

Complaint

IN THE MATTER OF
DURA LUBE CORPORATION, ET AL.

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

Docket D-9292; File No. 962 3146
Complaint, April 29, 1999--Decision, May 3, 2000

This consent order addresses Dura Lube Corporation's dissemination of advertisements making unsubstantiated claims regarding Super Dura Lube Engine Treatment and Advanced Dura Lube Engine Treatment ("Dura Lube"). Respondents represented that, compared to motor oil alone or oil treated with any other product, Dura Lube: (1) reduces engine wear; (2) reduces engine wear by more than 50%; (3) prolongs engine life; (4) reduces emissions; (5) reduces the risk of serious engine damage when oil pressure is lost; (6) improves gas mileage; and (7) improves gas mileage by up to 35%. Respondents also represented that product demonstrations in their advertising proved, demonstrated, or confirmed that, (a) compared to motor oil alone, Dura Lube reduces the risk of serious engine damage when oil pressures is lost, and (b) without Dura Lube, motor oil fails to protect automobile engines under hot running conditions, when in fact the demonstrations do not prove, demonstrate, or confirm these product attributes. Finally, the Complaint alleged that Respondents represented that former astronaut Charles "Pete" Conrad had endorsed the product based on a valid exercise of his expertise in the evaluation of automobile engine lubricants, when in fact Mr. Conrad did not have expertise in the evaluation and testing of automobile engine lubrication. The consent order requires Dura Lube Corporation, et al., to pay \$2 million in consumer redress and prohibits Respondents from making unsubstantiated representations regarding the performance, benefits, efficacy, attributes or use of any product for use in an automobile, or from misrepresenting the results of any study.

Participants

For the Commission: *Joel Brewer, Jonathan Cowen, Lemuel Dowdy, and Robert M. Frisby.*

Complaint

For the Respondents: *Lewis Rose, Arent Fox Kintner Plotkin & Kahn.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Dura Lube Corporation, American Direct Marketing, Inc, Howe Laboratories, Inc, Crescent Manufacturing, Inc, The Media Group, Inc, and National Communications Corporation, corporations; Herman S. Howard, individually and as an officer and director of the corporations; and Scott Howard, individually and as an officer and director of the corporations hereinafter sometimes referred to as "respondents"), have 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 Dura Lube Corporation ("DLC") is a New York corporation with its principal office or place of business at 102-3 Hamilton Avenue, Stamford, Connecticut 06902. DLC coordinates the activities of the other corporate respondents herein, which include the manufacture, promotion and sale of Super Dura Lube Engine Treatment and Advanced Dura Lube Engine Treatment ("Dura Lube"), both purported automobile engine treatment products.

2. Respondent American Direct Marketing, Inc. ("ADM") is a Delaware corporation with its office and principal place of business located at 300 McCann Street, Nashville, Tennessee 37210. ADM is responsible for the direct marketing of Dura Lube.

3. Respondent Howe Laboratories, Inc. ("Howe") is a Delaware Corporation with its office and principal place of business located at 102-3 Hamilton Avenue, Stamford, Connecticut 06902. Howe is responsible for the distribution of Dura Lube to retailers.

Complaint

4. Respondent Crescent Manufacturing, Inc. ("Crescent") is a New York corporation with its office and principal place of business located at 8800 South Main Street, Eden, New York 14057. Crescent manufactures and packages Dura Lube.

5. Respondent The Media Group, Inc. ("Media Group") is a New York corporation with its office and principal place of business located at 102-3 Hamilton Avenue, Stamford, Connecticut 06902. Media Group provides advertising services for Dura Lube.

6. National Communications Corporation ("National") is a Delaware corporation with its office and principal place of business located at 102-3 Hamilton Avenue, Stamford, Connecticut 06903. National provides advertising services for Dura Lube.

7. Respondent Herman S. Howard is or was at relevant times herein an officer of the corporate respondents. Individually or in concert with others, he has formulated, directed, or controlled the acts and practices of the corporate respondents, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of DLC.

8. Respondent Scott Howard is or was at relevant times herein an officer of the corporate respondents. Individually or in concert with others, he has formulated, directed, or controlled the acts and practices of the corporate respondents, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of DLC.

9. The aforementioned respondents cooperated and acted together in carrying out the acts and practices hereinafter set forth.

Complaint

10. Respondents have manufactured, advertised, promoted, labeled, offered for sale, sold, and distributed to the public various aftermarket motor oil additives (sometimes referred to as engine treatments) known by the product name Super Dura Lube Engine Treatment and Dura Lube Advanced Engine Treatment. These products consist of chlorinated paraffin and other chemicals suspended in motor oil.

11. 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.

