

IN THE MATTER OF
USDIVES CORPORATION

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

Docket C-3866. Complaint, April 6, 1999--Decision, April 6, 1999

This consent order, among other things, prohibits a California-based corporation from misrepresenting the extent to which any CD-ROM drive is made in the United States.

Participants

For the Commission: *Kent Howerton, Laura Koss and Elaine Kolish.*

For the respondent: *Jon Parsons, Palo Alto, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that USDrives Corporation ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent USDrives Corporation is a California corporation with its principal office or place of business at 850 Auburn Court, Fremont, California.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including optical drives that read information on compact disc read-only memory discs ("CD-ROM drives").

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.

4. Respondent has disseminated or has caused to be disseminated packaging and labeling for its CD-ROM drives, including but not necessarily limited to the attached Exhibits A through C. The packaging and labeling contain the following statements and depictions:

A. Exhibit A, product packaging for CD-ROM drive 24X IDE

1. Depiction of the American eagle (on two principal display panels of package);
2. The statement "MADE IN THE USA" in red and blue (on two principal panels and top panel of package);

3. The company name "USDrives" in red, white, and blue (on all panels except bottom panel of package).

B. Exhibit B, product packaging for CD-ROM drive 20x IDE

1. Depiction of the American flag in red, white, and blue in a circle surrounded by the statement "Well made in the U.S.A." (on two principal display panels and top panel of package);
2. A depiction of the Statue of Liberty (on one principal display panel of package);
3. A depiction of the American eagle (on one principal display panel of package);
4. The company name "USDrives" in red, white, and blue (on all panels except bottom panel of package).

C. Exhibit C, name plate label for Model No.: USDRIVE 24DT

1. The statement "MADE IN USA."

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that its CD-ROM drives are made in the United States, *i.e.*, that all, or virtually all, of the component parts of its CD-ROM drives are made in the United States, and that all, or virtually all, of the labor in manufacturing its CD-ROM drives is performed in the United States.

6. In truth and in fact, the CD-ROM drives packaged in Exhibits A or B or labeled with the statement in Exhibit C were, or are, assembled in the United States of primarily imported parts. Therefore, the representations set forth in paragraph five were, and are, false or misleading.

7. Respondent has disseminated or has caused to be disseminated packaging for its CD-ROM drives, including but not necessarily limited to the attached Exhibits D and E. The packaging contain the following statements and depictions:

A. Exhibit D, revised product packaging for CD-ROM drive 24x IDE

1. A depiction of the American Eagle (on two principal display panels of package);
2. A depiction of a billowing American flag in red, white, and blue (across two principal display panels of package);
3. The company name "USDrives" in red, white, and blue (on all panels except bottom panel of package);

In small print at the bottom of two side panels, the words "MADE IN CHINA."

B. Exhibit E, product packaging for CD-ROM drive 32x IDE

1. A depiction of a billowing American flag in red, white, and blue (across two principal display panels of package);
2. The company name "USDrives" in red, white, and blue (on all panels except bottom panel of package);

In small print on bottom panel, the words "MADE IN CHINA."

8. Through the means described in paragraph seven, notwithstanding the inconspicuous statement "Made in China," respondent has represented, expressly or by implication, that its CD-ROM drives are made in the United States, *i.e.*, that all, or virtually all, of the component parts of its CD-ROM drives are made in the United States, and that all, or virtually all, of the labor in manufacturing its CD-ROM drives is performed in the United States.

9. In truth and in fact, the CD-ROM drives packaged in Exhibits D or E were, or are, made in China of primarily non-U.S. parts. Therefore, the representations set forth in paragraph eight were, and are, false or misleading.

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.

Complaint

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EXHIBIT A

USDrives **CD-ROM** **MADE IN**

Features

- * *Easy-Touch* loading
- * Play/Select - Stop/Eject Buttons
- * Volume Control - Headphone Connector
- * IDE/ATAPI Interface

Technical

- 300KB/Sec. Transfer Rate
- MPC level 3 compliant
- ISO 9000 compliant
- MTBF longevity of 100,000 hrs

Compatible

- Windows 95, NT or 3.1
- OS/2 Warp • MS-DOS
- Photo-CD • CD-Memix
- CD Interactive • CD-ROM XA
- AND MORE...

