

IN THE MATTER OF
VIRAL RESPONSE SYSTEMS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9245. Complaint, February 4, 1991--Decision, July 31, 1992

This consent order prohibits, among other things, a Connecticut-based corporation and its president from making false and unsubstantiated claims regarding the efficacy of their "Viralizer System," a hand-held device for treating colds and allergies, and also prohibits respondents from misrepresenting the existence, content, validity, results, conclusions, or interpretations of any test or study.

Appearances

For the Commission: *Matthew D. Gold.*

For the respondents: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Viral Response Systems, Inc., a corporation, and Robert S. Krauser, 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) Viral Response Systems, Inc., is a Delaware corporation. It has its principal office and place of business at 34 East Putnam Avenue, Greenwich, Connecticut.

(b) Robert S. Krauser 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 corporation.

(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 heated nebulizer-sprayer described as, among other things, "Viralizer" and "Viralizer System" (hereinafter, "the Viralizer System").

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 Viralizer System. As advertised, respondents' Viralizer System consists of, among other things, devices and drugs, as "devices" and "drugs" are defined in Section 15 of the Federal Trade Commission Act.

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, sale and distribution of the Viralizer System 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 Viralizer System by various means in or affecting commerce, including, *inter alia*, the placement of advertisements in newspapers 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 respondents' Viralizer System.

PAR. 6. Typical examples of respondents' advertisements and promotional materials, disseminated as previously described, but not necessarily all inclusive thereof, are the advertisements and promotional materials attached hereto as Exhibits A through E. Specifically, these advertisements and promotional materials have contained the following statements:

(a) "THE VIRALIZER SYSTEM"

"HEATED NEBULIZER-SPRAYER with Vira-Spray"

"A fast, effective treatment for allergy, sinusitis, runny nose, sore throat, and common cold symptoms . . . in most cases, complete relief of symptoms within 24 hours. It's doctor tested, doctor recommended."

* * *

"Scientific tests (in vitro) have proven that the common cold virus self-destructs when heated at temperatures of approximately 110° F.

"The amazing Viralizer System offers this kind of controlled dry heat (hyperthermia) to penetrate the nose and throat. The temperature creates a hostile environment for the viruses and allergy related IGE antibodies...while healthy cells remain undamaged....

"The Viralizer System takes the treatment one step further by conveniently dispensing Vira-Spray I and Vira-Spray II pre-measured sprays that supply analgesic/bactericidal and decongestant medications. Scientific tests (in vitro) demonstrate that Viralizer heat will kill the Rhinoviruses, and Vira-Spray I solution will kill secondary bacterial infections." (Exhibit A)

(b) "Fast, effective COLD, ALLERGY and SINUS symptom relief, like no other treatment in the world!"

* * *

"Independent tests on human subjects have demonstrated the Viralizer system to be better than 90% effective in eliminating nasal cold symptoms in one day or less." (Exhibit B)

(c) "In scientific tests at Europe's renowned Pasteur Institute, a Nobel prize-winning virologist concluded that the rhinovirus literally self-destructs when precise heat is inhaled into the nose. And now, the safe, affordable Viralizer system brings this remarkable therapy into your home, for possibly the most effective cold symptom relief your family has ever experienced. The Viralizer system attacks the cold virus with a mix of precise heat and medicated mists designed to knock that cold right out.

* * *

"By raising the temperature, we destroy the virus. Simply. You just kill it. If you kill it, it's not there, and the symptoms of the cold will thus be eliminated.

* * *

"The heat basically kills the viruses.

* * *

"The pollen create the IGE antibodies which are heat sensitive, and you heat your nasal passages up with the Viralizer and it kills these little antibodies and then you don't stimulate the runny nose and the sneezing." (Exhibit C)

(d) "Now a major scientific breakthrough prepares you for the onslaught of the cold season with this effective new method for relieving the stuffy heads, and persistent sneezes that plague cold and allergy sufferers -- the Viralizer System.... The Viralizer is based on medical fact: the cause of the common cold is the Rhinovirus family which lives and multiplies in the nose and throat, but cannot thrive in temperatures over 110° F.... Now use the Viralizer to help prevent infectious re-runs and the go-round of children's colds.... Proven in clinical tests 90% effective on eliminating the symptoms of upper respiratory infection in 24 hours or less... " (Exhibit D)

(e) "THE VIRALIZER SYSTEM"

"Now proven relief from congestion, runny nose, sore throat, & allergies."