12. Respondents have disseminated or have caused to be disseminated advertisements and labeling for Dura Lube, including but not necessarily limited to the attached Exhibits A through E. These advertisements contain the following statements, demonstrations, and other depictions:

A. A program-length television advertisement for Dura Lube-branded products (Exhibit A):

(1) **Host:** ...thousands of testimonials in writing...from people all across the country stat[e] how great Dura Lube really is. For instance, Minnesota. Newspaperman Gerald Snyder boosts his mileage and avoids a hundred dollar transmission repair by treating his car with Dura Lube. Los Angeles. Johnny Ishibashi's '68 Pontiac had flunked California's tough emissions test. But after just one bottle of Dura Lube, it passed with flying colors.... (Exhibit A, p. 2)

(2) **Video:** Mechanics manipulating remote controls of running automobile engine.

Host: We added Dura Lube to the oil of a huge race car engine and then drained all the oil out including the Dura Lube. Dura Lube works even if all your oil is gone.... Should the engine have

Complaint

seized already? Under normal circumstances. Severe engine damage would have happened by now.... Then, with no oil pressure we started revving that 500 horsepower engine up under full load. Got any load yet?

Mechanic: Oh, we've got a lot of load, Jim. Up to 120 horsepower, 160, 224, 254, 260, 292...

Excited Mechanic: I was ready to leave the building. I thought we were going to see the Fourth of July today and parts flying through that wall.

Mechanic: 302, 348...

Superscript: NO OIL PRESSURE!

Excited Mechanic: I was ready to run.

Mechanic: ...409, 453, 473

Second Excited Mechanic: I'm still speechless.

Mechanic: ...482, 520, 525.

Third Excited Mechanic: Oh, no. Unbelievable. I don't believe it. Oh, my God.

Superscript: A 500 HP Dura-Lube treated race car engine just ran successfully with no oil pressure under full load and high RPM...Unrehearsed!

Host: That test left professional mechanics shaking. But even with no oil at all, even with that big torture run up, the bearings in the Dura Lube-treated engine looked as good as new, as you can see for yourself. (Exhibit A, pp. 3-4)

- (3) **Video:** Spectators around automobile engine mounted in open field; fire engine in background.

Host: You know, Dura Lube really is a miracle, and we're going to prove it again. We're going to empty all the oil out. Now, you would expect that, right? Guess what we're going to do next? We're going to take all the water out. No oil. No coolant in the engine.... When we told the authorities what

Complaint

kind of test we were planning, they insisted that we have a fire truck standing by. They didn't think any engine could withstand the kind of torture we had in mind. First, we started up a big six-cylinder engine. Then we drained out all the oil and that engine just kept humming along. No problem. But we wanted to top ourselves.... We drained that radiator dry as a bone and the engine just purred right along. All right. The oil's gone. Water's gone or just about gone. Why is this still running?

Superscript: Floyd Stivik—Lubrication Specialist

Floyd Stivik: Dura Lube. The quality of Dura Lube's what's happening, Jim. Dura Lube actually stays up there and does the lubrication for you. It doesn't leave your engine.

Host: So it's not treating the oil, it's treating the metal.

Stivik: That's exactly right. It's treating the metal....

Host (to Spectator): Do you know anything about engines?

Spectator: No, just put oil in when the little oil light goes on.

Host: Well, you always worry that one day you're going to come home from work and the wife tells you that she meant to tell you for the last three days the red light is on in the car. And the next thing you know, you've got major problems, major cost factors. With this you wouldn't have that problem. (Exhibit A, pp. 5-8)

- (4) **Video:** Scenes of outer space; graphic illustrations of moving parts in automobile engine.

Announcer: Introducing Dura Lube. The world's first space age all-purpose lubricant that virtually eliminates friction like nothing on earth. In space there is no friction, but inside your engine friction drags on every moving component generating heat,

Complaint

wear and tear, causing poor fuel economy, more pollution, even engine breakdown.

Superscript: FRICTION CAUSES: Heat! Wear! Poor Fuel Economy! More Pollution! Engine Breakdown!

Announcer: Dura Lube radically reduces friction by penetrating metal surfaces to create a nonfriction shield that gives you a more efficient engine. With Dura Lube you'll have a cooler running engine and get more miles per gallon, more horsepower with less pollution and a quieter ride.

Superscript: DURALUBE Cooler Engine! More MPG! More Horsepower! Less Pollution! Quieter Ride! Much Less Wear!

Announcer: You'll eliminate the damage caused by cold starts saving you hundreds if not thousands of dollars.

Superscript: DURALUBE You'll save hundreds of dollars, if not thousands!

Announcer: Nothing compares to Dura Lube because it treats the metal, not the oil.

