

IN THE MATTER OF

RUSTEVADER CORPORATION, ET AL.

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

Docket 9274. Complaint, Aug. 30, 1995--Decision, Aug. 15, 1996

This final order adopts the initial decision and order which prohibits, among other things, the Pennsylvania-based corporation from representing, in any manner, that the electronic corrosion control device is effective in preventing or substantially reducing corrosion in motor vehicle bodies, or from making any representations concerning the performance, efficacy or attributes of such products, unless the respondent possesses, at the time of such representations, competent and reliable evidence to substantiate the claims.

Appearances

For the Commission: *Michael Milgrom, Brinley H. Williams and Dana C. Barragate.*

For the respondents: *Keith E. Whann, Whann & Associates, Dublin, OH. and Jerry W. Cox, Eckert, Seamans, Cherin & Mellott, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that RustEvader Corporation, and David F. McCready, individually and as an officer of RustEvader Corporation (referred to collectively herein as "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 RustEvader Corporation a/k/a Rust Evader Corporation, sometimes d/b/a REC Technologies ("REC") is a Pennsylvania corporation with its office and principal place of business located at 1513 Eleventh Avenue, Altoona, Pennsylvania.

At times material to the allegations of this complaint, respondent David F. McCready ("McCready") has been the president and an owner and director of REC. His business address is the same as that

of REC. Individually, or in concert with others, McCreedy has directed, formulated and controlled the acts and practices of REC, including the acts and practices alleged in this complaint.

PAR. 2. Respondents manufacture, label, advertise, offer for sale, sell, and distribute an electronic corrosion control device for use on automobiles, trucks and vans (hereinafter "motor vehicles") under the names Rust Evader, Rust Buster, Electro-Image, Eco-Guard and others (referred to collectively herein as "Rust Evader").

PAR. 3. 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. 4. Respondents have disseminated, or have caused to be disseminated, advertisements and promotional materials for the Rust Evader including, but not necessarily limited to, the attached Exhibits A through E. These advertisements and promotional materials contain the following statements:

(a) Rust Buster Electronic Corrosion Control

This is the original multi-patented Electronic Corrosion Control for automobiles. Over a decade of test market experience and Consumer satisfaction guarantees our product as the best in today's hi-tech market.

MOST COMMONLY ASKED QUESTIONS

What can I expect from this product? Corrosion rate is reduced and auto body life is extended.

....

The Rust Buster C.D.O.I. interferes with the rusting process. Since the rusting process is gradual, the amount of energy consumed is very small. Rust Buster C.D.O.I. effectively reduces corrosion rate.

....

Rust Buster C.D.O.I. provides a source of free electrons that interfere with coupling of ferrous metal electrons with oxygen -- reducing the corrosion rate.

....

... complete interference in the rusting process cannot be expected, but rust retardation is dramatically demonstrated.

....

You want your car to look good while you're driving it, when you are ready to sell or trade it and particularly if you decide to give the car a major overhaul. If you lease a car, you are responsible to maintain a certain cosmetic standard or pay a penalty. Rust Buster C.D.O.I. wants your car to last and maintain its maximum value.

....

Over a decade of proven effectiveness.

Thousands of satisfied customers.

Inside-out & outside-in corrosion reduction (Exhibit A)

(b) The invisible shield of protection for your vehicle!

The invisible shield of protection used worldwide!

Protect your car, truck or van 24 hours a day -- rain or shine -- with the world leader in electronic automotive rust control! The RustEvader* system retards rust and corrosion, and protects your vehicle with a lifetime guarantee. Common nicks, scratches and abrasions won't deteriorate into rust-through damage from the outside in -- or inside out. The RustEvader* system safeguards your investment. . .

....

- helps increase your car's value at trade-in time
- protection against rust-through damage as result of stone chips, abrasions, salt, snow, sleet and sea-spray
- the original multi-patented electronic corrosion control device
- over 10 years of consumer satisfaction

....

Your best investment in your vehicle's future value!

*See printed warranty for exact description of warranty coverage and exclusions! (Exhibit B)

(c) Rust Evader

ELECTRONIC CORROSION CONTROL

The RustEvader interferes with rusting process. Electro-chemists have made great progress in understanding corrosion. RustEvader Corp. has applied the results of this progress in developing the RustEvader Automotive Corrosion Control System and since the rusting process is gradual, the amount of energy consumed is very small -- RustEvader reduces the corrosion rate.

RustEvader Electronic Corrosion Control gives you unmatched protection from salt, snow, sleet and sea spray corrosion. Rust perforation (rust-through) from either side of the sheet metal is warranted not to occur on your vehicle.

....

THE INTELLIGENT APPROACH TO PRESERVING AUTOMOTIVE APPEARANCE

....

- * Established track record in reducing corrosion -- documented by users.
- * Recapture your investment at trade-in time . . . for New and Used cars. (Exhibit C)

(d) NOW!! ELECTRONIC CORROSION CONTROL

Rust Evader Automotive Corrosion Control

....

The RustEvader interferes with the rusting process. . . . Environmental conditions that promote rusting also prompt a counter response from the RustEvader system. Energy for the electron bath is provided by the car's battery and since the rusting process is gradual, the amount of energy consumed is very small -- RustEvader reduces the corrosion rate. "The Logical Choice for Controlling Rust" (Exhibit D, reduced copy of dealer display board)

(e) The Rust Buster System Beats Rust!

The Rust Buster System keeps your car, truck or van beautiful for years! Common nicks, scratches and road salt won't deteriorate into rust-through damage, so you'll save on costly autobody repairs and preserve your investment!

The Rust Buster system also offers unmatched protection! Unlike traditional undercoating, it protects hard-to reach, corrosively vulnerable areas by impressing

electrons throughout the metal body panels of the vehicle and interfering [sic] with oxygen's natural ability to couple with these ferrous metals. (Exhibit E, reduced copy of dealer display board)

PAR. 5. Through the use of the trade names "Rust Evader" and "Rust Buster" and the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the promotional materials attached as Exhibits A-E, respondents have represented, directly or by implication, that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies.

PAR. 6. In truth and in fact, the Rust Evader is not effective in substantially reducing corrosion in motor vehicle bodies. Therefore, respondents' representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the trade names "Rust Evader" and "Rust Buster" and the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the promotional materials attached as Exhibits A-E, respondents have represented, directly or by implication, that at the time they made the representation set forth in paragraph five, respondents possessed and relied upon a reasonable basis that substantiated such representation.

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

PAR. 9. In connection with the promotion and sale of the Rust Evader, respondents have disseminated or caused to be disseminated to distributors and dealers materials to conduct a demonstration of the efficacy of the Rust Evader. Respondents have also disseminated depictions of the same demonstration, of which Exhibit G, attached hereto, is an example. The demonstration places two pieces of metal in a transparent tank containing salt water. One piece of metal is connected to a Rust Evader and the other is not. In connection with this demonstration, respondents make, and instruct the distributors and dealers to make the following (or similar) statements:

This Laboratory Test provides the "worst case scenario" to test RustEvader Technology. Two (2) identical pieces of sheet steel are suspended in salt bath. The RustEvader protects Sample "A" while Sample "B" rusts severely. (Exhibit G)

PAR. 10. Through the use of the depictions, materials and statements set forth in paragraph nine, respondents have represented, directly or by implication, that the demonstration described in paragraph nine accurately represents how the Rust Evader protects motor vehicle bodies from corrosion.