"Finally there has been a significant breakthrough in treating colds, sinus infections and allergy symptoms. This system attacks both the cause and the symptoms."

"The Viralizer System has been tested extensively under medical supervision and has proven to be effective in eliminating nasal cold symptoms within one day or less."

"The Viralizer System offers controlled heat to attack the elusive cold virus...and then takes the treatment for the common cold one step further by combining it with cold medication." (Exhibit E)

PAR. 7. Through the use, *inter alia*, 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 Viralizer System can or will:

- (a) Eliminate or help eliminate cold symptoms in one day or less;
- (b) Destroy, disable, or help destroy or disable the viruses responsible for colds;
- (c) Prevent or help prevent the spread or transmission of colds;
- (d) Provide or help provide permanent or long term relief from allergy symptoms; and
- (e) Destroy, disable, or help destroy or disable the antibodies that play a part in the manifestation of allergic reactions.

PAR. 8. Through the use, *inter alia*, 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 seven, they possessed and relied upon a reasonable basis for those representations.

PAR. 9. In truth and in fact, at the time of making the representations set forth in paragraph seven, respondents did not possess and rely upon a reasonable basis for making the representations. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. Through the use, *inter alia*, 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) Competent and reliable scientific tests have established that the Viralizer System will eliminate or help eliminate cold symptoms in one day or less; and

(b) Competent and reliable scientific tests have established that the Viralizer System will destroy, disable, or help destroy or disable the viruses responsible for colds.

PAR. 11. In truth and in fact,

(a) No competent and reliable scientific tests have established that the Viralizer System will eliminate or help eliminate cold symptoms in one day or less; and

(b) No competent and reliable scientific tests have established that the Viralizer System will destroy, disable, or help destroy or disable the viruses responsible for colds.

Therefore, the representations made by respondents as set forth in paragraph ten were, and are, 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 and false advertisements in violation of Section 12 of the Federal Trade Commission Act.

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EXHIBIT A

"HOORAY... I KNEW SOMETHING GREAT WOULD HAPPEN IN MY LIFETIME." - D.J.S., Kildeer, IL.

THE VIRALIZER® SYSTEM

HEATED NEBULIZER-SPRAYER with Vira-Spray

A fast, effective treatment for allergy, sinusitis, runny nose, sore throat, and common cold symptoms... In most cases, complete relief of symptoms within 24 hours. It's doctor tested, doctor recommended.

Here's what other satisfied users are saying:

