

IN THE MATTER OF

HAYES MICROCOMPUTER PRODUCTS, INC.

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

Docket C-3543. Complaint, Nov. 28, 1994--Decision, Nov. 28, 1994

This consent order prohibits, among other things, a Georgia manufacturer and distributor of computer communications products from making representations for any of its modem related products regarding the risk of data loss or data destruction, or data transmission problems due to any escape method, unless the respondent possesses and relies upon competent and reliable substantiating evidence.

Appearances

For the Commission: *Linda K. Badger and Kerry O'Brien.*

For the respondent: *James Hawkins, Dennis, Goldstein, Frazer & Murphy, Atlanta, GA.*

COMPLAINT

The Federal Trade Commission having reason to believe that Hayes Microcomputer Products, Inc. ("respondent"), has 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. Respondent Hayes Microcomputer Products, Inc., is a Georgia corporation, with its principal office or place of business at 5835 Peachtree Corners East, Norcross, Georgia.

PAR. 2. Respondent has manufactured, advertised, offered for sale, sold, and distributed products for computer communications, including modems, local area networks, and software. One of respondent's products is a modem with an "escape sequence." An escape sequence is a mechanism by which modems end a data transmission. Respondent patented this product under the title, "Modem with Improved Escape Sequence Mechanism to Prevent Escape in Response to Random Occurrence of Escape Character in Transmitted Data." The escape sequence mechanism defined in this

patent is known as the "Improved Escape Sequence with Guard Time."

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for the Improved Escape Sequence with Guard Time, including but not necessarily limited to the attached Exhibits A-B. These advertisements contain the following statements and depictions:

A. Tick, Tick, Tick. Boom! You're Dead.

A time bomb may be lurking inside your modem. A fatal flaw that can paralyze the data you're transmitting, causing untold chaos to the flow of accurate data you need.

You see, some modem manufacturers decided to turn their backs on proven modem technology, and on you. They haven't told you about the dangers because the only solution for this crisis is to replace their modems. Fortunately, Hayes can give you the knowledge to locate the bomb and prevent the purchase of another one.

HOW TO UNCOVER THE BOMB. We've developed a FREE test kit that's extremely easy to run on your PC or Mac. The kit spells out the dangers completely and accurately tracks down their fatally flawed component. . . .

THE ONLY WAY TO BE COMPLETELY PROTECTED. You can protect your data, your company, and even your job by purchasing modems that incorporate licensed technology from Hayes. . . .

The bomb is armed. The clock is ticking. Where will you be after the bomb goes off? Contact Hayes today for your FREE test kit and stop data transmission disaster before it strikes. (Exhibit A).

B. It's Time To Find The Bomb.

The Bomb.

By now, you know that a time bomb may be lurking inside your modem. It's there because some modems are using unreliable technology. This fatal flaw can paralyze the data you're transmitting because this unreliable escape sequence can fail you at any time.

The Solution.

This bomb is so dangerous that the best solution for this crisis is to replace these modems. . . .

Improved Escape Sequence with Guard Time.

. . . . To be reliable, it is important that a modem not escape if the characters used in the escape sequence appear at any time in the data being transmitted.

Time Independent Escape Sequence.

If you buy a TIES modem, you might assume that the modem is Hayes compatible because it uses AT commands, only to learn later that the modem might have been designed with a serious reliability problem. . . .

How to test your modem for TIES.

If the file transfer is unexpectedly interrupted or if the modem reverts to Command mode you are using a modem that implements the unreliable TIES procedure. (Exhibit B).

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-B, respondent has represented, directly or by implication, that:

A. Because a modem does not incorporate the Improved Escape Sequence with Guard Time, the use of that modem creates a substantial risk of data destruction.

B. When incorporated in modems, the "Time Independent Escape Sequence" ("TIES") creates a substantial risk of data transmission failure.

C. The Improved Escape Sequence with Guard Time is the only escape method that does not create a substantial risk of data transmission failure.

D. The use of any modem that does not incorporate the Improved Escape Sequence with Guard Time entails a data transmission problem that can be solved only by replacing it with a modem that incorporates the Improved Escape Sequence with Guard Time.

PAR. 6. In truth and in fact:

A. A modem's failure to incorporate the Improved Escape Sequence with Guard Time does not create a substantial risk of data destruction.

B. When incorporated in modems, TIES does not create a substantial risk of data transmission failure.

C. The Improved Escape Sequence with Guard Time is not the only escape method that does not create a substantial risk of data transmission failure.