PAR. 11. In truth and in fact, the demonstration described in paragraph nine does not accurately represent how the Rust Evader protects a motor vehicle body from corrosion. The process utilized in the demonstration -- impressed current cathodic protection -- is much more effective under water than under conditions that a motor vehicle would normally encounter. Therefore, respondents' representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. In connection with the promotion and sale of Rust Evader, respondents have disseminated or have caused to be disseminated, to distributors and dealers, reports of laboratory and other tests performed on the Rust Evader. Some of these reports represent, directly or by implication, that the reported test constitutes scientific proof that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies. In addition, respondents have represented orally, directly or by implication, that these tests constitute scientific proof that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies.

PAR. 13. In truth and in fact, such tests do not constitute, scientific proof that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies. Therefore, respondents' representation set forth in paragraph twelve was, and is, false and misleading.

PAR. 14. In connection with the sale of the Rust Evader, respondents have provided purchasers with a limited warranty in the form attached hereto as Exhibit F. That warranty contains the following provision:

INSPECTIONS REQUIRED: The vehicle must be inspected every 24 months within 30 days of anniversary of installation date, by an authorized Rust Evader Dealer who may charge his current labor rate up to one hour for the inspection. FAILURE TO HAVE VEHICLE INSPECTED AS REQUIRED VOIDS THE WARRANTY.

PAR. 15. The warranty provision described in paragraph fourteen is in violation of Section 102(c) of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (15 U.S.C. 2302(c)) because it conditions a warranty pertaining to a consumer product actually costing the consumer more than \$5 on the consumer's use of a service (other than a service provided without charge) which is identified by brand, trade, or corporate name.

PAR. 16. In providing advertisements, promotional materials and product demonstrations, such as those referred to in paragraphs four through thirteen, to their distributors and dealers, respondents have furnished the means and instrumentalities to those distributors and dealers to engage in the acts and practices alleged in paragraphs five through thirteen.

PAR. 17. 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 A

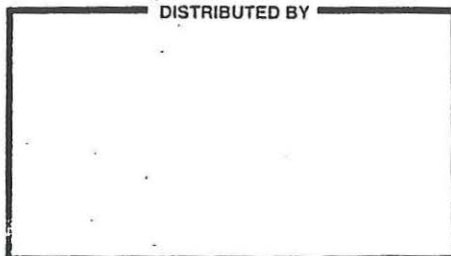
THE INTELLIGENT APPROACH TO
PRESERVING AUTOMOTIVE APPEARANCE

Technology That Works.
Benefits You'll Appreciate.

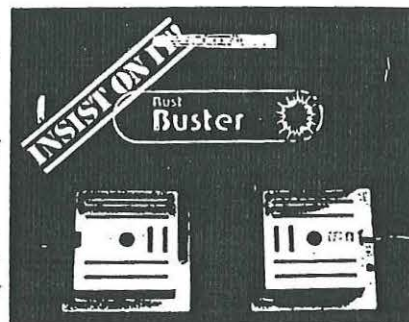
- Over a decade of proven effectiveness.
- Thousands of satisfied customers.
- Inside-out & outside-in corrosion reduction
- Transferrable to a second automobile.
- No interference with your vehicle's manufacturer warranty.
- Uses less power than the car's clock.
- No holes drilled - autobody integrity is preserved.
- Safe - no hazardous chemicals.
- Liability Warranties: A comprehensive \$1 million dollar product liability policy is underwritten by major insurance companies.
- Sold around the world.

EASY INSTALLATION - INSTALLS UNDER THE
HOOD IN JUST 20 MINUTES.

DISTRIBUTED BY



"Rust Buster" is a Registered Trademark of
Rust Evader Corp., Altoona, PA.
Entire contents Copyright © 1993, Rust Evader Corp., Altoona, PA.
All Rights Reserved
"Rust Buster" system U.S. Patents #4,647,353, #4,828,665,
#4,915,808, #4,921,588, #4,950,372, and #5,102,514.
Foreign Patents Pending



This is the original multi-patented Electronic Corrosion Control for automobiles. Over a decade of test market experience and Consumer satisfaction guarantees our product as the best in today's hi-tech market.

MOST COMMONLY ASKED QUESTIONS

- What can I expect from this product? *Corrosion rate is reduced and auto body life is extended.*
- Will this product effect any other electrical component in my vehicle? *If properly installed, No!*
- If my car has been chemically rustproofed, is this product compatible with Rust Buster? *Yes.*
- Since this product consumes a small amount of electrical energy, how long would it take to drain my battery below starting power? *Up to 30 days.*
- How long is this product guaranteed? *It is guaranteed for as long as you own it. Replacement - Free of charge.*
- What kind of vehicles can benefit from this product? *automobile manufactured after 1980, and most light trucks and vans.*
- Is it transferrable from vehicle to vehicle? *Yes, however the purchase of a reinstallation kit is necessary.*
- Do you have customer assistance available? *Yes, through a nationwide WATTS number, 1-800-458-3474.*

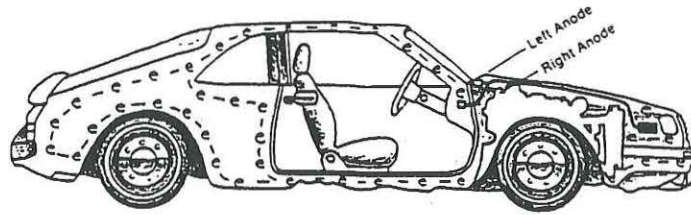
OUR PRIDE IS CUSTOMER SATISFACTION

000069

Complaint

122 F.T.C.

EXHIBIT A



The Rust Buster® C.D.O.I. interferes with the rusting process. Since the rusting process is gradual, the amount of energy consumed is very small. Rust Buster® C.D.O.I. effectively reduces corrosion rate.

The most common way of preventing automotive corrosion is to apply a barrier between oxygen and the metal. This is why we paint automobiles. The paint is a suitable barrier. When the metal loses paint or is incompletely painted, corrosion begins and continues until all of the metal is converted to an oxide or rust. Extra barriers have been developed such as undercoatings, rustproofing and paint sealants; but they are effective only as long as they insulate the metal from oxygen. Paint, rustproofing and sealants are known as di-electrics (not permitting electron transfer). As long as these di-electrics are in place without any small breaks, cracks, or crevices, nicks, scratches or stone chips, the automotive body has a fair chance of surviving the environment. However, in the real world, a constant attack is underway to break down these barriers. Once broken, the barriers permit the migration of electrons from iron to oxygen – the result is rust and corrosion. Rust Buster® C.D.O.I. provides a source of free electrons that interfere with coupling of ferrous metal electrons with oxygen – reducing the corrosion rate.

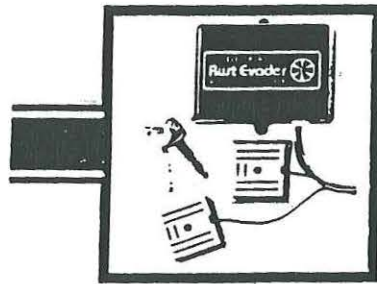
Capacitive Discharge Oxidation Interference "CDOI"

Since automobiles are produced essentially totally coated with a di-electric barrier of paint and rustproofing, the need to protect breaks in these barriers is of significant importance. The Rust Buster® C.D.O.I. forces electrons to escape or exit at the very site where the barrier has broken down or worn away "CDOI" effect. Compromises had to be considered in the Rust Buster® C.D.O.I. design. Therefore, complete interference in the rusting process cannot be expected, but rust retardation is dramatically demonstrated.