- "My doctor suggested this, when I showed him the ad. I am happy I did get it." - M.H. Minneapolis, MN
- "A very big thank you. We really do feel that this system is helpful. We have 3 chronic sinus sufferers - and it does seem to relieve a great deal." - C.W.B. Phoenix, MD
- "My sore throat (which is usually severe) was relieved in 1 day, almost all other symptoms in 3 days." - R.B. San Diego, CA
- "Instant relief of nasal congestion - relieved that I haven't been able to breathe." - D.N. San Juan Capistrano, CA
- "Doctors have had no suggestions for me except surgery. Terracycline or Cortisone. I'm spreading the word. Do you need a sales person in Florida?" - H.D. Venice, FL
- "I had read of the theory and was pleased to find it works for me." - G.G. Columbia Heights, MN
- "For me I think this is the total answer. While I don't look forward to colds, I feel I'm ready for the next one." - S.D.K. Alhambra, CA
- "It seems to really help chronic rhinitis that causes colds. I'm grateful." - M.L.W. LaQuinta, CA
- "I noticed the difference after 3 days of treatment. I was almost up to my nose." - M.C. Cincinnati, OH
- "Relief after 24 hours was good - I never ever getting rid of sore throat." - A.H.C. Evanston, IL
- "Complete relief in 24 hours. My colds usually last 3 weeks, and I usually feel badly about one week before my nose stops running." - S.J.L. Indian Head Park, IL
- "We used this on two occasions with a child. In both cases, the symptoms disappeared after one treatment." - L.S. Memphis, TN
- "Helped allergy symptoms." - E.R. Woodstock, AL
- "Surprised and pleased at degree of relief. Sinus stopped after day 1." - R.L.M. Maple, MN
- "It really works. Every minute just should own one. Please call our Right Person." - Capt R.N. Greenwich, CT
- "I am very pleased with the Viralizer - I am recommending your device to all my friends." - R.R.T. Glenview, IL
- "Read about this last year - was very interested - wrote you." - R.L.R. McKinney, IL
- "What a great device! I'm telling all my friends about it. Thank you for your ingenuity." - E.S. Mayfield Hts. OH
- "Good!! It works." - M.A. Edgewood, MD
- "Just great! Can I buy some stock?" - R.C.B. Riverside, CT
- "Oh-so successful!" - A.J.M. Chicago, IL
- "Was amazed at the quick relief it gave me." - J.A. Peaslee, IL
- "Good stuff, it helps, it relieved me." - D.W. Chicago, IL
- "Very satisfied - treatment very helpful." - M.S. Detroit, MI
- "I think it is the greatest!" - V.K. Kenner, LA
- "I am pleased with the results." - C.M.C. Norton Heights, CT
- "Very successful response - no cold after two days' treatment." - K.S. Leabokuff, IL
- "Seems to do exactly what it proposes - amazing!" - M.S. Tipton, MI
- "It's heaven sent! Have even been to allergist, and even that didn't help and Viralizer does." - E.L.T. Indianapolis, IN
- "3 people in our family used Viralizer with both Vira-Spray I and II with excellent results." - J.B.M. Deerborn, MI
- "I feel it gave us both relief after the first treatment. I feel it is very good." - F.L. Palmdale, IL
- "My daughter was surprised the treatment worked so quickly. She felt much better immediately." - M.I. Monroe Park, IL
- "Our 10-year-old has since used the Viralizer and had almost complete relief in 48 hours." - S.L. Schaumburg, IL
- "Helped to unplug head cold." - J.R. Aroma, PA, IL
- "It was magical - I can't believe how effective this was. I will be sure to pass on the good word! I would tell he blowing my nose without using the product!" - J.G. Greenwich, CT
- "Used at the beginning of symptoms, it gives relief and stops the problem from getting worse." - C.A. Honesick, CT
- "Good product - effective!" - L.A.G. Ramona, CA
- "This may be the great doom to the 7-day cold!" - L.W. Studio City, CA
- "It is a great invention - I love it!" - G.V. Kenner, LA
- "The only relief I have gotten other than drugs." - E.A.R. Grimes, LA
- "So far, so good - pleased - thank you." - A.R. Deer Park, NY

VIRAL RESPONSE SYSTEMS INC.

24 EAST PUTNAM AVENUE GREENWICH CT 06030 (203) 661-1330

Scientific tests (in vitro) have proven that the common cold virus self-destructs when heated at temperatures of approximately 150° F.

The amazing Viralizer System offers this kind of controlled dry heat (hyperthermia) to penetrate the nose and throat. The temperature creates a hostile environment for the viruses and allergy related RGE antibodies - while healthy cells remain undamaged. Additionally hyperthermia leads to increased blood flow to the nasal and throat mucosa which stimulates the body's own immune system.

The Viralizer System takes the treatment one step further by conveniently dispensing Vira-Spray I and Vira-Spray II pre-measured sprays that supply analgesic, bactericidal and decongestant medications. Scientific tests (in vitro) demonstrate that Viralizer heat will kill the Rhinoviruses, and Vira-Spray I solution will kill secondary bacterial infections.

- Gentle enough for children
- Non-prescription - over-the-counter
- Eliminates the "rebound phenomenon" - no adverse side effects
- Controlled heat and pre-measured medicated spray

\$34.95

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The Viralizer System is available at these fine pharmacies in Fairfield County:

Wal Drug Store, Westport
The Pharmacy, Stamford
Lewin Pharmacy, Stamford
Finch's Drug Stores, Greenwich
Gilbert's Pharmacy, Norton Heights

Grannick's Pharmacy, Greenwich
Greenwich Drug Store, Greenwich
Hoyt St. Pharmacy, Stamford
Kerr's Pharmacy, Old Greenwich

Lakes Pharmacy, Old Greenwich
Lang's Pharmacy, New Canaan
North St. Pharmacy, Greenwich
Professional Pharmacy, South Norwalk
Postphone Pharmacy, Port Chester, NY

Richard's Pharmacy, Norwalk
Slate's Pharmacy, Stamford
White's Drug Store, Cos Cob
Windsor Drugs, Norwalk