D. The use of any modem that does not incorporate the Improved Escape Sequence with Guard Time does not entail a data transmission problem that can be solved only by replacing it with a modem that incorporates the Improved Escape Sequence with Guard

Time. In truth and in fact, other methods of escape can be used, or the escape sequence can be disabled or reset.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

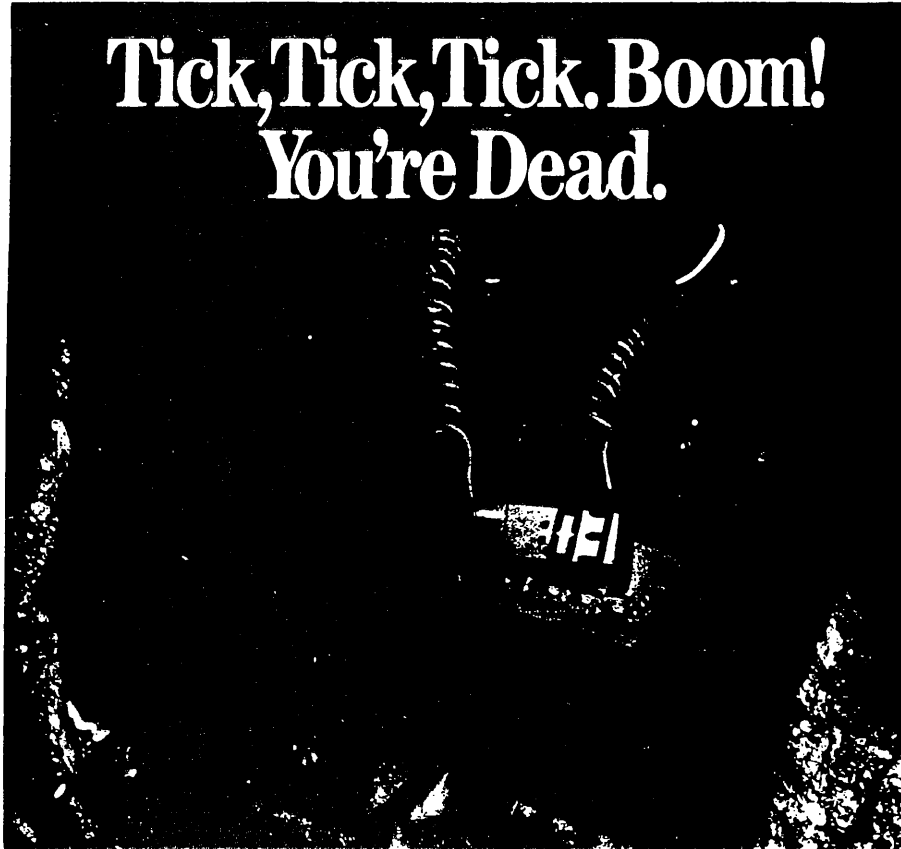
PAR. 7. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-B, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time it made the representations set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. The acts or practices of respondent as alleged in this complaint 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

Tick, Tick, Tick. Boom! You're Dead.



A time bomb may be lurking inside your modem. A fatal flaw that can paralyze the data you're transmitting, causing untold chaos to the flow of accurate data you need.

You see, some modem manufacturers decided to turn their backs on proven modem technology, and on you. They haven't told you about the dangers because the only solution for this crisis is to replace their modems. Fortunately, Hayes* can give you the knowledge to locate the bomb and prevent the purchase of another one.

HOW TO UNCOVER THE BOMB. We've developed a FREE test kit that's extremely easy to run on your PC or Mac. The kit spells out the dangers completely and accurately tracks down their fatally flawed component. To order your FREE kit, just call 800-846-8388, FAX your request to 404-728-6650, or download the test files from the Hayes BBS.

THE ONLY WAY TO BE COMPLETELY PROTECTED. You can protect your data, your company,

and even your job by purchasing modems that incorporate licensed technology from Hayes. Modems using complete solution Rockwell

chip sets are licensed as well as most modems of direct licensees of Hayes U.S. Patent 4,549,302. So look for the symbol. It means your modem uses the industry-standard escape sequence technology that has established its reliability for over a decade. Of course, all modems and ISDN products manufactured by Hayes use this technology as well.

The bomb is armed. The clock is ticking. Where will you be after the bomb goes off? Contact Hayes today for your FREE test kit and stop data transmission disaster before it strikes.



Hayes

Why settle for anything less?
Hayes products have the computer world talking. More than ever.

Go On Line with Hayes BBS; call 800-874-2837 or 404-446-6336
© 1991 Hayes Microcomputer Products, Inc., P.O. Box 9880, Atlanta, GA 30347

EXHIBIT A

EXHIBIT B



Tick,
Tick,
Tick.

EXHIBIT B

EXHIBIT B

It's Time To Find The Bomb.

The Bomb.

By now, you know that a time bomb may be lurking inside your modem. It's there because some modems are using unreliable technology. This fatal flaw can paralyze the data you're transmitting because this unreliable escape sequence can fail you at any time.

The Test.