You want your car to look good while you're driving it, when you are ready to sell or trade it and particularly if you decide to give the car a major overhaul. If you lease a car, you are responsible to maintain a certain cosmetic standard or pay a penalty. Rust Buster® C.D.O.I. wants your car to last and maintain its maximum value.

Exhibit A

EXHIBIT B



Distributed By:



World Headquarters:

RustEvader Corporation

1513 11th Ave., Altoona, PA 16601, USA

800/458-3474 • 814/944-8700 • fax: 814/943-3752



A large, vertical graphic for Rust Evader. It features a dark background with a large, stylized lightning bolt. At the top, the letters 'ET' are prominently displayed in a bold, blocky font, with the words 'electronic technology' written in a smaller font below them. To the right of the lightning bolt, the text 'from RustEvader' is written. Below this, the text 'The invisible shield of protection for your vehicle!' is written in a serif font. At the bottom, a silhouette of a car is shown, and below it, the text 'World's Leading Electronic Automotive Rust Control System!' is written in a bold, sans-serif font.

EXHIBIT B

The invisible shield of protection used worldwide!

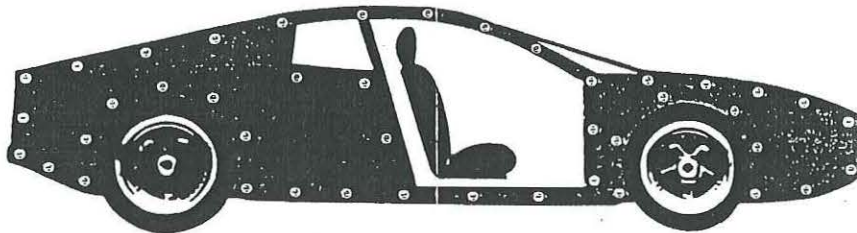
Protect your car, truck or van 24 hours a day — rain or shine — with the world leader in electronic automotive rust control! The RustEvader[®]* system retards rust and corrosion, and protects your vehicle with a lifetime guarantee. Common nicks, scratches and abrasions won't deteriorate into rust-through damage from the outside in — or inside out. The RustEvader[®]* system safeguards your investment — and helps preserve the environment!

ET
electronic technology
by **RustEvader[®]***

*The environmentally intelligent
approach to protecting your
automotive investment!*

- helps increase your car's value at trade-in time
- protection against rust-through damage as a result of stone chips, abrasions, salt, snow, sleet and sea-spray
- the original multi-patented electronic corrosion-control device
- over 10 years of consumer satisfaction
- nearly one million installed worldwide
- limited transferable lifetime new vehicle warranty* and used vehicle warranties* available
- insured by major international underwriters
- won't invalidate your vehicle's warranties
- won't interfere with vehicle electrical systems
- made in the USA!

*Your best investment in your
vehicle's future value!*



*See printed warranty for exact description of warranty coverage and exclusions!
© 1992 • "RustEvader" is patented and trademarked by RustEvader Corporation, Altoona, PA.

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Complaint

EXHIBIT C

RUSTEVADER® ET "EXTENDED TECHNOLOGY"



Specifications:
 Input Voltage: 12 Volt DC
 Ground: (-) Negative
 Current Draw: 23.4 ma

Anode Composition "Carbosil™ Capsules" non sacrificial
 Command Module Size: 3 1/4" x 3" x 1 1/4"
 Anode: 2" x 2" (2)
 Weight: 8 oz.

RustEvader® Wants Your Car To Last

RustEvader® products were designed for people who care about their car and understand the value of careful maintenance and effect on their pocketbook. RustEvader® wants your car to last and maintain it's maximum value.



Ask your dealer about RustEvader®

- Paint Protector
- Radiator Protector
- Fabric Protector
- Engine Oil Additive

DISCLAIMER

The warranty discussed in this brochure is for informational purposes only. Your warranty application provides the details of the warranty. Please read it thoroughly.

RustEvader Corp. 1513 11th Avenue P.O. Box 351
 Altoona, PA 16603 814-944-8700
 1-800-458-3474

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 "RustEvader" "AEL" "Power Powder" are registered trademarks of RustEvader Corp.
 Altoona, PA.
 RustEvader® System U.S. Patent #4,921,588 & 4,950,372, Power Powder® additive U.S. Patent
 #4,886,122
 Foreign Patents Pending

The Original Patented
Rust Evader
 ELECTRONIC
 RUST CONTROL 1988

Made in the U.S.A.

The World's Leading Electronic
 Rust Control System

U.S. Patents 4,921,588
 4,950,372

EXHIBIT
 6(a)

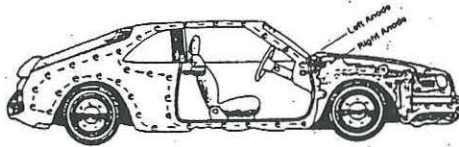
Complaint

122 F.T.C.

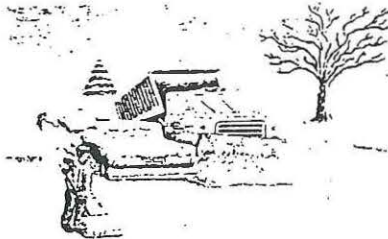
EXHIBIT C

Rust Evader®

ELECTRONIC CORROSION CONTROL

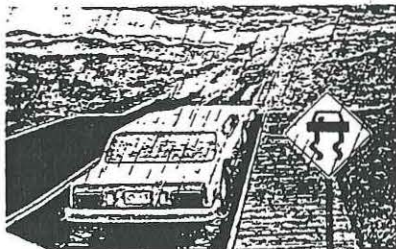


The "RustEvader" interferes with rusting process. Electro-chemists have made great progress in understanding corrosion. RustEvader® Corp. has applied the results of this progress in developing the RustEvader® Automotive Corrosion Control System and since the rusting process is gradual, the amount of energy consumed is very small—RustEvader® reduces the corrosion rate.



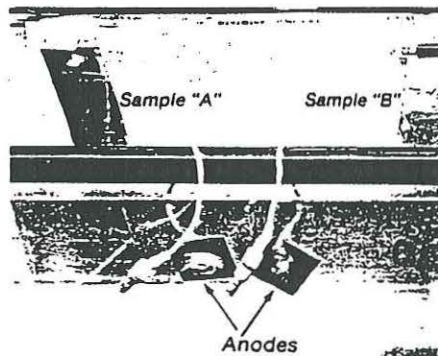
RustEvader® Electronic Corrosion Control gives you unmatched protection from salt, snow, sleet and sea spray corrosion. Rust perforation (rust-through) from either side of the sheet metal is warranted not to occur on your vehicle. (see actual warranty for details).

This is the original multi-patented Electronic Corrosion Control for automobiles. Over 10 years of consumer satisfaction and test market experience guarantees your dealing with the best and with the respect of the marketplace.



THE INTELLIGENT APPROACH TO PRESERVING AUTOMOTIVE APPEARANCE

- ★ RustEvader® emphasizes customer satisfaction, thousands in service worldwide.
- ★ Established track record in reducing corrosion — documented by users.
- ★ Recapture your investment at trade-in time...for New Used cars.
- ★ Used car warranty available depending upon age of ve and mileage.
- ★ Limited lifetime new car warranty, transferable to a se owner.
- ★ RustEvader® warrants that should the sheet metal of vehicle be perforated with/by rust, we will fix the ho
- ★ Consult RustEvader® Warranty Application for e description of coverage and exclusions.
- ★ Insured by major insurance companies.
- ★ RustEvader® is transferable from car to car.
- ★ Limited lifetime new car warranty available in the and Canada.
- ★ Optional 10 year limited new car warranty avai worldwide.