EXHIBIT A

EXHIBIT C

Viralizer System Point-of-Sale Commercials1. John Thompson Segment (1:00)

John Thompson: “If you and your family have been plagued by colds and allergies, here’s good news. Hi. I’m John Thompson to tell you about Viralizer, and what many scientists believe is the first really effective way to attack and stop common cold and allergy symptoms. In scientific tests at Europe’s renowned Pasteur Institute, a Nobel prize-winning virologist concluded that the rhinovirus literally self-destructs when precise heat is inhaled into the nose. And now, the safe, affordable Viralizer system brings this remarkable therapy into your home, for possibly the most effective cold symptom relief your family has ever experienced. The Viralizer system attacks the cold virus with a mix of precise heat and medicated mists designed to knock that cold right out [SUPER: USE ONLY AS DIRECTED]. At the first sign of a cold, just inhale the Viralizer’s heat and mists to penetrate infected areas of the nose and throat. That’s all there is to it. It’s safe and effective for the whole family, gentle enough for children too. In most instances, the length and severity of your family’s cold symptoms will be reduced to a shadow of what they were. Viralizer. Every home should have one.”

2. “Long” WWL, New Orleans Cold Segment (2:30)

Announcer: “WWL TV, Channel 4, New Orleans. Garland Robinette, Angela Hill, Jim Henderson, and meteorologist Dave Barnes. Louisiana’s news leader. Channel 4 Eyewitness News.”

Angela Hill: “Putting down money is not a problem for Americans fighting the sniffles. More than a billion dollars will be spent this year to combat the common cold. And though no cure yet exists, Janet Lawhon reports, a hot new device could put an end to your cold after just one day.”

Janet Lawhon: “Terri Pianovich has a very bad cold.”

[SUPER: VOICE OF TERRI PIANOVICH; same speaking]: “Well I’ve been having it for two weeks. It’s been transferred back and forth from my ten month old daughter, back to me, back to her, and it’s just been going on and on, an endless process.”

[SUPER: DR. MACK CHENEY, EYE, EAR, NOSE & THROAT HOSP.; same speaking]: “The virus actually causes a lot of sinus congestion and inflammation around the sinuses, and because of that you can then develop a secondary bacterial type of infection, which is a more severe infection.”

[PIANOVICH'S AND DOCTOR'S VOICES IN BACKGROUND] Janet Lawhon: "Today a menthol spray in a doctor's office helped relieve Terri's symptoms, but like the dozens of cold remedies on the market, it couldn't kill her cold [SUPER: SHELF DISPLAY OF DIMETANE DECONGESTANT, DIMETAPP (4 HOUR) TABLETS, DIMETAPP EXTENTABS (12 HOUR) TABLETS, DIMETANE (12 HOUR) TABLETS, ACTIFED 12 HOUR CAPSULES, ACTIFED TABLETS]. However, a new product that looks like a hair dryer may be able to. It's called the Viralizer. Just approved by the FDA, this device heats up sinus passages from a normal 92 degrees to about 115."

[SUPER: DR. MARCEL GOLDBERGER, VIRAL RESEARCHER; same speaking]: "By raising the temperature, we destroy the virus. Simply. You just kill it. If you kill it, it's not there, and symptoms of the cold will thus be eliminated."

Janet Lawhon: "Researchers say cold viruses are heat sensitive and can't live long under these conditions. Plus, a bacterial spray in the device helps kill secondary infections that make colds linger. And tests so far show good results."

[SUPER: DR. ALLEN AVEN, VIRAL RESEARCHER; same speaking]: "And it shows an unbelievable 98 percent of these people achieved improvement or complete clearing of their upper respiratory symptoms within 24 to 48 hours."

Janet Lawhon: "The Viralizer may also be helpful to those sensitive to medications, like children, pregnant women, and elderly people. But it shouldn't be used by those with chronic nasal problems."

Dr. Cheney: "And also anyone that has a history of nose bleeds or unilateral or one-sided nasal obstruction probably should come in and be seen before using it."

3. WWL, New Orleans Allergy segment (1:40)

Anchorman: "Remember the Viralizer, that hot air device we told you about that can kill a cold problem within two days? Well, the Viralizer is now working wonders, we're told, on another problem--allergies. Janet Lawhon has more on that."