Fortunately, this free Hayes' test kit will give you the knowledge to locate the fatally flawed component and help you avoid purchasing another one. The test data file is extremely easy to run on your computer, just follow the instructions on the back of this flyer.

The Solution.

This bomb is so dangerous that the best solution for this crisis is to replace these modems. You can protect your data transmission, your company, and even your job by purchasing modems that incorporate licensed technology from Hayes. Modems using complete solution Rockwell® chip sets are licensed, as well as most modems of direct licensees of Hayes U.S. Patent 4,549,302. So look for this symbol. It means your modem uses the industry standard escape sequence technology that has established its reliability for over a decade. Of course, all modems and ISDN products manufactured by Hayes use this technology.



EXHIBIT B

What is a Modem Escape Sequence?

A modem escape sequence allows a modem to change or "escape" from the receive/transmit mode of operation to the command mode of operation. Prior to 1981, modems used various escape sequences, such as the Eaton escape sequence, but these escape sequences were unreliable in actual use because they could not prevent the modem from unexpectedly escaping into command mode when the data being transmitted contained the escape code.

Improved Escape Sequence with Guard Time.

The Improved Escape Sequence with Guard Time was first used in a Hayes modem in 1981. The particular improvement allows a modem to escape from the receive/transmit mode of operation to the command mode of operation in a very reliable manner that does not depend on the probability of character occurrence in the data. To be reliable, it is important that a modem not escape if the characters used in the escape sequence appear at any time in the data being transmitted.

Dale Heatherington was not satisfied with an escape mechanism which caused some data to be unsendable because the modem would not be truly transparent to some data. He solved the problem by choosing predetermined characters for the escape code (such as `+++`) and surrounding them on either side by a predetermined guard time to alert the modem that the sequence is distinguished from a typical data string transmission.

Dale Heatherington redefined the problem, and his resulting invention led to U.S. Patent # 4,549,302 and corresponding patents in a number of countries. Hayes has licensed many modem manufacturers to allow this technology to be readily available to the market. Currently, manufacturers such as Amstrad, Compaq, GPT, IBM, Megahertz, OKI, Practical Peripherals, US Robotics and others license this technology from Hayes and have provided reliable escape mechanisms in their products.

Time Independent Escape Sequence.

A new escape sequence, the so-called Time Independent Escape Sequence (TIES), has recently appeared on the market. TIES is a non-standard escape sequence which is definitely not the same as the Improved Escape Sequence with Guard Time that was first used in a Hayes modem and is now used as the de facto standard for reliable modem operation by modem manufacturers worldwide.

If you buy a TIES modem, you might assume that the modem is Hayes compatible because it uses AT commands, only to learn later that the modem might have been designed with a serious reliability problem. Under certain system configurations, the modem could be reset or reconfigured by the remote modem, and when a file is being transmitted, the modem may unexpectedly escape into command mode, making it impossible to transmit that particular file. Each time you try to send the file, the same outcome would occur.

By re-introducing the faulty escape problem in the TIES technology, manufacturers would be doing a great disservice to you. Furthermore, because manufacturers of TIES modems do not publicize that the modem uses TIES, you probably would not know that the modem uses the TIES technology until you experience an unexpected interruption of your data transmission.

How do I know if my modem supports TIES?

We've developed the test data file enclosed (TIESTEST.BIN) that can assist you in determining if your modem or the modems which you are evaluating support TIES. If you transfer the TIESTEST.BIN file using XMODEM or YMODEM and your modem supports TIES, the file transfer will unexpectedly abort at a certain point or the modem will revert to Command State where it will not transmit data until an appropriate AT command is typed.

EXHIBIT B

Unlike the Improved Escape Sequence with Guard Time, TIES will cause a file transfer to abort if certain sequences of characters are present. The simplest TIES default escape sequence is "AT<CR>" where <CR> represents "carriage return." In TIES there are no required guard times. Other "poison sequences" might have a lower case AT ("at") or be of the form "AT<string><CR>", where <string> is any valid AT command.

The particular "poison sequences" for a TIES modem depend on whether the communications software changes the value of the "escape character" (the ^) and the end-of-command character (the <CR>). The TIESTEST.BIN file includes all possible sequences of the form "xxATy" where the ASCII value for x is varied from 0 to 127 and the ASCII value for y is varied from 0 to 127. This results in 16,384 sequences which are each repeated twice to be sure the protocol does not interrupt the character sequence.

A shorter file, TIESQUIT.BIN, is also available and will detect the existence of TIES if any Hayes Smartcom communications software is used. It will also detect TIES with any other XMODEM or YMODEM file transfer software that does not reprogram the end-of-command character (most widely used communications software fall into this category). This shorter file will upload in 6 to 12 seconds at 2400 bps. (Note: this is a test for TIES escape mechanism only. It does not test for Hayes Improved Escape Sequence with Guard Time in any way).