This Laboratory Test® provides the "worst case scenar to test RustEvader® Technology. Two (2) identi pieces of sheet steel are suspended in salt bath. T RustEvader® protects Sample "A" while Sample " rusts severely.

EXHIBIT D

ELECTRONIC CORROSION CONTROL

RustEvader

AUTOMOTIVE CORROSION CONTROL



**THE INTELLIGENT APPROACH TO
PRESERVING AUTOMOTIVE APPEARANCE**

The RustEvader[®] interferes with the rusting process. Electrochemists have made great progress in understanding corrosion. RustEvader[®] Corp. has applied the results of this progress in developing the RustEvader[®] Automotive Corrosion Control System. The RustEvader[®] impresses an electron bath on the vehicle's surface that interferes with oxygen's ability to couple with ferrous metals. Environmental conditions that promote rusting also prompt a counter response from the RustEvader[®] system. Energy for the electron bath is provided by the car's battery and since the rusting process is gradual, the amount of energy consumed is very small — RustEvader[®] reduces the corrosion rate.

"The Logical Choice for Controlling Rust"

- Recapture your investment at trade-in time for New and Used cars.
- RustEvader[®] emphasizes customer satisfaction thousands in service worldwide.
- Limited lifetime new car warranty, transferable to a second owner.
- Used car warranty available depending upon age of vehicle and mileage.
- Insured by a major insurance company.
- RustEvader[®] the original patented protection.
- Protection you can keep and take with you when you sell your car.

Exhibit D

Complaint

122 F.T.C.

EXHIBIT E

NOW!

THE ORIGINAL PATENTED
Rust Buster®

**WORLD'S LEADING AUTOMOTIVE
ELECTRONIC RUST CONTROL SYSTEM**

Left Anode
Right Anode
Command Module

The Rust Buster® System Beats Rust!

The Rust Buster® system keeps your car, truck or van beautiful for years! Common nicks, scratches and road salt won't deteriorate into rust-through damage, so you'll save on costly body repairs and preserve your investment!

The Rust Buster® system also offers unmatched protection! Unlike traditional undercoatings, it protects hard-to-reach, corrosively vulnerable areas by impressing throughout the metal body panels of the vehicle and interfering with oxygen's natural ability to couple with these ferrous metals.

- * eliminates the need for other costly rustproofing methods
- * uses less battery power than your car's clock
- * won't invalidate your vehicle's warranties
- * transferable to a second vehicle
- * protects rain or shine
- * installs in 30 minutes
- * small & compact device
- * no chemical mess or smell
- * year-after-year protection
- * for 1977 and newer models
- * environmentally safe

Exhibit E

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Complaint

EXHIBIT F

RUST EVADER[®]
 Electronic Corrosion Control
 LIMITED WARRANTY

 RUST EVADER[®]
 Electronic Corrosion Control
 LIMITED WARRANTY

(Plastic Card)

EXHIBIT

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RUST EVADER DEALER		EFFECTIVE DATE	RUST EVADER [®] SERIAL NO.
OWNER'S LAST NAME		FIRST NAME	TELEPHONE NUMBER
ADDRESS		CITY	STATE ZIP
INSTALLATION DATE		MILEAGE	DATE OF MANUFACTURE
VEHICLE - YEAR	MAKE	MODEL	VIN
☒ NEW VEHICLES ☐ LIFETIME LIMITED WARRANTY		USED VEHICLES ☐ 1 YEAR OLD OR LESS - 8 YRS. LIMITED WARRANTY ☐ 1 YR. TO 2 YRS. OLD - 5 YRS. LIMITED WARRANTY ☐ 2 YRS. TO 3 YRS. OLD - 3 YRS. LIMITED WARRANTY	

TERMS AND CONDITIONS Rust Evader Corp. warrants that the Rust Evader Electronic Corrosion Control when installed by an authorized Rust Evader Dealer on a new vehicle or a used vehicle as herein defined, will protect the vehicle from rust-thru (metal perforation by rust) during the term of this limited warranty. ("Warranty" as used hereafter means "limited warranty".)

ELECTRONIC CORROSION CONTROL UNIT Rust Evader Corp. warrants that the Rust Evader Electronic Corrosion Control Unit when installed on a new or qualified used vehicle as described above is free from defects in material and workmanship and if necessary will be repaired without charge by Rust Evader Corp.

NEW VEHICLE DEFINITION A new vehicle is one which was manufactured within 15 months of the date of this warranty and has 500 miles or fewer original miles and is registered to the original owner for 15 or fewer days. Such vehicle may be warranted for its lifetime.

USED VEHICLE DEFINITION A used vehicle is one manufactured within 3 years of the date of this warranty and has 150,000 miles or fewer original miles, and otherwise not classified as new. If such a vehicle is one year old or less it may be warranted for 6 years; if over one year to two years old, it may be warranted for 5 years; if over two years to three years old, it may be warranted for 3 years.

WHAT'S COVERED UNDER THIS WARRANTY The new or used vehicle described herein is warranted not to rust-thru (rust damage that perforates the metal) any of the following designated areas of the vehicle: roof, front windshield support, rear window housing, rear window frame, door handle mounting, exterior mirror mounting, locking mechanism mounting, outer door panels, inner door panels, crimped and flanged edges of all doors, rear hatch assembly complete, rear deck lid assembly complete including inner panels, rear lighting assembly components, hood outer sheet metal, hood inner sheet metal, front fender outer sheet metal, front fender inner sheet metal, and mounting assemblies, all other forward lighting assemblies supplied as original equipment, inner front fender sheet metal and passenger compartment interior passenger compartment roof and door assemblies including center door posts and all complete latching and hinge mechanisms support, rear fender outer sheet metal, rear fender inner sheet metal, complete inner and outer trunk areas including rear lighting support mountings, inner front grill supports and sheet metal including "radio" housing support and front splash pan sheet metal, all rocker panels, lower exterior body finishing panels and passenger compartment assembly.

EXCLUSIONS 1. All areas not listed as designated areas including but not limited to engine power drive train, heat exchangers, electrical system, exhaust system, suspension and brake system, bumpers and energy absorbing beam or crumple zones. 2. Any damage within the designated areas which has resulted because of: a) collision, accident, penetration other than rust whether deliberate or accidentally, or experimental work or testing; b) battery acid damage; c) Commercial-type vehicle use; and d) passenger compartment roof areas.

ADDITIONAL EXCLUSION This warranty is secondary to any existing vehicle manufacturer's warranty. Coverage is limited to the aggregate total cost of repair to the warranty period but not in excess of the current NADA suggested book value of the vehicle.

INSPECTIONS REQUIRED The vehicle must be inspected every 24 months within 30 days of anniversary of installation date, by an authorized Rust Evader Dealer. Any new charge for current labor rate up to one hour for the inspection. FAILURE TO HAVE VEHICLE INSPECTED AS REQUIRED VOIDS THE WARRANTY.

RUST-THRU CLAIM PROCEDURE If another rust thru warranty (vehicle manufacturer or other) was in effect at time this Rust Evader warranty is issued, owner may elect to keep the one existing warranty for claim service if said warranty is still in effect. If no such other warranty exists or is in effect, and any rust-thru should occur during the term of this warranty, owner must return vehicle along with this warranty document to an authorized Rust Evader Dealer within 30 days of first notice of rust-thru, permitting better repair and prevention of additional damage. Where possible, owner should return vehicle to dealer named under "Rust Evader Dealer" above. No claim will be valid under this warranty if the extent of the rust-thru is substantially larger than could have reasonably occurred within 30 days after rust-thru first became apparent. In any event, the last day of the term of this warranty is the last day any claim may be filed providing it too falls within the 30-day period above.

