

Complaint

123 F.T.C.

IN THE MATTER OF

AAF-McQUAY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3703. Complaint, Jan. 6, 1997--Decision, Jan. 6, 1997*

This consent order prohibits, among other things, a Kentucky-based manufacturer of residential air filters from making any representation regarding the performance, health or other benefits, or efficacy of air cleaning products, unless the respondent possesses competent and reliable scientific evidence to substantiate such representations.

Appearances

For the Commission: *Brinley H. Williams* and *Michael Milgrom*.
For the respondent: *Dennis J. Reinhold*, Louisville, KY.

COMPLAINT

The Federal Trade Commission, having reason to believe that AAF-McQuay, Inc., d/b/a AAF International, a corporation, ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent AAF-McQuay, Inc., d/b/a AAF International, is a Delaware corporation with its principal office or place of business at 215 Central Avenue, Louisville, Kentucky.

PAR. 2. Respondent has manufactured, labeled, advertised, promoted, offered for sale, sold, and distributed air filters for use in residences under the brand names ElectroKlean and Dirt Demon.

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 and promotional materials for the ElectroKlean and Dirt Demon air filters, including but not necessarily

limited to the attached Exhibits A through E. These advertisements contain the following statements and depictions:

A. ElectroKlean ELECTROSTATIC Permanent Air Filter Eliminates 95% of Household Dust, Lint and Pollen

.....

Helps reduce sources of allergy problems by eliminating microscopic airborne particles, including pet dander. [Depiction of cat and dog]

Stops pollen, molds, dust and lint from recirculating through-out your home. [Depiction of flowers releasing pollen].

Special filter material is noticeably better than ordinary air filters in purifying the air you breathe. [Depiction of cigarette releasing smoke]

* * * *

Treated with EPA Registered Intersept Antimicrobial Special additive makes ElectroKlean superior to ordinary filters, helps to significantly improve indoor air quality. Inhibits growth of odor-causing bacteria, mold, mildew and other organisms that can quickly multiply in your heating and cooling system.

* * * *

Breathe cleaner air all the time with ElectroKlean. Eliminate 95% of household dust, lint and pollen.

* * * *

What is Intersept Antimicrobial?

The ElectroKlean Air Filter is treated with Intersept Antimicrobial, a special additive that inhibits the growth and build up of bacteria, mold, mildew and other organisms in your heating and cooling system. This means you're breathing cleaner and healthier air!

* * * *

I have allergies. Will this filter help?

It should. ElectroKlean removes most of the contaminants that aggravate your condition. It eliminates 95% of household dirt, lint, animal danders, pollen and other irritants.

* * * *

Is this filter considered an allergy relief aid?

It can be. Your doctor may actually prescribe a special home air filter to help eliminate the sources (dust, pollen, etc.) of your allergies. The purchase price of this filter may be tax deductible. (Exhibit A)

B. DIRT DEMON

High Efficiency Pleated Air Filter

6 TIMES BETTER THAN STANDARD AIR FILTERS REMOVES 95% OF HOUSEHOLD DIRT, DUST, POLLEN & LINT HELPS RELIEVE ALLERGY SYMPTOMS

* * * *

Stops pollen, molds, dust and lint from recirculating throughout your home. [Depiction of flowers releasing pollen]

* * * *

Special filter material and pleated design are noticeably better than ordinary air filters in purifying the air you breathe. [Depiction of cigarette releasing smoke] (Exhibit B)

C. ElectroKlean ELECTROSTATIC Permanent Air Filter

- Removes 95% of household dust, dirt, lint and pollen
- Inhibits growth of bacteria, molds and mildews that effect [sic] allergy sufferers (Exhibit C)

D. DIRT DEMON

HIGH EFFICIENCY PLEATED AIR FILTER

REMOVES 95% OF HOUSEHOLD DIRT, DUST, POLLEN & LINT.

