranging from carbon monoxide to sulfur to hydrocarbons." (Exhibit E)

(f) "Removes: radon, formaldehyde, pet odors, kitchen & bathroom smells, cigarette smoke." (Exhibit F)

(g) "Old day archaic air filtering systems looked, acted and sounded like this, adding much more pollution to the air than they ever reduced ... The natural air purification of one Phototron will replace and surpass all of the artificial mechanisms of yesteryear....Other pollutants, such as pet odors, kitchen smells, cigarette smoke, bathroom odors are all absorbed by the plant material before you do." (Promotional Video)

(h) "What if a lamp could: give light, deionize the air purify the air, ventilate the air, fragrance the air, and grow dozens of roses, all at the same time? How much do you think that would cost? Well, the only lamp that can do all of that is the Phototron." (Program-length Commercial)

(i) "You only need one Phototron to filter and clean 1,000 cubic feet of air in your home for \$399.95, or 10 6-foot ficus trees at \$199.95 each, equaling nearly \$2,000." (Program-length Commercial)

PAR. 7. Through the use of the statements set forth in paragraph six, and other statements contained in advertisements and promotional materials not specifically set forth therein, respondents have represented, directly or by implication, that the Phototron removes all indoor air contaminants.

PAR. 8. In truth and in fact, the Phototron does not remove all indoor air contaminants. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statements set forth in paragraph six, and other statements contained in advertisements and promotional materials not specifically set forth therein, respondents have represented, directly or by implication, that:

(a) The Phototron is effective in removing one or more individual indoor air contaminants;

(b) The Phototron is a viable substitute for, and is superior to, conventional air purification or filtration methods or products; and

(c) The Phototron is effective in removing or reducing the concentration of indoor air contaminants in a 1,000 cubic foot area.

PAR. 10. Through the use of the statements set forth in paragraph six, and other statements contained in advertisements and promotional materials not specifically set forth herein, respondents have represented, directly or by implication, that at the time of making the representations set forth in paragraph nine, they possessed and relied upon a reasonable basis for those representations.

PAR. 11. In truth and in fact, at the time of making the representations set forth in paragraph nine, respondents did not possess and rely upon a reasonable basis for making the representations. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. The aforesaid acts or practices of respondents were and are to the prejudice and injury of the public and constituted and now constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Exhibit A



Let's Clear The Air. Together.

Phototron III® - The Power of Fresh Thinking

Hello my name is Jeffrey Julian DeMarco, president and founder of Pyramatic Industries, Inc. (U.S. owner of the Phototron®). The highlight of the last 30 years has been energy efficiency. That is, we have learned how to live harmoniously and your home against the loss of heat and air conditioning. \$39.95 down!

The world has been so vital in air pollution. The Environmental Protection Agency (EPA) has suggested that every home in the United States has between 2 and 30 times the amount of pollution inside the home than outside. When placed in a 1,000 sq. ft. room, the Phototron® circulates 1,000 sq. ft. of air through the Phototron® 22,000 times, 24 hours. This does 4 things: Plants have always been the natural lungs of the Earth.

- 1- In the Phototron® the natural processes of plants breathe in all of the air you breathe.
- 2- Along with all of the carbon dioxide you exhale and convert the CO₂ to pure oxygen for your health.
- 3- The natural circulation of plants releases up to 1 gallon of pure distilled, deionized water vapor back to the air for your easy breathing.
- 4- Aromatize an environment by mixing your own herbs with an oil of artificial smell. You breathe the same pollution, you just don't smell them.

By introducing fragrant plants into the Phototron III® you provide environment, a natural air freshener is created. Your whole house is naturally perfumed with roses, gardenias, peonies, honeysuckle, etc. The Phototron III® will grow any plant twice as fast as normal rate, producing more fruits, flowers, and vegetables. The noticeable change that plants will have on your living environment is far more amazing than the history of ornamental display, and you can take action for the health and well being of your family for just \$39.95 down, with 0% interest and payments over 90 days. With the Phototron III®, you can help save the planet naturally, peacefully, and unobtrusively, as over 100,000 people have already received \$39.95 down!

"If you do not learn more about the Pyramatic than you ever have before, I will pay you for the call. I guarantee it."