REPAIRS - CLAIMS All claims are subject to prior inspection of the vehicle and approval by Rust Evader Corp. Rust Evader Corp. is not responsible for matching the color of the repaired areas to the paint color on the rest of the vehicle. Each perforation will be repaired one only during the warranty period and is subject to a deduct of \$25.00 (to be paid by vehicle owner) for each valid claim made.

TRANSFER OF WARRANTY Upon change of ownership of the vehicle, the balance of the term of the warranty may be transferred to the new owner provided an authorized Rust Evader Dealer inspects the vehicle just prior to transfer and a copy of the attached transfer application is forwarded to Rust Evader Corp.

INSURANCE An insurance policy is in force for payments of claims at all times; however, should be made as set forth in "RUST-THRU CLAIM PROCEDURE" above.

LIMITATIONS ON COVERAGES THIS WARRANTY COVERS ONLY THE DESIGNATED AREAS LISTED UNDER "WHAT'S COVERED UNDER THIS WARRANTY" ABOVE. THIS WARRANTY DOES NOT COVER LOSS OF USE OF THE VEHICLE OR RENTAL, CAR EXPENSES OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES. IMPLIED WARRANTIES UNDER STATE LAW ARE LIMITED IN DURATION TO THE PERIOD OF TIME COVERED BY THE WARRANTY FROM THE DATE OF INSTALLATION. SOME STATES MAY NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON INCIDENTAL OR IMPLIED WARRANTY CONSEQUENTIAL DAMAGES OR LIMITATIONS ON HOW LONG THE WARRANTY LASTS. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY HAVE OTHER LEGAL RIGHTS WHICH VARY FROM STATE TO STATE.

RUST EVADER CORP. WARRANTY - TRANSFER APPLICATION This application must be completed in full and given to the Rust Evader Dealer. The warranty for the balance of the term will be issued to the new owner.

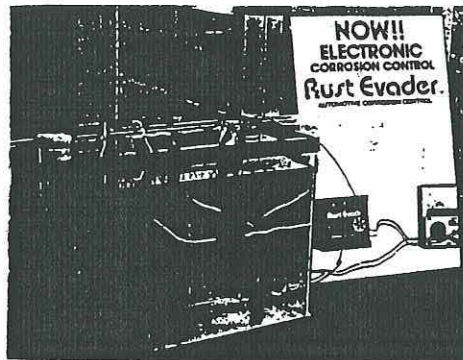
TRANSFER DATE _____
 BY NEW OWNER _____
 ADDRESS _____ CITY/STATE/ZIP _____
 BY RUST EVADER DEALER _____

Complaint

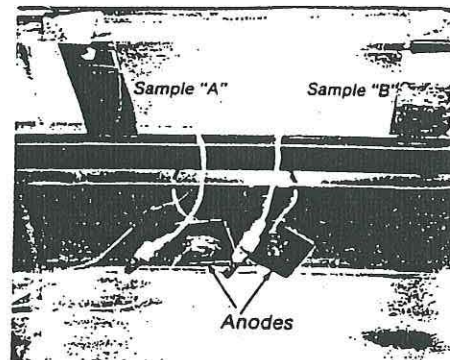
122 F.T.C.

EXHIBIT G

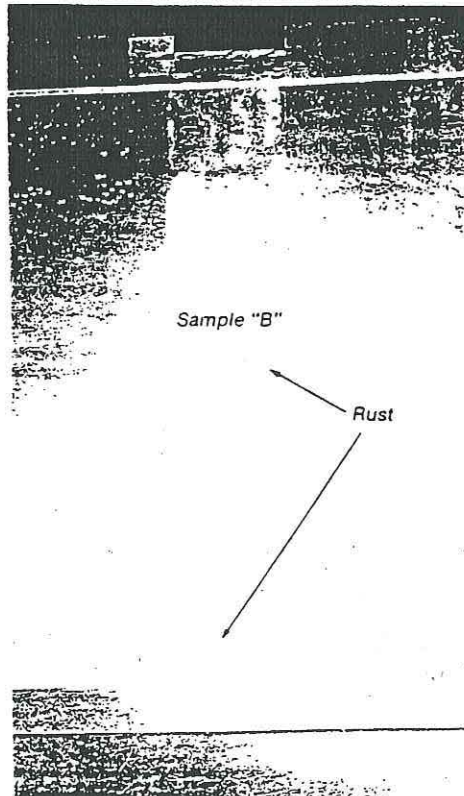
This Laboratory Test provides the "worst case scenario" to test RustEvader Technology. Two(2) identical pieces of sheet steel are suspended in salt bath. The RustEvader protects Sample "A" while Sample "B" rusts severely.



4½ gallons of 10% NaCl Solution. 70° F



Sample "A" is made cathodic (-) No Rust



Sample "B" after 240 hours

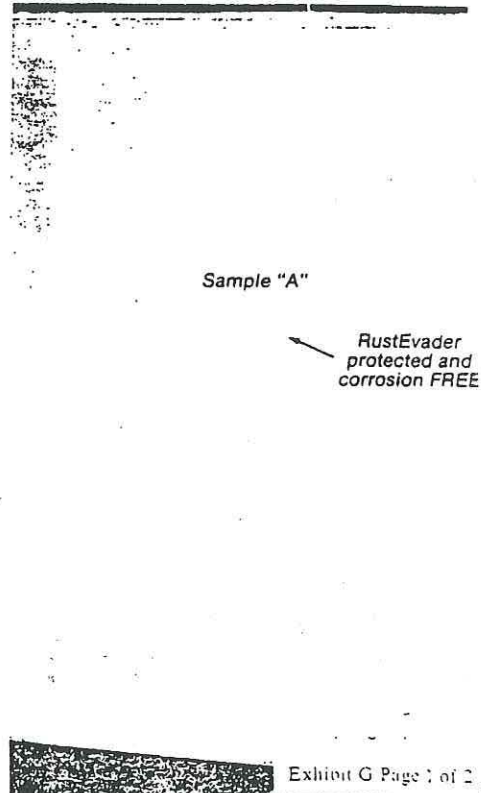


Exhibit G Page 1 of 2

EXHIBIT G

For Your Information!

How do you judge an automotive value? Ask those in the industry and they will tell you that condition and appearance are paramount in the evaluation. If you are purchasing a new car, its value several years down the road is important, so condition and appearance dictate the value of the car at any point beyond the day it was manufactured. A RustEvader and good maintenance will pay off by increasing the projected value of your car by reducing the rate of corrosion and retard rusting. The RustEvader was designed specifically to retard cosmetic corrosion. The normal imperfections in the paint along with small scratches, nicks and scars are less susceptible to cancerous body corrosion, or that ugly, scabby appearance. It is hard to imagine that your new car is so vulnerable but just look at any car that is two or three years old and you can see the devastation that has already begun.

It is easy to understand how hidden corners, bends and shapes of sheet metal body parts are consumed by a hostile environment. Abrasions from sand, stone and salt and freezing and thawing of water activate microscopic corrosion sites and pores in the paint that rapidly advance into body panel failure. Even galvanized sections that have been welded or bent in the factory-forming process are open to attack.

