

IN THE MATTER OF

FRANK A. LATRONICA, JR., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3640. Complaint, Feb. 12, 1996--Decision, Feb. 12, 1996*

This consent order requires, among other things, the distributor and the manufacturer of the Duram Emergency Escape Mask to possess competent and reliable scientific evidence to substantiate claims that their mask will absorb, filter out, or otherwise protect the user from any hazardous gas or fumes associated with fires, and for claims that the mask is appropriate for use in mines. In addition, the consent order requires the respondents to provide a disclosure statement on all package labels and inserts for the mask, or any substantially similar products.

Appearances

For the Commission: *Alan E. Krause* and *C. Steven Baker*.

For the respondents: *George Miron, Feith & Zell*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, ("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. Respondent Frank A. Latronica, Jr., is an individual doing business as Life Safety Products. His principal office or place of business is located at 412 North Pacific Coast Highway, Suite 357, Laguna Beach, California.

PAR. 2. Respondent Duram Rubber Products is a registered partnership of Kibbutz Ramat Hakovesh with its principal office or place of business at Kibbutz Ramat Hakovesh, 44930 Israel.

PAR. 3. Respondents have advertised, offered for sale, sold, and distributed the Duram Emergency Escape Mask to the public.

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

PAR. 5. Respondents have disseminated or have caused to be disseminated advertisements and other promotional materials for the Duram Emergency Escape Mask, including, but not necessarily limited to, the attached Exhibit 1. This advertisement contains the following statements:

A. "WHEN SECONDS COUNT . . .

The Duram Emergency Escape Mask Provides Protection from Deadly Toxic Smoke and Gases."

B. "The Duram mask provides up to 20 minutes of protection in the most toxic environment; sufficient time to escape safely."

C. "The Duram Smoke Filier [sic] Mask is a disposable hood designed to provide emergency respiratory protection to enable safe escape from fires and related dangers such as heavy smoke, most poisonous fumes, dust, and lethal gases."

D. "Test results show that the mask filters 94% of the smoke and enables regular breathing in an environment filled with heavy smoke."

E. "APPLICATIONS

Factories and mines (in case of explosions)."

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisement attached as Exhibit 1, respondents have represented, directly or by implication, that:

A. The Duram Emergency Escape mask will absorb or filter out all significant toxic smoke and poisonous fumes and lethal gases associated with fires.

B. The Duram Emergency Escape Mask will protect the user from all significant hazards associated with toxic smoke, poisonous fumes and lethal gases in fires for up to twenty minutes.

C. The Duram Emergency Escape Mask is appropriate for use in mines.

PAR. 7. In truth and in fact:

A. The Duram Emergency Escape Mask will not absorb or filter out all significant toxic smoke or poisonous fumes or lethal gases associated with fires, because it does not absorb or filter out carbon monoxide, a lethal gas associated with fires.

B. The Duram Emergency Escape Mask will not protect the user from all significant hazards associated with toxic smoke, or poisonous fumes or lethal gases in fires for up to twenty minutes, because it does not absorb or filter out carbon monoxide, a lethal gas associated with fires.

C. The Duram Emergency Escape mask is not appropriate for use in mines because it does not meet the standards developed by the National Institute for Occupational Safety and Health and the United States Bureau of Mines for Respiratory Protective Devices, as set forth in 30 CFR 11.

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

PAR. 8. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisement attached as Exhibit 1, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph six, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 9. In truth and in fact, at the time they made the representations set forth in paragraph six, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisement attached as Exhibit 1, respondents have represented, directly or by implication, that scientific tests prove that the Duram Emergency Escape Mask filters 94% of the smoke in an environment filled with heavy smoke.

PAR. 11. In truth and in fact, scientific tests do not prove that the Duram Emergency Escape Mask filters 94% of the smoke in an environment filled with heavy smoke. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. In the advertising and sale of the Duram Emergency Escape Mask, respondents have represented that the Duram Emergency Escape Mask absorbs or filters out all significant toxic smoke, poisonous fumes and lethal gases associated with fires. Respondents have failed to disclose to consumers that the Duram Emergency Escape Mask does not absorb or filter out carbon monoxide, a lethal gas associated with fires. This fact would be material to consumers in their purchase or use decisions regarding the Duram Emergency Escape Mask. The failure to disclose this fact, in light of the representations made, was, and is, a deceptive practice.

PAR. 13. In providing the advertisements and promotional materials referred to in paragraph five to its distributors, respondent Duram Rubber Products has furnished the means and instrumentalities to those distributors to engage in the acts and practices alleged in paragraphs five through twelve.

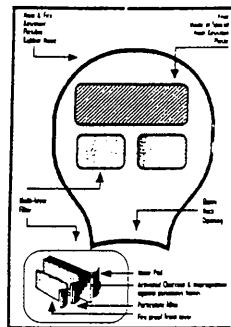
PAR. 14. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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Complaint

EXHIBIT 1

EXHIBIT 1

When Seconds Count ...*The Duram Emergency Escape Mask Provides Protection from Deadly Toxic Smoke and Gases*

■ **Increased Survivability**

The Duram mask provides up to 20 minutes of protection in the most toxic environment; sufficient time to escape safely.