Microsoft **Windows 95** **OS/2 Warp** **6** **31351 91003 0**

FC **CE** **RU** **A** **RU**

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All other names are trademarks of their respective companies.

EXHIBIT A

(principal display
panel/side panel)

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Complaint

EXHIBIT A



EXHIBIT A
(top panel)

EXHIBIT B

US Drives

CD-ROM FIVE

WELL MADE IN THE U.S.A.

FEATURES

- Easy-To-use Interface
- Play/Pause -
- Stop/Eject Buttons
- Volume Control -
- Headphone Connector
- 100/1000 Interfaces

TECHNICAL

- 2400KB/sec. Transfer Rate
- 16°C level 3 compliant
- 100 0000 compliant
- MTBF longevity of 100,000 hrs

COMPATIBLE

- Windows 95, NT or 3.1
- 386/486, 500K - 1000K
- Hard-Disk - CD-ROM
- CD-ROM Interface - CD-ROM 1A
- AND MORE...

Yes **OS/2** **PC** **SA** **5U**

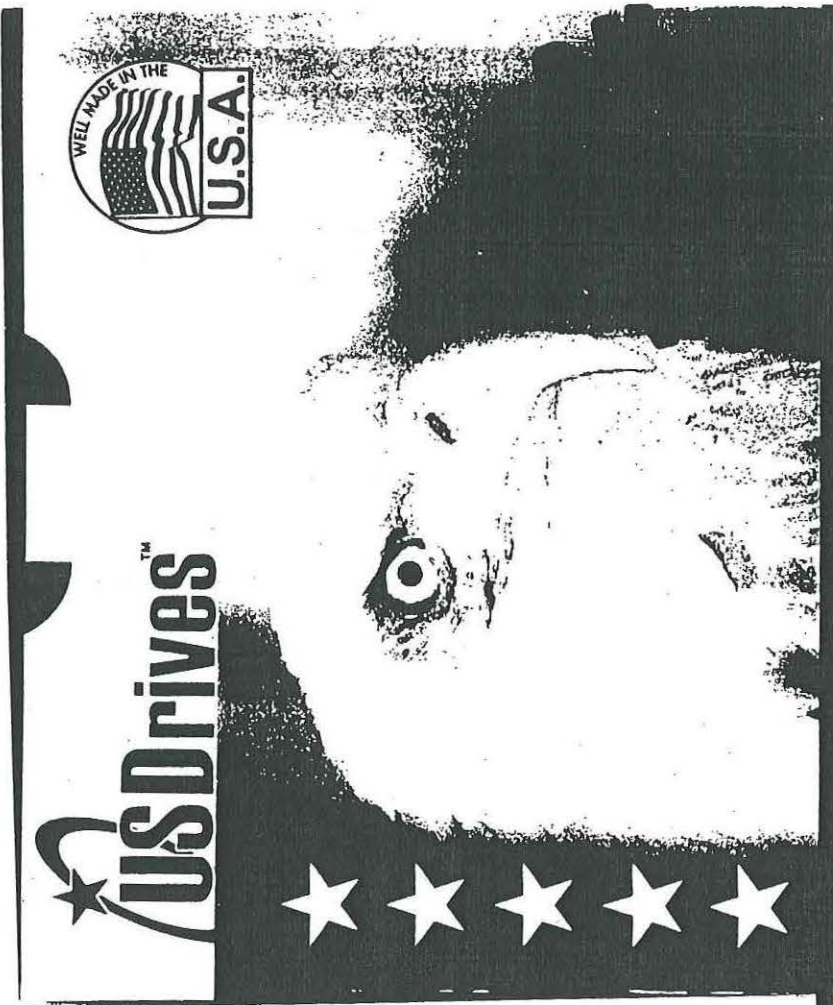
6 31351 91001 6

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EXHIBIT B

(first principal disp.
panel/side panel)

EXHIBIT B



US Drives™

WELL MADE IN THE U.S.A.