HELPS RELIEVE ALLERGY SYMPTOMS (Exhibit D)

E. DIRT DEMON

High Efficiency Pleat with Intersept Extraordinary pleated design removes up to 95% of lint, dust and pollen passing through the filter. Keeps air throughout the house cleaner and easier to breathe in any season.

* * * *

Intersept Antimicrobial

Air filters can be a source of microbial contamination. American AirFilter products treated with Intersept will keep the filter from being a potential incubator of mold, mildew, fungi and bacteria. Intersept inhibits the growth of these microorganisms in the filter media, thereby removing it as a potential source of contamination.

* * * *

The filter effectively removes airborne dust mite allergens [Depiction of dust mite (magnified)]

Reduces pollen, molds, mildew, bacteria, fungi, dust and lint [Depiction of pollen grain (magnified)]

Helps reduce aggravating particles such as pet dander [Depiction of cat]

Special media is more effective in reducing pollutants in the air you breathe. [Depiction of cigarette smoker exhaling smoke] (Exhibit E)

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

A. Use of the ElectroKlean and Dirt Demon filters will substantially reduce the incidence of allergies caused by indoor allergens under household living conditions.

B. The ElectroKlean and Dirt Demon air filters remove 95 percent of airborne contaminants from the air that people breathe under household living conditions.

C. The Dirt Demon traps 95% of the lint, dust and pollen from the household air passing through it.

D. The Dirt Demon filter is six times as efficient at removing pollutants as a standard air filter.

E. The addition of Intersept antimicrobial to the ElectroKlean makes air cleaner and healthier than it would otherwise be under household living conditions.

F. The addition of Intersept antimicrobial to the ElectroKlean inhibits the growth of microbes in household heating and cooling systems.

G. The addition of Intersept antimicrobial to the Dirt Demon removes the filter as a potential source of contamination of household air.

PAR. 6. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through E, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representations.

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

PAR. 8. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits B, D, and E, respondent has represented, directly or by implication, that the Dirt Demon is a HEPA (High Efficiency Particulate Air) filter.

PAR. 9. In truth and in fact the Dirt Demon is not a HEPA filter according to industry standards. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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EXHIBIT A

10 • 20 • 1

Actual Filter Size

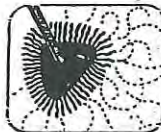
5 7/8 in • 19 5/8 in • 7/8 in

33mm • 498mm • 22mm



ElectroKlean™ ELECTROSTATIC Permanent Air Filter

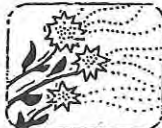
Eliminates 95% of Household
Dust, Lint and Pollen



So effective that you
won't have to dust
as often.



Helps reduce sources
of allergy problems
by eliminating micro-
scopic airborne
particles, including
pet dander.



Captures pollen, molds,
dust and lint from
recirculating through-
out your home.



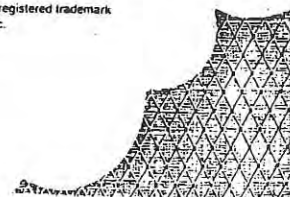
Special filter material
is noticeably better
than ordinary air
filters in purifying
the air you breathe.

Treated with EPA Registered Intersept® Antimicrobial

- Special additive makes ElectroKlean superior to ordinary air filters, helps to significantly improve indoor air quality.
- Inhibits growth of odor-causing bacteria, mold, mildew and other organisms that can quickly multiply in your heating and cooling system.
- Remains active over the life of the filter.

Intersept® is a registered trademark
of Interface, Inc.

American Air Filter
Snyder-Gamwell



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EXHIBIT B

← DEMON

High Efficiency Pleated Air Filter

**6 TIMES BETTER THAN
STANDARD AIR FILTERS**

- REMOVES 95% OF HOUSEHOLD DIRT, DUST, POLLEN & LINT
- HELPS RELIEVE ALLERGY SYMPTOM
- IMPROVES INDOOR AIR QUALITY
- CLEANS AIR UP TO 90 DAYS



 Stops pollen, molds, dust and lint from recirculating throughout your home.

 So effective that you won't have to dust as often.