Janet Lawhon: "Julia Schomaker has put a lot of love and sweat into her garden [SUPER: METAIRIE], so much that she refuses to be driven away by chronic allergy problems. For several months now, she's been using what looks like a mini blow dryer to get relief. It's called the Viralizer, and it heats your sinuses up to 110 degrees using one spray to kill germs and another to unstuff the problem."

[SUPER: JULIA SCHOMAKER; same speaking]: "I've used it mostly when I'm congested either in the sinuses, like when I get up in the morning, or during at night, and I'll have a headache."

Janet Lawhon: "The product was originally introduced into select pharmacies during the last cold season, and sold for about \$35. But with allergies at their peak, the device is still greatly in demand." [SUPER: JANET LAWHON, EYEWITNESS NEWS 4] Another advantage the Viralizer has is that it can be used by pregnant women, heart and diabetes patients, without side effects. And in the general population, it doesn't cause excitability in children or drowsiness we get from taking some of these allergy and cold preparations. In the meantime, Julia Schomaker says it not only helps her stay in the garden, it also helps keep her medicine costs down."

Julia Schomaker: "We're a drug society. We're always looking for that magic pill. This is not a pill, and I'm telling you, it can help you if you use it right. I'm sold on it, I'm telling you that."

Janet Lawhon: "Janet Lawhon, channel 4, Eyewitness News."

4. Best Talk in Town segment (3:40)

Nola Roper: "Hi and welcome back. Well, it affects 93 million of us every year. It is the common cold. We lose work over it, everything. With me this morning is Robert Krauser, he's the president of Viral Response Systems. And he says, or you say, that this can help the common cold."

Robert Krauser: "That's right. I say we have fifteen medical doctors associated with the company who agree with this. And we've sold ten thousand units since January, and we have thousands of people around the country who agree with it."

Nola Roper: "Well we're going to learn more about it in just a second. But first let's see how it works, since I caught a cold today, and it works in how many minutes?"

Robert Krauser: "Well, three minutes will give you some relief. And three minutes repeated every two to three hours for a day and you should be happy the next day."

Nola Roper: "Let's try it. What do we do?"

Robert Krauser: "We just heat it up."

Nola Roper: "And you just sniff it?"

Robert Krauser: "Yeah, just breathe normally. And you're going to feel warm air. It's a little bit like a portable sauna."

Nola Roper: "Yeah."

Robert Krauser: "And it kind of dries up the mucous. The heat basically kills the viruses. And this little spray we can use, and that kills secondary bacterial infection."

Nola Roper: "It's drying my mascara, too."

Robert Krauser: "That's right."

Nola Roper: "I tell you what. I'm going to continue using this . . . And don't vaporize, Viralize. This does work. It is starting to work. I can feel it. It's made a new man out of me. This is terrific. Now we've just committed viracide?"

Robert Krauser: "Viracide, that's right."

Nola Roper: "Now what about people who have allergies."

Robert Krauser: "Apparently it works very well for allergies too. [SUPER: ROBERT KRAUSER, PRES., VIRAL RESPONSE SYSTEMS, INC.] The pollen create the IgE antibodies which are heat sensitive, and you heat your nasal passages up with the Viralizer and it kills these little antibodies and then you don't stimulate the runny nose and the sneezing. And it's also worked on chronic sinusitis. We have a response card from a lady in Stamford, Connecticut, and we have other people from two, three, six months, six years, who said she had a problem for twenty years in terms of congestion and sinusitis, and she bought a Viralizer and she's breathing free."

Nola Roper: "Oddly enough now there is some little medication in the top of this, and like I have a little sore throat, but this is helping that too."

Robert Krauser: "Yeah, it'll help. You see, the heat also stimulates the immune system. But the spray, the spray will kill the secondary bacterial infection that is apparent when you have a bad cold or a continued prolonged sinusitis."

Nola Roper: "Now you told me a story a little earlier ago about a dentist that uses it with kids."

Robert Krauser: "That's right, Dr. Michael Sobel is an orthodontist who's on staff at the University of Pittsburgh. [SUPER: ROBERT KRAUSER, PRES., VIRAL RESPONSE SYSTEMS, INC.] And, a lot of times when kids come in to see him, they have stuffy noses--you know, snotty kids. And uh."

Nola Roper: "I have one of those."