★ ★ ★ ★ ★

US Drives™

FEATURES
 Easy-Touch loading
 Play/Select -
 Stop/Eject Buttons
 Volume Control -
 Headphone Connector
 RS-232C Interface

TECHNICAL
 2400Baud/sec. Transfer Rate
 MP3 level 8 compliant
 120,000 compliant
 100,000 hrs
 100,000 hrs

COMPATIBLE
 Windows 95, NT or 3.1
 OS/2 Warp • Novell • MS-DOS
 Photo-CD • CD-i
 CD Interactive • CD-ROM XA
 AND MORE...

Yes
 OS/2 Warp
 FC CE RU A RU

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EXHIBIT B

(second principal display
 panel/side panel)

Complaint

127 F.T.C.

EXHIBIT B

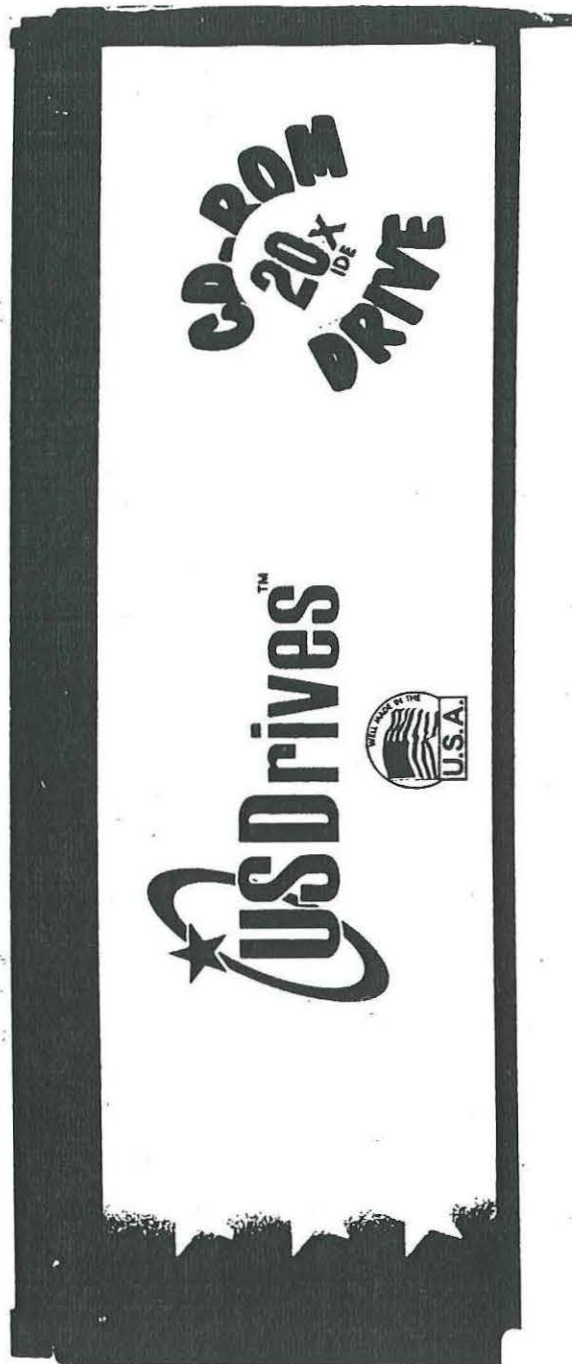


EXHIBIT B

(top panel)