Superscript: Treats the metal, not the oil.

Announcer: In fact, the higher the temperature and pressure the better it performs. Dura Lube eats the heat and saves the engine.

Superscript: Eats the heat! Saves the engine. Protects up to 50,000 miles!

Announcer: Just one bottle added to your engine's oil protects for up to 50,000 miles. (Exhibit A, pp. 15-16)

- (5) **Host:** ...Now, that was a torture test, not something we recommend. But NASCAR driver Steve Hansen experienced exactly that. He didn't mean to.

Complaint

Steve Hansen didn't intend to completely lose his oil pump in the middle of a big race, but it happened.

Superscript: It happened on August 7, 1993!

Video: Cars circling racetrack.

Hansen: During the feature race, I started right up front, second car on the outside, green light went on, floored the car wide open. My oil pressure dropped down to nothing. I had no oil pressure.

Superscript: Elko Minnesota September 11, 1993.

Hansen: At that time I thought to myself, well, I'm done. I'll pull off the track. But the motor still was running good. So I went for it. I figured if it's going to blow up, it's going to blow up. I continued to race strong. The oil light got brighter and brighter.... It wasn't knocking. It wasn't ticking. It was running strong. I finished a 15-lap race which isn't bad considering I had no oil and the motor was still running.... (Exhibit A, pp. 19-20)

- (6) **Host:** That's what Dura Lube can do in emergencies. Let's see what it's doing for folks day after day.

First Consumer Endorser: The car was overheating a lot and running hot and I put it right in the motor with the oil and not a problem since.

Superscript: Cools the engine!

Second Consumer Endorser: I used to have this exhaust problem, there would be this little cloud of smoke that was behind my car all the time. After I used Dura Lube it disappeared completely.

Superscript: Cleaner emissions!

Third Consumer Endorser: I used it in my own personal vehicle and I've noticed almost 40 to 45 percent increase in my fuel.

Superscript: More MPG!

Host: Oh, come on.

Complaint

Third Endorser: Really. Really. I usually fuel up once a week and now I'm doing it every two weeks. And I only go like five miles a day round trip.

Host: So you've got a routine.

Third Endorser: I've got a routine. Believe me, I've got a routine. Let me tell you. I can honestly say without a word of a lie that I've almost doubled the amount of time I can go on a tank of gas in my truck. (Exhibit A, pp. 20-21).

- (7) **Host:** How can one product do so much? Breakthrough technology. And no one knows that better than astronaut Pete Conrad. You probably know him from his famous walk on the moon. But to Pete that's old news. Just recently he flight managed our nation's latest breakthrough, the Delta Clipper, the rocket ship blasts off and then it stops in mid-air. Now, this is like something out of Buck Rogers. Then it moves sideways. And then it lands, ready to take off again.

Superscript: Pete Conrad

Conrad: With Delta Clipper you have an old idea using today's technology that will allow low cost access to space. With Dura Lube, what can I say? I knew it was a real advance in engine lubrication. Now everyone knows it. Sure there were skeptics. Just like there were plenty of skeptics regarding the Delta Clipper idea, but now we know they're both winners. (Exhibit A, p. 22)

- (8) **Host:** Just how is Dura Lube able to do all those things? Well, recently we got together with our lubrication specialist, Floyd Stivik. He showed me a simple demonstration of the secret to Dura Lube's success....

Complaint

Stivik: Dura Lube will actually go in and relieve that heat and pressure. That's saving oil, saving maintenance on the car, saving those engines, Jim.

Host: Especially the small cars.

Stivik: Especially small cars, Jim. Let me show you what we're going to do here. We have a piece of sheet metal. We're going to simulate an engine.

Host: I see this is flat.... What are you going to do?

Superscript: Perfectly level.

Stivik: We're going to...put in oil. Hand me some oil, Jim.

Host: Now, do you care which one?

Stivik: It doesn't make any difference. Dura Lube is completely compatible with all oil, Jim. Synthetics, naturals, it doesn't make any difference....

Video: Untreated oil heated on piece of sheet metal.

Stivik: ...We're going to see that actually it's going to start cooking down and it will actually move away from the flames.

Host: You can certainly see that it is spreading out.

Stivik: Spreading out and you can see it's starting to cook a little along this edge and moving away from the heat over here.... Now I'm going to pour some Dura Lube in here and we're going to see what happened.... Look at how it's going to travel. It's traveling towards that heat. Jim, it goes to the heat. That's what's really important. Dura Lube eats the heat and saves those engines. Look at that. Look at that moving to the heat. Isn't it amazing? Look what it's doing. It's going to come in and marry up to that old oil and do the lubrication job that's necessary on that engine. (Exhibit A, pp. 23-25)

- (9) **Announcer:** Just look at this heat and pressure test conducted by the Falex Corporation. Now, this

Complaint

independent laboratory found premium oil failing at 1,250 pounds. STP hit the failure mark and 1,750 pounds. Slick 50 fared a little bit better, but it too failed at 2,250 pounds. Now look at Dura Lube. It ran in the optimal temperature zone the whole day. Dura Lube ran off the chart.