How to test your modem for TIES.

To test a modem, transfer the TIESTEST.BIN file on this disk to another system or the Hayes BBS using either XMODEM or YMODEM file transfer protocol.

To use the Hayes BBS, call *OnLine with Hayes* in the U.S. at 404/446-6336 or 800/874-2937. Register on the BBS and then select [T] TIES Modem Test Area from the Main Menu. You may then select: 1. What is TIES?, 2. Who needs to perform this test?, 3. Download test file, 4. Upload file/Perform test, and 5. Ask a question about TIES. Set your data communications software to use XMODEM or YMODEM and select 4 from the TIES Modem Test Area menu to perform the test. Tell the BBS which protocol you selected and send the TIESTEST.BIN file.

If the file transfer is unexpectedly interrupted or if the modem reverts to Command mode you are using a modem that implements the unreliable TIES procedure.

Remember, if you are using a Hayes modem you do *not* have to perform this test.

If you need assistance with the test or have any questions or comments, please contact Hayes Customer Service at 800/846-8388.

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Why settle for anything less?
Hayes products have the computer world talking.
More than ever.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons 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 issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Hayes Microcomputer Products, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 5835 Peachtree Corners East, in the City of Norcross, State of Georgia.

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

DEFINITIONS

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

A. The term "*Improved Escape Sequence with Guard Time*" means the escape method technology described, among other things, in United States Patent Number 4,549,302, titled as "Modem With Improved Escape Sequence With Guard Time Mechanism."

B. The term "*Time Independent Escape Sequence*," or "*TIES*," means an escape sequence consisting of three escape characters (*e.g.*, "+++"), followed by a valid AT command, which can be followed by additional AT commands, and ended with another character, typically a carriage return.

C. The term "*modem-related product*" means any modem, any component of any modem, or any hardware or software used in the operation of any modem.

I.

It is ordered, That respondent, Hayes Microcomputer Products, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of products containing the Improved Escape Sequence with Guard Time, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Because a modem does not incorporate the Improved Escape Sequence with Guard Time, the use of that modem creates a substantial risk of data destruction;

B. When incorporated in modems, the "Time Independent Escape Sequence" ("TIES") creates a substantial risk of data transmission failure;

C. The Improved Escape Sequence with Guard Time is the only escape method that does not create a substantial risk of data transmission failure; or

D. The use of any modem that does not incorporate the Improved Escape Sequence with Guard Time entails a data transmission problem that can be solved only by replacing it with a modem that incorporates the Improved Escape Sequence with Guard Time;

unless such representation is true, and at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such 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.

II.

It is further ordered, That respondent, Hayes Microcomputer Products, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any modem-related product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the risk of experiencing data destruction, data loss or data transmission problems due to any escape method, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

III.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respon-

dent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the respondent that may affect compliance obligations under this order such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s).

V.

It is further ordered, That respondent shall, within ten (10) days from the date of service of this order upon it, distribute a copy of this order to each of its officers, agents, representatives, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, to all company executives, and to all marketing and sales managers; and for a period of three (3) years, from the date of issuance of this order, distribute a copy of this order to all of respondent's future such officers, agents, representatives, independent contractors, and employees.

VI.

It is further ordered, That respondent shall, within sixty (60) days from the date of service of this order upon it, 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 it has complied with this order.

Commissioner Varney not participating.

Modifying Order

118 F.T.C.

IN THE MATTER OF

THE COCA-COLA COMPANY

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9207. Final Order, June 13, 1994 -- Modifying Order, Dec. 5, 1994*

This order reopens the proceeding and modifies the Commission's final order issued on June 13, 1994, that required the respondent, for ten years, to obtain Commission approval before acquiring certain brand-name soft drink concentrate manufacturers, by eliminating a provision which had expressly defined Coca-Cola Enterprises, Inc. as a Coca-Cola Company subsidiary or affiliate subject to this prior approval requirement.

ORDER REOPENING AND MODIFYING FINAL ORDER

The Commission issued a final order in this proceeding on June 13, 1994, and respondent The Coca-Cola Company -- and Coca-Cola Enterprises, Inc. -- filed petitions for review of that order in the United States Court of Appeals for the District of Columbia Circuit on August 26, 1994. Coca-Cola Enterprises Inc. was not a party to the administrative proceeding and there is no need that it be singled out in the order for identification as a subsidiary or affiliate of The Coca-Cola Company.

Accordingly, the Commission, having determined *sua sponte* to reopen this proceeding and modify Part I.A of the final order, pursuant to Commission Rule 3.72 (a).

It is ordered, That the final order in this matter be, and it hereby is, modified to delete the following sentence from Part I.A of the final order:

For purposes of this order, Coca-Cola Enterprises Inc. is a subsidiary or affiliate of Coca-Cola.