Rust and corrosion occur when the three essential ingredients interact: oxygen, metal and moisture, (H_2O). The metal provides the electrons to satisfy oxygen's craving for electrons. Moisture is needed to provide the pathway of electron transfer from iron to oxygen. The most common way of preventing automotive corrosion is to apply a barrier between oxygen and the metal. This is why we paint automobiles. The paint is a suitable barrier. When the metal loses paint or is completely painted corrosion begins and continues until all of the metal is converted to an oxide or rust. Extra barriers have been developed such as undercoatings, rustproofing and paint sealants; but they are effective only as long as they insulate the metal from oxygen and water. Paint, rustproofing and sealants are known as di-electrics (not permitting electron transfer). As long as these di-electrics are in place without any small breaks, cracks or crevices, nicks, scratches or stone chips, the automotive body has a fair chance of surviving the environment. However, in the real world, a constant attack is underway to break down these barriers. Once broken, the barriers permit the migration of electrons from iron over a moist pathway to oxygen — the result is rust and corrosion. RustEvader provides a source of free electrons that interferes with the migration and coupling of ferrous metal electrons with oxygen — reducing the corrosion rate.

Capacitive Discharge Oxidation Interference "CDOI"

Since automobiles are produced essentially totally coated with di-electric barrier of paint and rustproofing, the need to detect breaks in these barriers is of significant importance. The RustEvader forces the impressed electrons to escape or exit at

the very site where the barrier has broken down or worn away "CDOI" effect. RustEvader only works where and when needed. This is accomplished by pumping excess electrons to the car body creating a condenser effect (when the electric is essentially intact) between the car body and RustEvader anodes. Electrons repel each other resulting in their desire to return to a more positive home (anodes in atmosphere). In their escape from the automotive body through breaks or pores in the di-electric coatings, these impressed electrons interfere with the rusting process and retard rusting at local corrosion sites. There are variables that effect this interfering process: the composition of the metal, the type and concentration of the electrolyte, temperature and humidity. Generally speaking, increases in humidity and moisture increases the rate and quantity of electron escape. However, even when the relative humidity is very low electrons will free escape into the atmosphere. The impressed electrons escape in two ways: by displacing other electrons and by direct individual movement. If a continuous electrolyte exists (such as complete submersion in salt water) between the breaks in the coating on the car body and anodes, displacing electrons will move from the negative car body to the positive anode. In this condition the greatest rust retardation effect will exist. RustEvader works best where and when it is needed most, under mild conditions. Compromises had to be considered in the RustEvader design. Therefore, complete interference in the rusting process cannot be expected but rust retardation dramatically demonstrated.

Unibody construction and modern autobody panel design extremely vulnerable to corrosion: therefore, they are naturally presented to the consumer for use in a totally coated (paint) form. RustEvader has been designed to assist in the care maintenance program by retarding corrosion at breaks in the coating. The smaller the break, the more concentrated the RustEvader effect. Most of the protection is provided at the perimeter (interface) of the paint and the abrasion. Therefore components such as exhaust systems and suspension components, which are normally not coated, are not protected. Body panel abrasions are not normally neglected by the owners and are repainted (coated) soon after abraded. Therefore, the RustEvader was designed to assist the owner who is conscious of careful maintenance.

You want your car to look good while you're driving it, when you are ready to sell or trade it and particularly if you decide to give the car a major overhaul. If you lease a car, you are responsible to maintain a certain cosmetic standard or pay a penalty.

RustEvader was designed for people who care about their car and understand the value of careful maintenance and effort on their pocketbook. RustEvader wants your car to last a maintain its maximum value.

Rust Evader®

CDOI™ RustEvader Corp.
1513 11th Avenue P.O. Box 351
Allentown, PA 16603
800-458-3333 in PA 814-944-8700
©1987 RustEvader Corp.

Initial Decision

122 F.T.C.

INITIAL DECISION

BY JAMES P. TIMONY, ADMINISTRATIVE LAW JUDGE

MAY 24, 1996

INTRODUCTION

On August 30, 1995, the Commission issued its complaint in this matter, charging RustEvader Corporation ("REC") and David F. McCready with violations of Section 5(a) of the Federal Trade Commission Act in connection with the promotion and sale of the Rust Evader electronic corrosion control device. The complaint charged that respondents represented, falsely and without substantiation, that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies. The complaint also alleged that respondents had used a deceptive product demonstration and had misrepresented the validity of tests of the efficacy of the Rust Evader. Finally, the complaint charged that respondents had violated the Magnuson-Moss Warranty -- Federal Trade Commission Improvement Act, 102(c), 15 U.S.C. 2302(c), by using a warranty conditioned on periodic inspections of the Rust Evader unit by an authorized dealer who could charge a fee for the inspections.

On October 6, 1995, respondents filed a joint answer, denying the substantive allegations of the complaint and alleging that the Rust Evader "substantially" reduces corrosion. A discovery schedule was set up by order dated October 17, 1995, with trial scheduled to begin on May 13, 1996. Both sides filed non-binding statements.

On January 23, 1996, complaint counsel moved for sanctions citing respondents' failure to respond to discovery requests. These included *subpoenas duces tecum* issued on October 26, 1995, and interrogatories issued on November 9, 1995. Respondents had also failed to serve complaint counsel with preliminary exhibit and witness lists by January 5, 1996, as required by the pre-trial order. After a telephone conference with all counsel, I granted complaint counsel's motion on February 1, 1996. The order directed respondents to comply with the subpoenas, respond to the interrogatories and serve their preliminary witness and exhibit lists by February 23, 1996. The order specifically warned respondents that, if they failed to comply, they faced sanctions under the Commission's rules, including the possibility of default.

On April 8, 1996, complaint counsel and respondent McCready, having reached a tentative settlement, filed a joint motion to withdraw this matter from litigation with respect to Mr. McCready. That motion was forwarded to the Secretary on April 9 and the matter was withdrawn from litigation with respect to Mr. McCready on April 11, 1996, by order of the Secretary. The settlement is now before the Commission.

On April 11, 1996, complaint counsel filed a renewed motion for sanctions against REC, stating that REC had failed to comply with the order of February 1 in all respects. Complaint counsel further argued that, since REC's failure to respond to discovery was general and went to all aspects of the litigation, the appropriate response was to strike the answer as permitted by Rule 3.38(b)(5). Because REC had filed a bankruptcy petition complaint counsel's motion was served both on counsel of record for REC and, separately, on the bankruptcy trustee. In view of complaint counsel's motion, I suspended the trial schedule on April 12, 1996. REC did not respond to this motion.

On May 3, 1996, I granted complaint counsel's renewed motion for sanctions, striking REC's answer. On May 22, 1996, complaint counsel filed proposed findings of fact, conclusions of law and a proposed order.

Rule 3.12(c) provides that, where a party has failed to answer the complaint, the Administrative Law Judge is authorized, without further notice to respondents, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and the appropriate order. Rule 3.38(b), which authorizes sanctions for failure to make discovery, permits the Administrative Law Judge to strike all or part of a pleading, render a decision in the proceeding against the party that has been sanctioned, or both. Thus, entry of the following findings, conclusions and order is appropriate under both Rule 3.12(c) and Rule 3.38(b)(5). Under the provisions of Rule 3.12(c) and Rule 3.38(b)(5), for the reasons stated in complaint counsel's Motion for Sanctions and Renewed Motion for Sanctions, I hereby grant default judgment against REC.

FINDINGS OF FACT

1. Respondent RustEvader Corporation a/k/a Rust Evader Corporation, sometimes d/b/a REC Technologies (hereinafter "respondent") is a Pennsylvania corporation with its office and

principal place of business located at 1513 Eleventh Avenue, Altoona, Pennsylvania.