Superscript: NO FAILURE

Superscript: Pete Conrad

Conrad: I insisted that they run that test. They did it and it passed with flying colors. (Exhibit A, pp. 25-26)

- (10) Host: You're cruising to the grocery store or something and your oil light comes on. Middle of the night, what are you going to do? Are you going to sit there and walk? If you have Dura Lube in your car, you're going to make it to your destination. (Exhibit A, p. 27)

B. Dura Lube Advanced Engine Treatment Container Box Labeling (Exhibit B)

- (1) Tested #1. Dura Lube Advanced Engine Treatment for gas and diesel engines saves fuel, improves performance, protects engine at start up, prolongs engine life. (Exhibit B, front panel)

Complaint

(2) **Pictured:** Conrad in space suit with NASA logo.

Text: Dura-Lube is the best lubricant I've ever seen. It's absolutely amazing! -- Charles "Pete" Conrad, International Dura-Lube spokesman.

- Captain United States Navy (retired)
 - Skylab 1: Commander; 1973
 - *Apollo XII: Commander; 1969
 - Gemini XI: Commander Pilot, 1966
 - Gemini V: Pilot, 1965
- *Executed the second lunar landing

(Exhibit B, side panel).

(3) **Pictured:** Chart of Falex Pin & V-Block test results. Text of caption explains chart as comparing results for "a leading motor oil," "a leading synthetic oil," Slick 50 and Dura Lube. All but the Dura Lube results show failure when load is increased.

Text: Dura-Lube dramatically reduces friction and wear, increases gas mileage and horsepower, makes starting easier, improves performance, and extends engine life.

Dura-Lube's micro-thin layer of bonded protection, however, safeguards vital engine components during these critical (cold start) periods, allowing engine parts to glide effortlessly against each other, reducing wear by more than 50%!

Dura-Lube contains none of the potentially harmful solid particles such as lead, silicone, molybdenum disulfide, PTFE, or graphite, which are found in other lubrication products. These ingredients can present a hazard to the environment

Complaint

and some can change tolerance in your vehicle's engine.

Dura-Lube's amazing formulation is the choice of professionals worldwide. It is used by taxi companies, police departments, and utilities to reduce fuel and maintenance costs, and to prolong engine life. Professional drivers choose Dura-Lube to protect their engines through the extreme conditions of auto racing, and because Dura-Lube increases horsepower, torque, compression, and fuel economy.

Dura-Lube contains NO chlorinated solvents, NO chlorinated esters, and NO ingredients listed as halogenated hazardous wastes by the U.S. E.P.A. (Exhibit B, back panel)

(4) **Headline:** Some Facts You Should Know

Text: Added to the engine of any car or truck, Dura-Lube dramatically reduces friction and wear, increases gas mileage and horsepower, makes starting easier, improves performance, and extends engine life.

[Dura-Lube] dramatically reduces friction and wear and allows your vehicle's engine to run smoother and cleaner.

Q: Can I use Dura-Lube if I've already treated my engine oil with another product?

A. Yes. You should notice an immediate improvement.

Q: Who tested Dura-Lube?

Complaint

A. Tests on Dura-Lube have been performed by the Falex Corporation, the world's largest manufacturer of friction and wear test equipment; by approved test facilities in the United States by numerous testing facilities in Europe, and by satisfied drivers all over the world who have traveled millions of trouble free miles using Dura-Lube.

Q: How long does Dura-Lube last?

A. Dura-Lube protects your vehicle's engine for up to 50,000 miles of normal driving.

C. Dura Lube Advanced Engine Treatment Bottle Labeling
(Exhibit C)

Dura-Lube Engine Treatment dramatically reduces friction and wear, increases gas mileage and horse power, makes starting easier, improves performance, and extends engine life. Dura Lube Engine Treatment protects engine up to 50,000 miles of normal driving.

D. Dura Lube Print Advertising (Exhibit D):

(1) **Headline:** Save up to \$25 per month on gas...or it's free!

(2) **Pictured:** Chart titled "Metal against metal pressure test." Caption explains chart as comparing results of extreme pressure tests for "Penzoil" [sic], "Quaker State," "Slick 50," "Marvel" and "STP." All but the Dura Lube results show failure when pressure up to 40 pounds is applied.