619-451-2837
\$39.95-Down

Pyramatic Industries, Inc. 8 • P.O. Box 27809, Dept. PB-98, San Diego, CA 92128 • (619) 451-2837 • \$39.95 down!

- Pyramatic Industries is ranked as the 8th fastest growing company in the United States.
- Manufacturer of the Year.
- Phototron® used by over 600 universities, schools, and institutions worldwide, including Harvard, UCLA, and NASA.
- Phototron® is on board Space Shuttle in 1992 to study permanent habitats on Space Station Freedom.
- 24 hour service call.
- 6 follow-up meetings.
- 100% guarantee.

Pyramatic
Industries

EXHIBIT A

Exhibit B

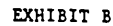


Exhibit C

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color

EXHIBIT C
CURRENT TONE

PYRAPONIC



As I waited in the lobby of Pyraponic Industries, Inc. II in preparation to do this feature, I admit to many levels of curiosity. I'd read through the significant amounts of information provided by Pyraponic and other media accounts, but frankly knew little more than when I started. I claim to have a green thumb (although I've killed my share of ferns), but how could this concept vault a company into INC. Magazine's Top 100 fastest growing private companies (the only company in San Diego to do so)?

I was about to find out, for it was then that I was introduced to founder, president, one-hundred percent shareholder and multi-talented Jeffery Julian DeMarco. Within five minutes of meeting Jeff, I knew that this was certainly not an ordinary company and its president was certainly not an ordinary chief executive.

I first asked Jeffery to explain to me, in fern-killing laymen's terms, how the technology worked and what its applications were. This was obviously a task that DeMarco relishes, since the Phototron® is his invention with "fourteen patents in seven countries."

The nearest aspect of the Phototron® is that the concept is simple, and its thought process behind it that gets the credit. "Basically, the Phototron® is a laboratory-grade unit that is designed to surround the plants inside with an evenly distributed source of 2000 foot-candles of light, which is the maximum a plant can utilize for the photosynthetic process."

Through a process of "vacuum metalization," the plexi-glass walls of the unit reflect 90% of the light back within the growing chamber so as to maximize the growth efficiency, but not totally disrupt the living area of humans around it with intensely bright and hot lights. The unit actually gives off a very soothing glow, but when you lift one of the removable glass panels, the difference from the inside is easy to see. Pyraponic was the first company in the world to use this process on plastic to produce optical clarity.

In addition, 21 different elements are closely controlled and monitored to allow a plant to grow at substantially increased rates. These elements are:

Environmental Controls

1. Light
 - a) Spectrum of Light
 - b) Foot-Candle Radiation of Light
 - c) Lumen Output
2. Light Wave and Particle Reflectivity
3. Wind Velocity
4. Carbon Dioxide Flow
5. Relative Humidity
6. Root Zone and Air Temperature
7. Water Transpiration and Evaporation

Chemical Controls

1. Nitrogen
2. Phosphorus
3. Potassium
4. Calcium
5. Magnesium
6. Sodium
7. Chloride
8. Sulphur
9. Iron
10. Manganese
11. Boron
12. Molybdenum
13. Total Soluble Salts
14. pH

The key, Jeff told me, is to "create a totally compatible environment for the specific type of plant and the environmental differences" (which those of us who are originally from the Midwest know all too well). The Phototron® has been through years of research to determine the most effective "linear formulation" of nutrients which, through computer enhancements and modeling, have produced what Jeff described as "ten lifetimes worth of work identifying the four billion possible per-

mutations of these elements."

But what does this mean to you and me? Simply put, by having a Phototron® in home or office, we are able to grow any plant a minimum of 2-3 times its normal rate, produce flowering plants indoors, and do it in an aesthetically pleasing environment. "The process adds four vitally important ingredients to our environment," Jeff explained. "First, there is an increased level of oxygen. One Phototron® can circulate the area in a 1 sq. ft. room 33 times in 24 hours while removing known pollutants that have been proven to exist in the enclosed environments in which we live. Plus, it is a fact that relative humidity between 30-50 greatly impedes the growth