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EXHIBIT C



E177731 This device complies with Part 15 of the FCC rules. Operation is subject to the following two conditions: (1) This device may not cause harmful interference, and (2) This device must accept any interference received, including interference that may cause undesired operation. Product is certified by the manufacturer to comply with DSHS rules 21, CFR 1049.10 and 1049.11 at the date of manufacture. Certified only to the CANADIAN electrical code. Certifié en vertu de la CANADIEN de l'électricité seulement. USDrive Technology Co. Model No.: USDRIVE 24DT Rating: +5V ——— 0.35A +12V ——— 1.70A Mfg. Date.: FEBRUARY 1998	DANGER INVISIBLE LASER RADIATION WHEN OPEN. AVOID DIRECT EXPOSURE TO BEAM. VORSICHT UNSICHTBARE LASERSTRAHLUNG WENN GEÖFFNET. NICHT IN DEN STRAHLEN STEHEN. ATTENTION RADIATION FU RABICHAU LASER INVISIBLE EN CAS D'OUVERTURE. EVITER TOUTE EXPOSITION AUX RAYONS. CLASS I LASER PRODUCT APPAREIL A LASER DE CLASSE I LASER KLASSE I LUOKAN I LASERLAITE PRODUCT LASER CATEGORIE I MADE IN USA
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Manufacture March 1998

Factory Code 8



025002.5.0

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EXHIBIT C

Complaint

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EXHIBIT D

US Drives™

24X IDE

US Drives™

FEATURES

- Easy-Touch Loading
- Play/Select/Stop/Eject Buttons
- Volume Control
- Headphone Connector
- IDE/ATAPI Interface

TECHNICAL

- 3600KB/Sec. Transfer Rate Max
- MPC level 3 compliant
- ISO 9660 compliant
- MTBF longevity of 100,000 hrs

COMPATIBLE

- Windows 95, NT or 3.1
- OS/2 Warp
- Photo-CD
- CD Interactive
- CD-ROM XA
- CD-Movie
- Novell
- MS-DOS

FC CE RU

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All other names are trademarks of their respective companies
MADE IN CHINA

EXHIBIT D

(principal displ.
panel/side pane

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Complaint

EXHIBIT D



EXHIBIT D

(top panel)

477

Complaint

EXHIBIT E



EXHIBIT E
(top panel)

DECISION AND ORDER

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

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the respondent of all the jurisdictional facts set forth in the draft 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent violated the said Act, and that a 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 findings, and enters the following order:

1. Respondent USDrives Corporation is a California corporation with its principal office or place of business at 850 Auburn Court, Fremont, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent, USDrives 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, labeling, advertising, promotion, offering for sale, sale, or distribution of any optical drive that reads information on compact disc read-only memory discs ("CD-ROM drive") in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, shall not misrepresent, in any manner, directly or by implication, the extent to which any such CD-ROM drive is made in the United States.

Provided, however, that a representation that any such CD-ROM drive is made in the United States will not be in violation of this order so long as all, or virtually all, of the component parts of the CD-ROM drive are made in the United States and all, or virtually all, of the labor in manufacturing the CD-ROM drive is performed in the United States.

II.

It is further ordered, That respondent USDrives Corporation, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All packaging, labeling, advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

III.

It is further ordered, That respondent USDrives Corporation, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement

acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

It is further ordered, That respondent USDrives Corporation, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

V.

It is further ordered, That respondent USDrives Corporation, and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade 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.

VI.

This order will terminate on April 6, 2019, 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 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 Part as though the complaint had never been 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

ABB AB, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3867. Complaint, April 14, 1999--Decision, April 14, 1999*

This consent order, among other things, requires the respondents to divest, within six months to a Commission-approved acquirer, the analytical division assets of Elsag Bailey Process Automation, which is involved in the manufacture and sale of process gas chromatographs and the research and development of a process mass spectrometer.

Participants

For the Commission: *Steven K. Bernstein, Pamela Taylor, Ann Malester, Naomi Licker, Daniel Ducore, William Baer, J. Elizabeth Callison, and David Meyer.*

For the respondents: *M. Elaine Johnston, White & Case, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondents, ABB AB and ABB AG (collectively hereinafter "ABB"), corporations subject to the jurisdiction of the Commission, have agreed to acquire Elsag Bailey Process Automation N.V. (hereinafter "Elsag Bailey"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. "*Process Gas Chromatograph*" means an analytical instrument used in process manufacturing to measure the chemical composition of a gas or a liquid using gas chromatography.

2. "*Process Mass Spectrometer*" means an analytical instrument used in process manufacturing to measure the chemical composition of a gas or a liquid using mass spectrometry.