2. Respondent has manufactured, labeled, advertised, offered for sale, sold, and distributed an electronic corrosion control device for use on automobiles, trucks and vans (hereinafter "motor vehicles") under the names Rust Evader, Rust Buster, Electro-Image, Eco-Guard and others (referred to collectively hereinafter as "Rust Evader").

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

4. Respondent has disseminated, or has caused to be disseminated, advertisements and promotional materials for the Rust Evader including Exhibits A through E attached to the complaint herein. These advertisements and promotional materials contain the following statements:

(a) Rust Buster Electronic Corrosion Control

This is the original multi-patented Electronic Corrosion Control for automobiles. Over a decade of test market experience and Consumer satisfaction guarantees our product as the best in today's hi-tech market.

MOST COMMONLY ASKED QUESTIONS

What can I expect from this product? Corrosion rate is reduced and auto body life is extended.

....

The Rust Buster C.D.O.I. interferes with the rusting process. Since the rusting process is gradual, the amount of energy consumed is very small. Rust Buster C.D.O.I. effectively reduces corrosion rate.

....

Rust Buster C.D.O.I. provides a source of free electrons that interfere with coupling of ferrous metal electrons with oxygen -- reducing the corrosion rate.

... complete interference in the rusting process cannot be expected, but rust retardation is dramatically demonstrated.

....

You want your car to look good while you're driving it, when you are ready to sell or trade it and particularly if you decide to give the car a major overhaul. If you lease a car, you are responsible to maintain a certain cosmetic standard or pay a penalty. Rust Buster C.D.O.I. wants your car to last and maintain its maximum value.

....

Over a decade of proven effectiveness.

Thousands of satisfied customers.

Inside-out & outside-in corrosion reduction (Exhibit A)

(b) The invisible shield of protection for your vehicle!

The invisible shield of protection used worldwide!

Protect your car, truck or van 24 hours a day -- rain or shine -- with the world leader in electronic automotive rust control! The RustEvader* system retards rust and corrosion, and protects your vehicle with a lifetime guarantee. Common nicks, scratches and abrasions won't deteriorate into rust-through damage from the outside in -- or inside out. The RustEvader* system safeguards your investment...

....

- helps increase your car's value at trade-in time
- protection against rust-through damage as result of stone chips, abrasions, salt, snow, sleet and sea-spray
- the original multi-patented electronic corrosion control device
- over 10 years of consumer satisfaction

....

Your best investment in your vehicle's future value!

*See printed warranty for exact description of warranty coverage and exclusions! (Exhibit B)

(c) Rust Evader

ELECTRONIC CORROSION CONTROL

The RustEvader interferes with rusting process. Electro-chemists have made great progress in understanding corrosion. RustEvader Corp. has applied the results of this progress in developing the RustEvader Automotive Corrosion Control System and since the rusting process is gradual, the amount of energy consumed is very small -- RustEvader reduces the corrosion rate.

RustEvader Electronic Corrosion Control gives you unmatched protection from salt, snow, sleet and sea spray corrosion. Rust perforation (rust-through) from either side of the sheet metal is warranted not to occur on your vehicle.

....

THE INTELLIGENT APPROACH TO PRESERVING AUTOMOTIVE APPEARANCE

....

* Established track record in reducing corrosion -- documented by users.

* Recapture your investment at trade-in time...for New and Used cars. (Exhibit C)

(d) NOW!! ELECTRONIC CORROSION CONTROL

Rust Evader

Automotive Corrosion Control

....

The RustEvader interferes with the rusting process. . . . Environmental conditions that promote rusting also prompt a counter response from the RustEvader system. Energy for the electron bath is provided by the car's battery and since the rusting process is gradual, the amount of energy consumed is very small -- RustEvader reduces the corrosion rate.

"The Logical Choice for Controlling Rust"

(Exhibit D, reduced copy of dealer display board)

(e) The Rust Buster System Beats Rust!

The Rust Buster system keeps your car, truck or van beautiful for years! Common nicks, scratches and road salt won't deteriorate into rust-through damage, so you'll save on costly autobody repairs and preserve your investment!

The Rust Buster system also offers unmatched protection! Unlike traditional undercoatings, it protects hard-to-reach, corrosively vulnerable areas by impressing electrons throughout the metal body panels of the vehicle and interfering [sic] with

oxygen's natural ability to couple with these ferrous metals. (Exhibit E, reduced copy of dealer display board)

5. Through the use of the trade names "Rust Evader" and "Rust Buster" and the statements and depictions contained in Exhibits A-E as well as other advertisements and promotional materials, respondent has represented, directly or by implication, that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies.

6. In truth and in fact, the Rust Evader is not effective in substantially reducing corrosion in motor vehicle bodies. Therefore, respondent's representation set forth in the previous finding was, and is, false and misleading.

7. Through the use of the trade names "Rust Evader" and "Rust Buster" and the statements contained in the advertisements and promotional materials referred to in Finding 4, including but not necessarily limited to the promotional materials attached to the complaint as Exhibits A-E, respondent has represented, directly or by implication, that at the time it made the representation set forth in Finding 5, respondent possessed and relied upon a reasonable basis that substantiated such representation.

8. In truth and in fact, at the time it made the representation set forth in Finding 5, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in Finding 7 was, and is, false and misleading.

9. In connection with the promotion and sale of the Rust Evader, respondent has disseminated or caused to be disseminated to distributors and dealers materials to conduct a demonstration of the efficacy of the Rust Evader. Respondent has also disseminated depictions of the same demonstration, of which Exhibit G, attached to the complaint herein, is an example. The demonstration places two pieces of metal in a transparent tank containing salt water. One piece of metal is connected to a Rust Evader and the other is not. In connection with this demonstration, respondent makes, and instructs the distributors and dealers to make the following (or similar) statements:

This Laboratory Test provides the "worst case scenario" to test RustEvader Technology. Two (2) identical pieces of sheet steel are suspended in salt bath. The RustEvader protects Sample "A" while Sample "B" rusts severely. (Exhibit G to the complaint)

10. Through the use of the depictions, materials and statements set forth in Finding 9, respondent has represented, directly or by implication, that the demonstration set forth in Finding 9 accurately represents how the Rust Evader protects motor vehicle bodies from corrosion.

11. In fact, the demonstration set forth in Finding 9 does not accurately represent how the Rust Evader protects a motor vehicle body from corrosion. The process utilized in the demonstration -- impressed current cathodic protection -- is much more effective under water than under conditions that a motor vehicle would normally encounter. Therefore, respondent's representation set forth in Finding 10 was, and is, false and misleading.

12. In connection with the promotion and sale of the Rust Evader, respondent has disseminated or has caused to be disseminated, to distributors and dealers, reports of laboratory and other tests performed on the Rust Evader. Some of these reports represent, directly or by implication, that the reported test constitutes scientific proof that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies. In addition, respondent has represented orally, directly or by implication, that these tests constitute scientific proof that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies.

13. In truth and in fact, such tests do not constitute scientific proof that the Rust Evader is effective in substantially reducing corrosion in motor vehicle bodies. Therefore, respondent's representation set forth in Finding 12 was, and is, false and misleading.

14. In connection with the sale of the Rust Evader, respondent has provided purchasers with a limited warranty in the form attached to the complaint as Exhibit F. That warranty contains the following provision:

INSPECTIONS REQUIRED: The vehicle must be inspected every 24 months within 30 days of anniversary of installation date, by an authorized Rust Evader Dealer who may charge his current labor rate up to one hour for the inspection. FAILURE TO HAVE VEHICLE INSPECTED AS REQUIRED VOIDS THE WARRANTY.