EXHIBIT D

STATE OF THE ART IN BIOTECHNOLOGY
PHOTOTRON
OVER 80,000 SOLD WORLDWIDE

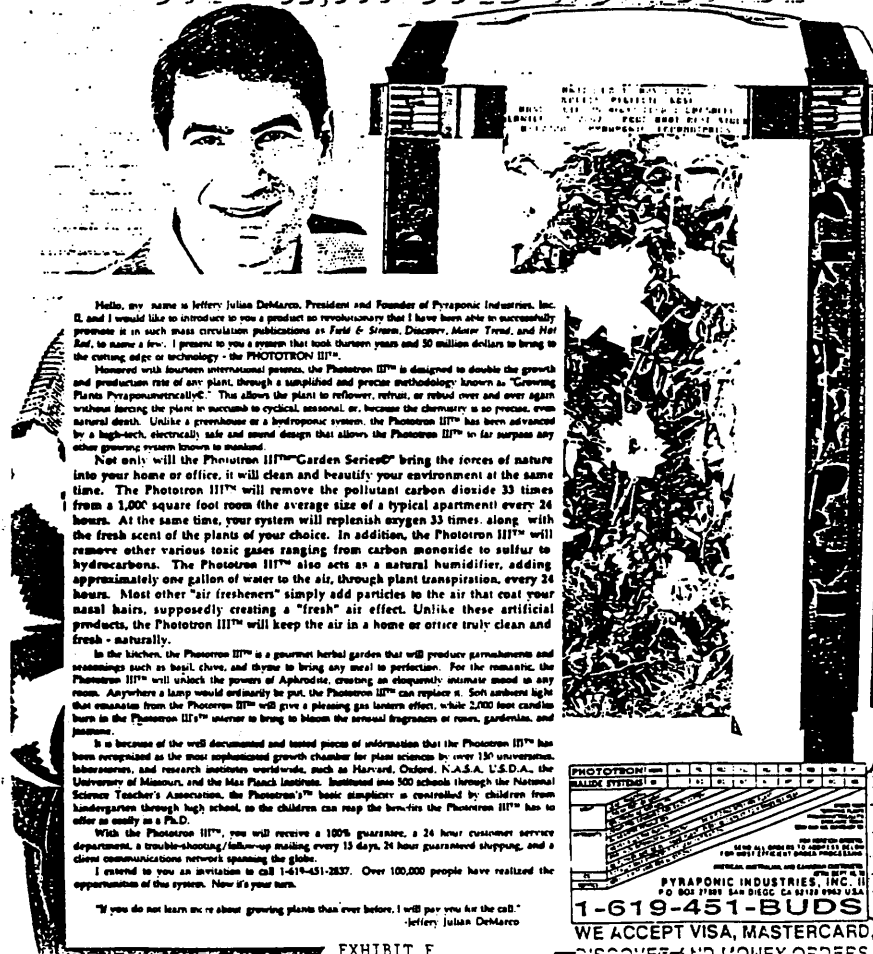


EXHIBIT E

PYRAPONIC INDUSTRIES II, INC., ET AL.
Complaint
Exhibit F

COMBINING PURE AIR & BEAUTY

Electrolytic

PURE AIR • OVER 120,000 SOLD WORLDWIDE • PURE OXYGEN

THE NATURAL HOME AIR PURIFIER

1-619-451-BUDS

Pyraponic Industries, Inc. II
P.O. BOX 3789 • DENTON, TEXAS 76205

EXHIBIT F

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 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 compliant, makes the following jurisdictional findings and enters the following order:

1. Respondent Pyraponic Industries II, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 15090 Avenue of Science, P.O. Box 27809, Carmel Mountain Ranch, San Diego, California.

Respondent Jeffrey Julian DeMarco is an officer of said corporation. He formulates, directs, and controls the policies, acts and practices of said corporation, and his 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

DEFINITIONS

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

A. The term "*air cleaning product*" means any product, equipment or appliance designed or advertised to remove, treat or reduce the level of any contaminant(s) in the air.

B. The terms "*indoor air contaminant(s)*" or "*contaminant(s)*" mean one or more of the following: radon, cigarette smoke, formaldehyde, carbon monoxide, sulfur, hydrocarbons, pet odors, kitchen & bathroom smells or any other gaseous or particulate matter found in indoor air.

C. The term "*substantially similar product*" means any plant growth chamber that does not also include a charcoal filter or other mechanism for removing or reducing the concentration of one or more indoor air contaminants.

I.