Robert Krauser: "Me too. And if the kid comes in and he's a little, and he's quite stuffed up it's tough to work on him because the orthodontist is working with both

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hands, and he can't breathe. If he can't breathe through his mouth and he can't breathe through his nose."

Nola Roper: "Right."

Robert Krauser: "So what he does, he tells the child to lean back and gives him a three minute heat treatment with the Viralizer, and he cleans him up. And he says the kids are happy, in fact they often want to find out how to buy the Viralizer. In addition, his down time is cut, because kids are always being worked on, and they don't cancel appointments. And he wants to publish a paper for the Journal of American Dentistry. He thinks every dentist should have one around the office."

Nola Roper: "Terrific. Robert Krauser, thank you so much. You may have come up with a cure for the common cold. This is terrific."

Robert Krauser: "It's been my pleasure. Thank you."

Nola Roper: "Thanks so much. And thank you for being here today. I'm Nola Roper, this is Best Talk in Town, and I feel terrific. See you tomorrow."

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EXHIBIT D

THE BREAKTHROUGH COLD BUSTER



Now a major scientific breakthrough prepares you for the onslaught of the cold season with this effective new method for relieving the stuffy heads, and persistent sneezes that plague cold and allergy sufferers — the Viralizer® System. It's the newest development of a concept pioneered at the Pasteur Institute in Paris. The Viralizer is based on medical fact: the cause of the common cold is the Rhinovirus family which lives and multiplies in the nose and throat, but cannot thrive in temperatures over 110° F. Now, far more compact and affordable, comes the Viralizer with Vira-Spray® medications. The Viralizer is designed to deliver a gentle, controlled heat which penetrates the nose and throat, creating a hostile environment for cold viruses. After a pleasant heat treatment, the Vira-Spray dispenses either of two mild, over-the-counter, medicated sprays, in premeasured amounts. Vira-Spray I is an analgesic, anti-bacterial spray. Vira-Spray II is a decongestant. These therapeutic sprays further discourage the stubborn cold germs so you're less likely to be re-infected or spread your cold to others. Now use the Viralizer to help prevent infectious re-runs and the go-round of children's colds. The Viralizer can produce effective relief by using it for only 3 or 4 minutes, several times a day. Proven in clinical tests 90% effective on eliminating the symptoms of upper respiratory infection in 24 hours or less, the Viralizer works without pills. The hottest news in cold treatment, Viralizer with Vira-Spray is safe and gentle enough for children and adults, portable, easy to use and has been tested and recommended by doctors. Designed to take you right through those cold and allergy seasons you usually dread, the complete Viralizer® System includes 1 electric Viralizer with Vira-Spray I and Vira-Spray II — plus — a 3-pak refill of medicated sprays. \$39.95 #1690.

EXHIBIT D

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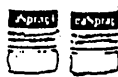
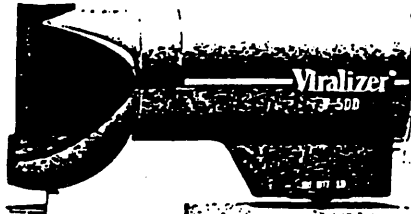
EXHIBIT E

THE VIRALIZER® SYSTEM**NEW!****Now proven relief from congestion, runny nose, sore throat & allergies**

Finally there has been a significant breakthrough in treating colds, sinus infections and allergy symptoms. This system attacks both the cause and the symptoms.

The Viralizer® System has been tested extensively under medical supervision and has proven to be effective in eliminating nasal cold symptoms within one day or less.

The Viralizer® System offers controlled heat to attack the elusive cold virus... and then takes the treatment for the common cold one step further by combining it with cold medication. Thus, Viralizer's® unique system offers dry heat to penetrate and attack viruses in infected areas of the nose and throat... and Vira-Spray® pre-measured sprays to disperse the medication (Vira-Spray® I analgesic and bacterioidal... and Vira-Spray® II decongestant).



The lightweight Viralizer® is about the size of a telephone receiver and can be held easily in the hand. Cold sufferers heat their nose and throat areas for up to five minutes and then spray a medication

called Vira-Spray® every minute. This portable system is designed to penetrate both the nose and throat areas... and is gentle and safe enough even for children.

The Viralizer® System consists of 1 electric Viralizer®, 1 bottle of Vira-Spray® I and 1 bottle of Vira-Spray® II.