■ **Ease of Use**

The extreme flexibility and special design enables the user to don the mask very quickly; easily adjusting to any head shape, long or short hair, glasses or jewelry.

■ **Compact**

Constructed of a unique flame resistant rubber, the Duram Mask is thin, strong and very light weight. The 4"x5"x1/4" low profile package makes it comfortable to carry in a coat pocket, briefcase or purse.



■ **Visibility**

The wide visor, made of heat-resistant material, enables clear visibility with a wide 180 degree angle of vision.

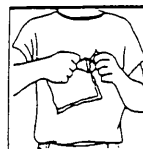
■ **Storage**

The Duram Mask is vacuum sealed in a foil container to guarantee the effectiveness of the filter for 4 years (travel case and wall mount fixture also available)

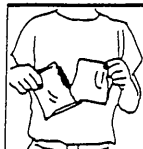
■ **Affordability**

At a cost \$49.95, respiratory protection is affordable for residential, personal or corporate applications.

The Duram Mask is protected by patents and pending patents worldwide. U.S. Patent No. 4,670,959.



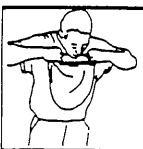
1 Open container along dotted line.



2 Extract mask from the vacuum sealed wrapper.



3 Hold mask upside down, facing your body.



4 Tuck edge under your chin.



5 Pull mask over your head.



6 Adjust mask in order to see comfortably.

The Duram Smoke Filter Mask is a disposable hood designed to provide emergency respiratory protection to enable safe escape from fires and related dangers such as heavy smoke, most poisonous fumes, dust, and lethal gases.

Smoke Is Very Dangerous

Research conducted by the NFPA (National Fire Protection Association) has determined that most deaths in fires result from smoke inhalation.

Utilizing advanced filtration technology, this mask gives the user extra time to find a way out and escape safely. Test results show that the mask filters 94% of the smoke and enables regular breathing in an environment filled with heavy smoke.

Applications

- Private homes, apartment houses, and high-rise buildings.
- Hotels, public facilities, and office buildings.
- Aircrafts, cruise ships, and trains.
- Factories and mines (in case of explosions).
- Industrial areas with severe ecological problems such as air pollution, heavy dust or chemical exposure.

For Complete Information Contact

LIFE SAFETY
P R O D U C T S

1-800-359-4323

4100 South Sandhill Road
Suite A-5
Las Vegas, Nevada 89121

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 Chicago 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received 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 Frank A. Latronica, Jr., is an individual doing business as Life Safety Products with his principal office or place of business at 412 North Pacific Coast Highway, Suite 357, Laguna Beach, California.

2. Respondent Duram Rubber Products is a registered partnership of Kibbutz Ramat Hakovesh organized, existing and doing business under and by virtue of the laws of the country of Israel, with its principal office or place of business at Kibbutz Ramat Hakovesh 44930 Israel.

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

4. 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 purposes of this order, the following definitions shall apply:

(1) "*Duram Emergency Escape Mask*" shall mean the over-the-head escape hood manufactured by Duram Rubber Products, an Israeli company.

(2) "*Substantially similar product*" shall mean any mask, hood or other product that is designed or advertised as offering the user protection from the hazards associated with fires.

(3) "*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.

I.

It is ordered, That respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the Duram Emergency Escape Mask, 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:

A. Such product is capable of absorbing, removing, filtering out, or otherwise protecting the user from any hazardous gas or fumes associated with fire, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

B. Such product can protect the user from any hazards associated with fire, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

C. Such product is appropriate for use in mines, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation.

II.

It is further ordered, That respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, shall include, as specified below, the following disclosure in any advertisement or promotional material for the Duram Emergency Escape Mask, or any substantially similar product, that is advertised, offered for sale, or sold by respondents that is incapable of absorbing, removing, filtering or otherwise providing significant protection from carbon monoxide, if that advertising or promotional material expressly or impliedly represents that the device protects the user from any hazard associated with fire:

NOTICE: This device does not filter carbon monoxide -- a lethal gas associated with fire.

In any print advertisement or promotional material, the above disclosure shall be printed in a typeface and color that are clear and prominent in at least ten-point bold type print, in close conjunction with the representation. In multipage documents, the disclosure shall appear on the cover or first page.

In any advertisement disseminated on television broadcast, cablecast, home video or theatrical release, the above disclosure shall be displayed in a legible superscript with a simultaneous voice-over recitation of the disclosure in a manner designed to ensure clarity and prominence.

In any radio advertisement, the above disclosure shall be spoken in a manner designed to ensure clarity and prominence.

Nothing contrary to, inconsistent with, or in mitigation of the above disclosure shall be used in any advertisement in any medium.

III.

It is further ordered, That respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, shall include, as specified below, the following disclosure on all package labels and package inserts for the Duram Emergency Escape Mask, or any substantially similar product, advertised, offered for sale, or sold by respondents that is incapable of absorbing, removing, filtering or otherwise providing significant protection from carbon monoxide:

WARNING: This device does not filter carbon monoxide -- a lethal gas associated with fire.