It is ordered, That respondent Pyraponic Industries II, Inc., a corporation, its successors and assigns, and its officers, and respondent Jeffery Julian DeMarco, individually and as an officer of said corporation, 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 the Phototron, or any substantially similar product, 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 such product, or any component of such product, removes all indoor air contaminants.

II.

It is further ordered, That respondent Pyraponic Industries II, Inc., a corporation, its successors and assigns, and its officers, and respondent Jeffery Julian DeMarco, individually and as an officer of said corporation, 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 the Phototron, or any other air cleaning product, 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 such product, or any component of such product:

- A. Removes one or more indoor air contaminant(s);
- B. Reduces the concentration of one or more indoor air contaminant(s);
- C. Is a viable substitute for, or is superior to, any other product or method with respect to its ability to remove or reduce the concentration of one or more indoor air contaminant(s); or
- D. Is effective, within any stated area, in removing or reducing the concentration of one or more indoor air contaminant(s);

unless at the time of making the representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

It is further ordered, That respondent Pyraponic Industries II, Inc., a corporation, its successors and assigns, and its officers, and respondent Jeffery Julian DeMarco, individually and as an officer of said corporation, and respondents' representatives, agents and em-

ployees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the Phototron, or any other air cleaning product, 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, any performance characteristic of any such product unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation. To the extent such evidence consists of tests, experiments, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, experiments, analyses, research, studies or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

IV.

It is further ordered, That for three (3) years from the date that the respondents make any representation covered by this order, respondents shall maintain and upon written request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements, promotional materials, documents, or other materials relating to the offer for sale or sale of any product covered by this order that make any representation covered by this order;

B. All materials relied upon by respondents to substantiate any representation covered by this order;

C. All tests, reports, studies, experiments, analyses, research, surveys, demonstrations, or other materials in the possession or control of respondents that contradict, qualify, or call into question any representation covered by this order or the basis on which respondents relied for such representation; and

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

V.

It is further ordered, That respondents shall 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 or subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

VI.

It is further ordered, That the individual respondent shall, for a period of five (5) years after the date of service of this order upon him, promptly notify the Commission, in writing, of his discontinuance of his present business or employment and of his affiliation with a new business or employment. For each such new affiliation, the notice shall include the name and address of the new business or employment, a statement of the nature of the new business or employment, and a description of respondent's duties and responsibilities in connection with the new business or employment.

VII.

It is further ordered, That the corporate respondent shall distribute a copy of this order to each of its operating divisions and to each of its managerial employees. The corporate respondent shall also distribute a copy of this order to each of its officers, agents, representatives or employees who either: (1) is engaged in the preparation or placement of advertising or other sales materials covered by this order; or (2) communicates directly with customers or prospective customers regarding the efficacy of any product covered by this order. The corporate respondent shall secure a signed statement acknowledging receipt of the order from each person to whom the order is distributed pursuant to this paragraph.

VIII.

It is ordered, That respondents shall, within sixty (60) days from 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.

IN THE MATTER OF

ROHM AND HAAS COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3387. Complaint, July 31, 1992--Decision, July 31, 1992*

This consent order permits, among other things, Rohm and Haas, a Pennsylvania-based company, to acquire the Union Oil Company's emulsion polymer assets, as long as it divests Union Oil's straight acrylics business to Union Carbide, or another FTC-approved buyer, within 180 days. If divestiture is not effected within that period, Rohm and Haas is required to consent to the appointment of a trustee. In addition, the consent agreement requires the respondents to assist the buyer in making the transition to full production and, for 10 years, requires the respondents to obtain FTC approval before acquiring any entity that produces straight acrylics for exterior house paint.

Appearances

For the Commission: *Marc G. Schildkraut* and *Joseph S. Brownman*.

For the respondents: *Stephen A. Stack, Jr., Dechert, Price & Rhoads*, Philadelphia, PA. *Harold E. Zahner*, in-house counsel, for respondent Union Oil Company of CA., Los Angeles, CA.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Rohm and Haas Company ("Rohm and Haas"), a corporation, and Union Oil Company of California ("Union Oil"), a corporation, have entered into an agreement that violates Section 5 of the Federal Trade Commission Act, and that, if consummated, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, and it appearing to the Commission that a proceeding in respect