C11601 Complete System \$34.95
C11701 Refills (3-Pak of 2 Vira-Spray® I's and 1 Vira-Spray® II) \$4.45
P11703 Refills (3 Packages of 3 bottles each) \$11.85

EXHIBIT E

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Viral Response Systems, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 34 East Putnam Avenue, Greenwich, Connecticut.

Respondent Robert S. Krauser is an officer of said corporation. He formulates, directs, and controls the policies, acts, and practices of said corporation. His office and place of business is the same as that of said corporation.

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

I.

It is ordered, That respondent Viral Response Systems, Inc., a corporation, its successors and assigns, and its officers, and respondent Robert S. Krauser, 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 Viralizer System, or any other 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, can or will:

- A. Destroy, disable, or help destroy or disable any virus responsible for the onset or continuance of colds;
- B. Prevent or help prevent the spread or transmission of colds;
- C. Provide or help provide permanent or long term relief from any allergy symptom;
- D. Destroy, disable, or help destroy or disable any antibody that plays a part in the manifestation of any allergic reaction; or
- E. Cure or help cure colds;

unless at the time of making the representation:

1. Respondents possess and rely upon competent and reliable scientific evidence which substantiates such representation; *provided, however*, that, for purposes of this Part, for any evidence to be competent and reliable it must include at least two adequate and well-controlled, double-blind clinical studies conforming to acceptable designs and protocols and conducted by different persons, independently of each other, who are qualified by training and experience to conduct such studies; or
2. Respondents possess and rely upon (a) a tentative or final standard promulgated by the Food and Drug Administration which substantiates such representation; or (b) other evidence which demon-

strates that the making of such representation is approved by the Food and Drug Administration.

II.

It is further ordered, That respondent Viral Response Systems, Inc., a corporation, its successors and assigns, and its officers, and respondent Robert S. Krauser, 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 Viralizer System or any other 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, can or will eliminate, alleviate, relieve, or reduce temporarily cold symptoms and/or allergy symptoms unless at the time of making the representation:

1. Respondents possess and rely upon competent and reliable scientific evidence which substantiates such representation; *provided, however,* that, for purposes of this Part, for any evidence to be competent and reliable it must include at least one adequate and well-controlled, double-blind clinical study conforming to acceptable designs and protocols and conducted by a person who is qualified by training and experience to conduct such a study; or

2. Respondents possess and rely upon (a) a tentative or final standard promulgated by the Food and Drug Administration which substantiates such representation; or (b) other evidence which demonstrates that the making of such representation is approved by the Food and Drug Administration.

III.

It is further ordered, That respondent Viral Response Systems, Inc., a corporation, its successors and assigns, and its officers, and respondent Robert S. Krauser, 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 Viralizer System, or any other health-related product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

IV.

It is further ordered, That, for three (3) years from the date that the practices to which they pertain are last employed, respondents shall maintain and upon 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 test 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 that involves the marketing of a product designed to treat colds and/or allergies. 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 respondents shall, within thirty (30) days from the date of service of this order upon them, deliver by first class mail or in person a copy of this order to present distributors and retail dealers of the Viralizer System.

VIII.

It is further 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
CIRCUIT CITY STORES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
MAGNUSON-MOSS WARRANTY ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3389. Complaint, August 3, 1992--Decision, August 3, 1992

This consent order requires, among other things, a Virginia-based national chain of consumer electronics and appliance stores to comply with the Magnuson-Moss Warranty Act and the Pre-Sale Availability of Written Warranty Terms Rule, which require retailers to make manufacturers' warranty information available to consumers, either (1) by displaying the text of the warranty near the warranted product, or (2) by furnishing the text of the warranty to customers upon request prior to sale, and prominently displaying signs advising customers of the availability of such warranties.

Appearances

For the Commission: *Jeffrey Klurfeld* and *Gerald Wright*.

For the respondent: *Howard Feller, McGuire, Woods, Battle & Booth*, Richmond, VA.

COMPLAINT

Pursuant to the provisions of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.*, and Rule 702, 16 CFR Part 702, promulgated thereunder, and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Circuit City Stores, Inc., a corporation ("respondent"), has violated the provisions of said Acts and Rule 702 promulgated under the Magnuson-Moss Warranty Act, and it appearing to the Commission that a proceeding by it would be in the public interest, alleges:

PARAGRAPH 1. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in