(3) **Text:** Duralube will save you up to 35% on gasoline! -- and add thousands of miles to the life of your car's engine -- in just one treatment!

Complaint

- (4) Our new product actually saves you money on gas by improving the efficiency of your engine and increasing your gas mileage by 15, 25, even 35%.
- (5) The experts agree. We knew we'd have doubters, but we have proof on our side. In tests performed by the U.S. Government's Environmental Protection Agency DuraLube clearly increased gas mileage and cut down on harmful emissions. But we knew some people still wouldn't be convinced, so we contracted with another independent testing laboratory, and then another, and all agreed that DuraLube works.

E. Dura Lube Direct Response Advertising (Exhibit E)

(1) **Inset:** Picture of Conrad

Picture caption with quote: Charles "Pete" Conrad, Jr., International Dura Lube Spokesperson, Research and Development Specialist. "It's absolutely amazing! DURA LUBE passed the tests with flying colors."

- (2) **Text:** Dura Lube dramatically reduces friction and wear by penetrating metal surfaces to create a non friction shield and give you a better running engine. You'll get a smoother ride while eliminating the damage caused by cold engine starts.... In independent lab tests, 3 of the most popular lubricants failed, but DURA LUBE ran off the chart. The engineers couldn't get it to fail!

Complaint

(3) We've even test-raced DURA LUBE in a 500 horsepower engine without any oil and found that DURA LUBE's state of the art protection kept on working because DURA LUBE treats the metal, not the oil. DURA LUBE *eats the heat and saves the engine*. Just one bottle added to your engine's oil protects for up to 50,000 miles so your motor will run smoother and last longer. This means less maintenance, less breakdowns, and less repairs! DURA LUBE's secret formula contains no solids of any kind.

(4) **Pictured:** Graph comparing result of Falex Pin & V-Block test showing Dura Lube passing and other lubricants failing.

13. Through the means described in Paragraph 12, respondents have represented, expressly or by implication, that:

- A. Dura Lube does not contain any chlorinated compound.
- B. Dura Lube has been tested by the U.S. Environmental Protection Agency.

14. In truth and in fact:

- A. Dura Lube contains chlorinated paraffin, a chlorinated compound.
- B. Dura Lube has not been tested by the U.S. Environmental Protection Agency.

Therefore, the representations set forth in Paragraph 13 were, and are, false or misleading.

15. Through the means described in Paragraph 12, respondents have represented, expressly or by implication, that:

Complaint

- A. Compared to motor oil alone or motor oil treated with any other product, using Dura Lube:
 - 1. Reduces engine wear.
 - 2. Reduces engine wear by more than 50%.
 - 3. Prolongs engine life.
 - 4. Reduces emissions.
 - 5. Reduces the risk of serious engine damage when oil pressure is lost.
 - 6. Improves gas mileage.
 - 7. Improves gas mileage by up to 35%.
- B. One treatment of Dura Lube continues to protect the engine for up to 50,000 miles.

16. Through the means described in Paragraph 12, respondents have represented, expressly or by implication, that at the time they made the representations set forth in Paragraphs 13 and 15, respondents possessed and relied upon a reasonable basis that substantiated such representations.

17. In truth and in fact, at the time they made the representations set forth in Paragraphs 13 and 15, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in Paragraph 16 was, and is, false or misleading.

Complaint

18. Through the means described in Paragraph 12, respondents have represented, expressly or by implication, that tests prove that:

- A. Compared to motor oil alone, using Dura Lube:
 - 1. Improves gas mileage.
 - 2. Improves gas mileage by up to 35%.
 - 3. Reduces emissions.
 - 4. Prolongs engine life.
 - 5. Reduces engine wear.
 - 6. Reduces the risk of serious engine damage when oil pressure is lost.
- B. One treatment of Dura Lube continues to protect the engine for up to 50,000 miles.

19. In truth and in fact, tests do not prove that:

- A. Compared to motor oil alone, using Dura Lube:
 - 1. Improves gas mileage.
 - 2. Improves gas mileage by up to 35%.
 - 3. Reduces emissions.
 - 4. Prolongs engine life.
 - 5. Reduces engine wear.
 - 6. Reduces the risk of serious engine damage when oil pressure is lost.

Complaint

- B. One treatment of Dura Lube continues to protect the engine for up to 50,000 miles.

Therefore, the representations set forth in Paragraph 18 were, and are, false or misleading.

20. Through the means described in Paragraph 12, including, but not necessarily limited to, the demonstrations in Exhibit A, respondents have represented, expressly or by implication, that:

- A. The demonstration consisting of running an automobile engine after draining the motor oil treated with Dura Lube, proves, demonstrates or confirms that, compared to motor oil alone, Dura Lube reduces the risk of serious engine damage when oil pressure is lost.
- B. The demonstration consisting of heating untreated oil on sheet metal and then treating it with Dura Lube proves, demonstrates or confirms that, without Dura Lube, motor oil fails to protect automobile engines under hot running conditions.