The above-required language shall be printed in at least ten-point bold type print in a typeface and color that are clear and prominent. Nothing contrary to, inconsistent with, or in mitigation of the above disclosure shall be used on any such package label or product insert.

IV.

It is further ordered, That respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion,

offering for sale, sale, or distribution of any fire protection or safety 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, that any such product protects or assists in protecting the user from respiratory hazards associated with fire, explosions, air pollution, chemical exposure or other environments where normal breathing is impaired, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

V.

It is further ordered, That respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any fire protection or safety related product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

VI.

It is further ordered, That respondents shall:

A. Within thirty (30) days from the date of service of this order, deliver by first class mail, a dated notification letter, on Life Safety Products letterhead stationery, in the form set forth in Appendix A to this order, to each person, partnership or corporation who purchased a Duram Emergency Escape Mask from Life Safety Products. The notification letter shall be delivered by itself in a format that does not include any additional communication from respondent.

B. Within sixty (60) days from the date of service of this order, deliver by first class mail, a dated notification letter, on Life Safety

Products letterhead stationery, in the form set forth in Appendix A to this order, to each person, partnership, or corporation who purchased a Duram Emergency Escape Mask from any of the catalog retailers to whom Life Safety Products sold the Duram Emergency Escape mask for resale. The notification letter shall be delivered by itself in a format that does not include any additional communication from respondent.

VII.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their 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 representations; 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.

VIII.

It is further ordered, That respondents shall:

A. Within thirty (30) days from the effective date of this order deliver a copy of this order to each of their officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

B. For a period of ten (10) years from the effective date of this order deliver a copy of this order to each of their future officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this order, within three (3) days after the person assumes such position.

IX.

It is further ordered, That the respondent Duram Rubber Products shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its partnership structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor partnership or corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition or any other partnership change, that may affect compliance obligations arising under this order.

X.

It is further ordered, That respondent Frank A. Latronica, Jr., doing business as Life Safety Products, shall, for a period of ten (10) years from the date this order becomes final, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of each affiliation with a new business or employment. Each notice of affiliation with any new business or employment shall include his new business address and telephone number, current home address, and a statement describing the nature of the business or employment and the duties and responsibilities. The expiration of the notice provision of this Part X shall not affect any other obligation arising under this order.

XI.

It is further ordered, That each respondent shall, within sixty (60) days after 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.

XII.

This order will terminate on February 12, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order,

whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

APPENDIX A

Dear Purchaser of a Duram Emergency Escape Mask:
Please note this important safety information:

The Duram Emergency Escape Mask you purchased does not filter carbon monoxide -- a lethal gas associated with fire. This mask will not protect you from the effects of carbon monoxide gas.

This means that if you are wearing the Duram Emergency Escape Mask during a fire, exit immediately. You should know that carbon monoxide is colorless and odorless.

Our company, Life Safety Products, is sending all Duram Emergency Escape Mask ("Duram Mask") purchasers this alert as a result of a consent order with the Federal Trade Commission. According to the Federal Trade Commission, advertisements for the Duram Mask claimed that the mask would protect you from all significant fire hazards for up to 20 minutes. These hazards included toxic smoke, poisonous fumes, and lethal gases.

The advertisements for the Duram Mask did not make it clear that the mask does not filter carbon monoxide -- a lethal gas associated with fires.

We have now agreed not to make any claims about the mask's ability to protect you from fire hazards, unless we have reliable scientific evidence to back up these statements.

We also have learned that these masks are not appropriate for use in U.S. mines.

While the Duram Mask will not protect you from carbon monoxide gas, it will protect you from other potentially lethal gases associated with fire. These gases include hydrogen chloride, hydrogen cyanide, nitrogen dioxide, and sulfur dioxide.

Life Safety Products

IN THE MATTER OF

L'AIR LIQUIDE S.A., ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3216. Consent Order, July 15, 1987--Set Aside Order, Feb. 15, 1996

This order reopens a 1987 consent order--which required L'Air Liquide to divest certain specified air separation gases assets and required prior Commission approval before making certain acquisitions--and sets aside the consent order pursuant to the Commission's Prior Approval Policy Statement, under which the Commission presumes that the public interest requires setting aside the prior approval requirements in outstanding merger orders and making them consistent with the policy.

ORDER SETTING ASIDE ORDER

On November 15, 1995, L'Air Liquide S.A. (formerly known as L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procedes Georges Claude) ("L'Air Liquide"), the respondent named in the consent order issued by the Commission on July 15, 1987, in Docket No. C-3216 ("order"), filed its Petition To Reopen and Vacate Order ("Petition") in this matter. L'Air Liquide asks that the Commission reopen and vacate the order pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval And Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement" or "Statement").¹ L'Air Liquide's Petition requests that the Commission "reopen the order in Docket No. C-3216, terminate the prior approval and related reporting obligations in paragraph VII, and vacate the order." Petition at 3. The thirty-day public comment period on L'Air Liquide's Petition ended on January 8, 1996. No comments were received. For the reasons discussed below, the Commission has determined to grant L'Air Liquide's Petition.

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no

¹ 60 Fed. Reg. 39745-47 (August 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13, 241.