15. The warranty provision described in Finding 14 is in violation of Section 102(c) of the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act (15 U.S.C. 2302(c)) because it conditions a warranty pertaining to a consumer product actually costing the consumer more than \$5 on the consumer's use of a service

(other than a service provided without charge) which is identified by brand, trade, or corporate name.

16. In providing advertisements, promotional materials and product demonstrations, such as those described in Findings 4 through 13, to its distributors and dealers, respondent has furnished the means and instrumentalities to those distributors and dealers to engage in the acts and practices found in Findings 5 through 13.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

2. The acts and practices of respondent as described in Findings 1 through 16 above constitute unfair or deceptive practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

3. The accompanying order, is necessary and appropriate under applicable legal precedent and the facts of this case.

ORDER

DEFINITIONS

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

A. "*Electronic corrosion control device*" shall mean any device or mechanism that is intended, through the use of electricity, static or current, to control, retard, inhibit or reduce corrosion in motor vehicles.

B. "*Rust Evader*" shall mean the electronic corrosion control device sold under the trade names Rust Evader, Rust Buster, Electro-Image, Eco-Guard, and any other substantially similar product sold under any trade name.

C. "*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 respondent RustEvader Corporation, a corporation, its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of the Rust Evader, 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 such product is effective in preventing or substantially reducing corrosion in motor vehicle bodies.

II.

It is further ordered, That respondent RustEvader Corporation, a corporation, its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, concerning the performance, efficacy or attributes of such product unless such representation is true and, at the time such representation is made, respondent possesses and relies upon competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence, that substantiates the representation.

III.

It is further ordered, That respondent RustEvader Corporation, a corporation, its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles 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, interpretations or purpose of any test, study, or survey.

IV:

It is further ordered, That respondent RustEvader Corporation, a corporation, its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles 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, that any demonstration, picture, experiment or test proves, demonstrates or confirms any material quality, feature or merit of such product.

V.

It is further ordered, That respondent RustEvader Corporation, a corporation, its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of the Rust Evader in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from employing the terms Rust Evader or Rust Buster in conjunction with or as part of the name for such product or the product logo.

VI.

It is further ordered, That:

A. Respondent RustEvader Corporation, a corporation, its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any consumer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act and actually costing

the consumer more than \$5, do forthwith cease and desist from conditioning any written or implied warranty of such product on the consumer's purchase or use, in connection with such product, of any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; and

B. Within sixty (60) days after the date of service of this order, respondent shall notify, by first class mail, all Rust Evader dealers and distributors and all other Rust Evader purchasers, that

1) The warranty provision requiring purchasers to pay for semi-annual inspections of their Rust Evader is null and void; and

2) No such warranty will be voided for failure to have an inspection required by the warranty, except for required inspections provided without charge after receipt of the notification provided under this order.

VII.

It is further ordered, That respondent RustEvader Corporation, its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, send by first class certified mail, return receipt requested, to each purchaser for resale of Rust Evader with which respondent has done business, a letter informing them of the provisions of the Commission's complaint and order in this matter and requesting that they cease engaging in practices prohibited by the order. The mailing shall not include any other documents. For purposes of this order, "purchaser for resale" shall mean any purchaser or other transferee of any Rust Evader who acquires or has acquired, with or without valuable consideration, said Rust Evader and resells or has resold the Rust Evader to other purchasers or to consumers;

B. In the event that respondent receives any information that, subsequent to its receipt of the letter sent pursuant to subparagraph A of this part, any purchaser for resale is using or disseminating any advertisement or promotional material that contains any representation prohibited by this order, respondent shall immediately notify the purchaser for resale that respondent will terminate the use of said purchaser for resale if it continues to use such advertisements or promotional materials; and

C. Terminate the use of any purchaser for resale about whom respondent receives any information that such purchaser for resale has continued to use advertisements or promotional materials that contain any representation prohibited by this order after receipt of the notice required by subparagraph B of this part.

VIII.

It is further ordered, That respondent RustEvader Corporation, its successors and assigns, shall, within thirty (30) days after the date of service of this order, provide a copy of this order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order.

IX.

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

X.

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

XI.

It is further ordered, That respondent RustEvader Corporation, its successors and assigns shall, for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Copies of all notification letters sent to purchasers for resale pursuant to subparagraph A of part VII of this order; and

B. Copies of all communications with purchasers for resale pursuant to subparagraphs B and C of part VII of this order.

XII.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

XIII.

It is further ordered, That this order will terminate twenty (20) years from the date of its issuance, or twenty (20) 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 complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty (20) 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.

FINAL ORDER

The Administrative Law Judge filed his Initial Decision in this matter on May 24, 1996, finding that the respondent RustEvader Corporation ("REC") engaged in unfair or deceptive practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45, and granting a default judgment against REC.¹ An appropriate order against REC to remedy the violations was appended to the Initial Decision.

Service of the Initial Decision was completed on June 19, 1996. Neither respondent nor complaint counsel filed an appeal.

As support for entering the default judgment, the Administrative Law Judge relied on both Sections 3.12(c) and 3.38(b)(5) of the Commission's Rules of Practice, 16 CFR 3.12(c), 3.38(b)(5) (1996). The Commission has determined that Rule 3.38(b)(5) provides ample authority for the entry of a default judgment in this case and that it is unnecessary to rely on Rule 3.12(c).

Accordingly, the Initial Decision and the order therein shall become effective as provided in Section 3.51(a) and Section 3.56(a) of the Commission's Rules of Practice, 16 CFR 3.51(a), 3.56(a) (1996), subject to the following modifications to the paragraph on page 2 [*see* page 57] that begins with "Rule 3.12(c).":

- (1) Delete the first sentence of the paragraph.
- (2) Delete the words "both Rule 3.12(c) and" in the third sentence of the paragraph.
- (3) Delete the words "Rule 3.12(c) and" in the final sentence of the paragraph.

It is ordered, That the Initial Decision (except as noted above), and the order therein, shall become the Final Order and Opinion of the Commission on the date of issuance of this order.

¹ On April 11, 1996, in response to the joint motion required by Section 3.25(c) of the Commission Rules of Practice, 16 CFR 3.25(c)(1996), the Secretary withdrew this matter from adjudication with respect to respondent David F. McCready for the consideration of a proposed consent agreement. The Commission has now accepted that consent agreement for public comment.

IN THE MATTER OF

FORD MOTOR COMPANY

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

Docket C-3679. Complaint, August 22, 1996--Decision, August 22, 1996

This consent order prohibits, among other things, a Michigan-based automobile manufacturer from making any representation about the efficacy of any automotive cabin air filter in the reduction or removal of pollutants, unless such representations are true and the respondent possesses reliable and competent scientific evidence to substantiate such representations.

Appearances

For the Commission: *Linda Badger and Jeffrey Klurfeld.*

For the respondent: *Gerald Durcharme*, in-house counsel,
Dearborn, MI.

COMPLAINT

The Federal Trade Commission, having reason to believe that Ford Motor Company ("respondent"), a corporation, 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 Ford Motor Company is a Delaware corporation, with its offices and principal place of business located at The American Road, Dearborn, Michigan.

PAR. 2. Respondent has manufactured, advertised, offered for sale, sold, and distributed automobiles, automotive parts, and other products to consumers. Certain models of Ford automobiles, such as the Mercury Mystique and Lincoln Continental, include an automotive cabin air filter called the "MicronAir Filtration System."

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 MicronAir Filtration System,