21. In truth and in fact:

- A. The demonstration referred to in Paragraph 20.A does not prove, demonstrate or confirm that, compared to motor oil alone, Dura Lube reduces the risk of serious engine damage when oil pressure is lost.
- B. The demonstration referred to in Paragraph 20.B does not prove, demonstrate or confirm that, without Dura Lube, motor oil fails to protect automobile engines under hot running conditions.

Complaint

Therefore, the representations set forth in Paragraph 20 were, and are, false or misleading.

22. Through the means described in Paragraph 12, including, but not necessarily limited to, the advertisements, labeling and promotional materials attached as Exhibits A-B and E, respondents have represented, expressly or by implication, that Charles "Pete" Conrad ("Conrad"), a former Naval aviator and NASA astronaut, has expertise in the evaluation and testing of automobile engine lubrication, and has conferred his endorsement of Dura Lube on the basis of an independent, objective and valid evaluation or test using procedures generally accepted in the field of automobile engine lubrication to yield accurate and reliable results.

23. In truth and in fact, Conrad does not have expertise in the evaluation and testing of automobile engine lubrication, and has not conferred his endorsement of Dura Lube on the basis of an independent, objective, and valid evaluation or test using procedures generally accepted in the field of automobile engine lubrication to yield accurate and reliable results. Therefore, the representations as set forth in Paragraph 22 were, and are, false and misleading.

24. 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.

NOTICE

Notice is hereby given to each of the respondents hereinbefore named that the third day of June, 1999, at 10:00 a.m. o'clock, or such later date as determined by an Administrative Law Judge of the Federal Trade Commission, is hereby fixed as the time, and Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580 as the

Complaint

place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the Administrative Law Judge, without further notice to you, to find

Complaint

the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. If, however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions as to Dura Lube Corporation, American Direct Marketing, Inc., Howe Laboratories, Inc., Crescent Manufacturing, Inc., and The Media Group, Inc., corporations; Herman S. Howard, individually and as an officer and director of the said corporations; and Scott Howard, individually and as an officer and director of the said corporations, might be inadequate to fully protect the consuming public, the Commission may order such other relief as it finds necessary or appropriate, including corrective advertising or other affirmative disclosure.

Moreover, the Commission has reason to believe that, if the facts are found as alleged in the complaint, it may be necessary and appropriate for the Commission to seek relief to redress injury to consumers, or other persons, partnerships or corporations, in the form of restitution and refunds for past, present, and future consumers and such other types of relief as are set forth in Section 19(b) of the Federal Trade Commission Act. The Commission will determine whether to apply to a court for such relief on the basis of the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

ORDER

Definitions

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

Complaint

“Dura Lube” shall mean the aftermarket motor oil additive known as Super Dura Lube Engine Treatment, Advanced Dura Lube Engine treatment, or any product of substantially similar composition marketed as a motor oil product.

“Motor oil product” shall mean a product for use in conjunction with or in place of fully formulated motor oil.

“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.

Unless otherwise specified, “respondents” shall mean Dura Lube Corporation, American Direct Marketing, Inc., Howe Laboratories, Inc., Crescent Manufacturing, Inc., The Media Group, Inc., and National Communications Corporation, corporations, their successors and assigns, and their officers, agents, attorneys, representatives, and employees; and Herman S. Howard and Scott Howard, individually and as officers of the corporations, whether acting directly or through any corporation, subsidiary, division, trust or other device, or any of them.

“Commerce” shall be as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of Dura Lube, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that:

Complaint

- A. Dura Lube contains no chlorinated compound or any harmful component.
- B. Dura Lube has been tested by the U.S. Environmental Protection Agency or meets the specifications, requirements or standards of any governmental or standard setting organization.

II.

IT IS FURTHER ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for use in any motor vehicle, in or affecting commerce, do forthwith cease and desist from:

- A. Making any representation, in any manner, expressly or by implication, that:
 - 1. Compared to motor oil alone or motor oil treated with any other product, using such product:
 - a. Reduces engine wear;
 - b. Reduces engine wear by any percentage, dollar or other figure;
 - c. Prolongs engine life;
 - d. Reduces emissions;
 - e. Reduces the risk of serious engine damage when oil pressure is lost;
 - f. Improves gas mileage;
 - g. Improves gas mileage by any percentage, miles per gallon, dollar, or other figure;

Complaint

2. One or any other number of treatments of such product reduces wear for 50,000 or any other number of miles; or,
 3. Regarding the performance, benefits, efficacy, attributes or use of such product, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.
- B. Misrepresenting, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

III.