 Helps reduce sources of allergy problems by eliminating microscopic airborne particles, including pet dander.

 Special filter material and pleated design are noticeably better than ordinary air filters in purifying the air you breathe.

American Air Filter
Snyder General

AA-5

EXHIBIT B



High Efficiency Pleated Air Filter

*... From
The World Leader in Clean Air Technology.*

- Hospitals, industrial plants, "cleanroom" environments, and nuclear installations all rely on AAF products.
- AAF systems have even been used in NASA space modules!
- AmericanAirFilter products have been made since 1925, and pleated filters for commercial and industrial facilities for more than 40 years.

Now, this technological expertise is available to clean the air you breathe in your home.

- Six times better than standard air filters.
- Cleans air up to 90 days (How often the Dirt Demon should be replaced depends on such things as how long the fan runs and windows are left open, and the amount of carpeting in your home.)
- UL Classified for safety.
- Made in the USA.

AmericanAirFilter
SnyderGeneral

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EXHIBIT C

- 
- 
- ElectroKleen™**
ELECTROSTATIC
Permanent Air Filter
- Removes 95% of household dust, dirt, lint and pollen
 - Inhibits growth of bacteria, molds and mildews that effect allergy sufferers
 - Long term value... rinse and reuse instead of replacing every month
- Ex.C

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EXHIBIT D



UP

HIGH EFFICIENCY PLEATED AIR FILTER

REMOVES 95% OF HOUSEHOLD DIRT, DUST, POLLEN & LINT.

HELPS RELIEVE ALLERGY SYMPTOMS

BREATHE CLEANER AIR!

American Air Filter

Snyder General

Snyder General Corporation 10000 10th Avenue San Diego, California 92123-3650

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EXHIBIT E

AmericanAirFilter

High Efficiency Pleat

with Intersept®



Extraordinary pleated design removes up to 95% of lint, dust and pollen passing through the filter. Keeps air throughout the house cleaner and easier to breathe in any season†.

Treated with Intersept®



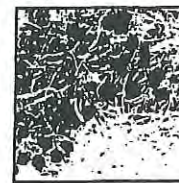
High efficiency pleated filter treated with Intersept® antimicrobial.

Untreated



Microscopic view of untreated filter with Gram-negative bacteria growth. (*Serratia marcescens*)

Untreated



Microscopic view of untreated filter with fungal growth. (*Aspergillus niger*)

Intersept® antimicrobial

Air filters can be a source of microbial contamination. AmericanAirFilter products treated with Intersept will keep the filter from being a potential incubator of mold, mildew, fungi and bacteria. Intersept inhibits the growth of these microorganisms in the filter media, thereby removing it as a potential source of contamination.

Low maintenance

Easy to install, lasts up to 90 days, then disposes easily. Helps heating/cooling system operate more efficiently.

Replace filter every 90 days

(Cured)

EXHIBIT E

High Efficiency Pleat with Intercept®

AmericanAirFilter

America's #1 selling line of residential air filters.



The filter effectively removes airborne dust mite allergens.



Reduces pollen, molds, mildew, bacteria, fungi, dust and lint.



Helps reduce aggravating particles such as pet dander.



Special media is more effective in reducing pollutants in the air you breathe.

Improve Your "Indoor Air Quality"

Pleated design with larger surface area cleans air more thoroughly than standard flat filters.

Call 1-800-927-6789 to receive your free informative brochure, "How to Improve Your Indoor Air Quality."

ElectroKlean with Intercept

Best

• Pollutant filter. Wash, rinse and reuse.

Pleated with Intercept

Better

Replace every 90 days.

AAF with Intercept

Good

Replace every 60 days.

AAF

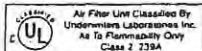
Standard

Replace every 30 days.

A Complete Line of Air Filters

From Standard to ElectroKlean™, AmericanAirFilter has just what you need.