IT IS FURTHER ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that any demonstration, picture, experiment, illustration or test proves, demonstrates or confirms any material quality, feature or merit of such product, or the superiority or comparability of the product in a material respect relative to any other product.

IV.

IT IS FURTHER ORDERED that, respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product, in or affecting commerce, shall cease and desist from representing, directly or by

Complaint

implication, that such product has been endorsed by a person, group or organization that is an expert with respect to the endorsement message, unless:

- A. The endorser's qualifications give the endorser the expertise that the endorser is represented as possessing with respect to the endorsement; and
- B. The endorsement is supported by an objective and valid evaluation or test using procedures generally accepted by experts in that science or profession to yield accurate and reliable results.

V.

IT IS FURTHER ORDERED that, for five (5) years after the last date of dissemination of any representation covered by this order, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All labeling, packaging, advertisements and promotional materials setting forth any representation covered by this order;
- B. All materials that were relied upon to substantiate any representation covered by this order; and
- C. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control, or of which they have knowledge, that contradict, qualify, or call into question such representation, or the basis relied upon for the representation, including complaints and other communications with consumers, third-party dispute mediators, or governmental or consumer protection organizations.

Complaint

VI.

IT IS FURTHER ORDERED that:

- A. The corporate respondents and their successors and assigns shall notify the Federal Trade Commission at least thirty (30) days prior to any change in the corporate respondents that may affect compliance obligations arising under this order, including but not limited to 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 respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as practicable after obtaining such knowledge.
- B. Each of the individual respondents, for a period of ten (10) years after the date of issuance of this order, shall notify the Federal Trade Commission of the discontinuance of his current business or employment, or his affiliation with any new business or employment. The notice shall include the respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities.

All notices required by this Part shall be sent by certified mail to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

Complaint

VII.

IT IS FURTHER ORDERED that the corporate respondents and their successors and assigns and the individual respondents 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 this order. Respondents shall deliver this order to current personnel within thirty (30) days after the service of this order, and to future personnel within thirty (30) days after the person assumes such position and responsibilities.

VIII.

IT IS FURTHER ORDERED that respondents shall:

- A. Within thirty (30) days after the date of service of this order, send notice of this order by first class certified mail, return receipt requested, to each purchaser for resale of Dura Lube with which respondents have done business since January 1, 1994. The mailing shall not include any other documents;
- B. In the event that respondents receive any information that subsequent to its receipt of notice of this order any purchaser for resale is using or disseminating any advertisement or promotional material that contains any representation prohibited by this order, respondents shall immediately notify the purchaser for resale that respondents 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 which respondents receive any information that such purchaser for resale has continued to use any representation

Complaint

prohibited by this order after receipt of the notice required by subparagraph B of this part.

IX.

IT IS FURTHER ORDERED that respondents 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 signed statements obtained from persons or entities pursuant to part VII of this order;
- B. Copies of all notification letters sent to purchasers for resale pursuant to subparagraph A of part VIII of this order; and
- C. Copies of all communications with purchasers for resale pursuant to subparagraphs B and C of part VIII of this order.

X.

IT IS FURTHER ORDERED that respondents shall, within sixty (60) days after service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied or intend to comply with this order.

XI.

IT IS FURTHER ORDERED that this order will terminate twenty (20) years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an

Complaint

accompanying consent decree) in federal court alleging any violation of the order, whichever later occurs; *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 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 had never been filed, except that the order will not be terminated 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 WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed at Washington, D.C. this twenty-ninth day of April, 1999.

By the Commission.

Complaint Exhibits

Complaint Exhibits

EXHIBIT A

1 //
2 //
3 //
4 //
5 The following program is a paid advertisement brought
6 to you by The Media Group.
7 Is there a breakthrough the oil companies may not
8 want you to know about? Magic in a bottle that could save
9 you hundreds of dollars on oil and gasoline?
10 This is unbelievable.
11 What do you think?
12 I wouldn't believe it if I didn't see it myself.
13 It's amazing. You drive through a puddle and your
14 car stalls. And this is a whole fire hose on it.
15 What do you think of it?
16 I can't believe it. I really can't believe it.
17 They're flooding this engine. It shouldn't be running.
18 I was amazed. I couldn't believe it.
19 I'm waiting for it to conk out. It just wouldn't.
20 [Clapping] If I didn't see it, I wouldn't believe it.
21 If I wasn't here, I wouldn't have believed it.
22 I wouldn't believe it if I didn't see it.