†For best results, keep the heating/air conditioning fan running continuously.
*Based on arrestance, ASHRAE standard 52.1-1992



AmericanAirFilter™

High Efficiency Pleat with Intercept®

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent, AAF-McQuay, Inc., and the respondent having been furnished thereafter with a copy of a draft of the complaint which the Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

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

1. AAF-McQuay, Inc., d/b/a AAF International, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 215 Central Avenue, Louisville, Kentucky.

2. The Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and proceeding is in the public interest.

DEFINITIONS

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

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

2. The term "*contaminant(s)*" refers to one or more of the following: fungal (mold) spores, pollen, lint, tobacco smoke, household dust, animal dander or any other gaseous or particulate matter found in indoor air.

ORDER

I.

It is ordered, That respondent AAF-McQuay, Inc., d/b/a AAF International, 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, labeling, advertising, promotion, offering for sale, sale or distribution of any air cleaning product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, in any manner, directly or by implication, regarding the performance, health or other benefits, or efficacy of such product, unless at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence, that substantiates such representation.

B. Making any representation, directly or by implication, that any air cleaning product will perform under any set of conditions, including household living conditions, unless at the time of making the representation(s) respondent possesses and relies upon competent and reliable scientific evidence that substantiates such representation(s) either by being related to those conditions or by having been extrapolated to those conditions by generally accepted procedures.

For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by

persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

It is further ordered, That respondent AAF-McQuay, Inc., d/b/a AAF International, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of the Dirt Demon, the ElectroKlean, or any other air filter for insertion into household central heating and/or cooling systems, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication that such filter is a HEPA (High Efficiency Particulate Air) filter.

III.

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 their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers, and complaints or inquiries from governmental organizations.

IV.

It is further ordered, That respondent AAF-McQuay, Inc., d/b/a AAF International, its successors and assigns, shall:

A. 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; and

B. For a period of ten (10) years from the date of service of this order, provide a copy of this order to each of respondent's 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 within three (3) days after the person assumes his or her position.

V.

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

VI.

It is further ordered, That respondent shall, within sixty (60) days after service of this order, 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.

VII.

This order will terminate on January 6, 2017, 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.

IN THE MATTER OF

THE PENN TRAFFIC COMPANY

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

Docket C-3577. Consent Order, May 15, 1995--Modifying Order, Jan. 10, 1997

This order reopens a 1995 consent order -- that required the respondent to divest one supermarket in each of the three Pennsylvania areas designated -- and this order modifies the consent order by terminating the respondent's obligation to divest one of its two supermarkets in Mount Carmel, Pennsylvania, in part, because Penn Traffic has demonstrated that new entrants into the Mount Carmel market has eliminated the need for the divestiture.

ORDER REOPENING AND MODIFYING ORDER

On September 13, 1996, respondent The Penn Traffic Company ("Penn Traffic") filed a Petition of Respondent the Penn Traffic Company to Reopen and Set Aside the Provisions of Paragraph II.A.3 of the Order Entered Herein ("Petition"). In its Petition, Penn Traffic requests that the Commission reopen the order in Docket No. C-3577 ("order") to set aside paragraph II.A.3 which requires Penn Traffic to divest either one of two supermarkets it owns in Mt. Carmel, Pennsylvania. The Petition addresses the remaining one of three supermarket divestitures required by the order. The Commission previously approved Penn Traffic's application for divestiture of the other two supermarkets on June 17, 1996.¹

For the reasons discussed below, the Commission has determined that Penn Traffic has demonstrated changed conditions of fact sufficient to require the reopening and modification of the order.

I. THE PETITION

In its Petition,² Penn Traffic requests that the Commission modify the order to eliminate the remaining required divestiture under the

¹ Penn Traffic completed the sale of the assets of the supermarket in Towanda, Pennsylvania on July 2, 1996 (required pursuant to ¶ II.A.1 of the order), and completed the sale of the supermarket in Pittston, Pennsylvania on July 5, 1996 (required pursuant to ¶ II.A.2 of the order).

² In support of its Petition, Penn Traffic provided the affidavit of Robert G. Coleman, Director of Real Estate for the Riverside Division of the Penn Traffic Company ("Coleman Affidavit").