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 129

Complaint Exhibits

1 I wouldn't believe it if I didn't see it. If I've heard
2 that line once, I've heard it a thousand times. Hi there, folks,
3 I'm Jim Caldwell. You know, since we went on the air with our
4 first show talking about Dura Lube, hundreds of thousands of you
5 have started adding it to your engine oil, your transmission
6 fluid, your power steering, your differential. Everywhere there's
7 a moving part, people are using Dura Lube.

8 Now, we knew that Dura Lube was truly a breakthrough
9 product, but we had no idea of the thousands of testimonials in
10 writing that we would receive from people all across the country
11 stating how great Dura Lube really is.

12 For instance, Minnesota. Newspaper man, Gerald
13 Snyder boost his mileage and avoids a hundred dollar
14 transmission repair by treating his car with Dura Lube.

15 Los Angeles. Johnny Ishibashi's '68 Pontiac had flunked
16 California's tough emissions test. But after just one bottle of
17 Dura Lube, it passed with flying colors.

18 New York. Barbara Wreck was ready to junk her whole car
19 when it kept stalling in the rain. But after using Dura Lube
20 spray, the problem absolutely disappeared. That one bottle ended
21 up saving her thousands of dollars.

22 Now, all this probably sounds a little bit too good to be
23 true doesn't it? If something was so good, wouldn't one of the
24 big oil companies come out with it? Well, think about it. Would

Complaint Exhibits

1 a big oil company want to put something on the market that would
2 save you so much money on gas and oil, plus make all of their
3 existing products obsolete? Would any big oil company want to
4 put something on the market that would allow an engine to run
5 without oil?

6 Well, if you saw our last show, you know that's exactly what
7 Dura Lube can do. We added Dura Lube to the oil in a huge race
8 car engine and then drained all the oil out including the Dura
9 Lube. Dura Lube works even if all your oil is gone. It's not
10 like other additives. It's a genuine breakthrough in
11 lubrication. Should the engine have seized already? Under
12 normal circumstances severe engine damage would have happened by
13 now. Already.

14 The Dura Lube obviously has attached itself to the engine
15 components and still protecting it.

16 Then with no oil pressure we started revving that 500
17 horsepower engine up under full load.

18 Got any load yet?

19 Oh, we've got a lot of load, Jim.

20 Up to 120 horsepower, 160, 224, 254, 260, 292.

21 I was ready to leave the building. I thought we were going
22 to see the Fourth of July today and parts flying through that
23 wall.

24 302, 348.

Complaint Exhibits

1 I was ready to run.
2 [Superscript: No oil pressure!]
3 409, 453, 473.
4 I'm still speechless.
5 482, 520, 525. Oh, no. Unbelievable. I don't believe it.
6 Oh, my God.
7 [Superscript: A 500 HP Dura-Lube treated race car engine just
8 ran successfully with no oil pressure under full load and high
9 rpm -- unrehearsed!]
10 That test left professional mechanics shaking. But even
11 with no oil at all, even with that big torture run up, the
12 bearings in the Dura Lube treated engine looked as good as new,
13 as you can see for yourself.
14 I saw it with my own eyes and there's more I can say about
15 that.
16 Logically, it's not possible to do what was just done.
17 It doesn't seem to be not when you think that the bearings
18 of the engine are suspended in oil and you just took away that
19 suspension totally from that crankshaft and that thing stayed
20 together.
21 Ever since that show, Dura Lube has been accepted around the
22 world, from England to France to Australia and Japan, no matter
23 what the people are using, no matter what kind of oil, whether

Complaint Exhibits

1 it's regular, premium or synthetic, Dura Lube simply turns it
2 into a super lubricant. Tomorrow's technology today.

3 But, you know, people got so excited about that big race
4 car-engine demonstration that they kind of missed the fact that
5 there is a Dura Lube formulated specifically for your
6 transmission. This will give you phenomenally smooth and easy
7 shifts and save you hundreds of dollars in costly repairs.

8 Now, check this out- Dura Lube spray. This does things that
9 no other lubricant even claims to do. It will protect your
10 electrical system against any kind of stall due to rain or
11 puddles or snow or ice. And of course, it will work on all those
12 little nooks and crannies like your roller blades. Let's say you
13 want them to spin faster. Or your door locks are frozen or maybe
14 your door hinges or you name it. This product works fantastic.

15 You know Dura Lube really is a miracle, and we're going to
16 prove it again. We're going to top ourselves folks. We're going
17 to take an engine and we're going to empty all the oil out. Now,
18 you would expect that, right? Guess what we're going to do
19 next? We're going to take all the water out. No oil. No
20 coolant in the engine. Then we're going to take this little
21 product right here, Dura Lube spray and we're going to do
22 something that they wouldn't even let us do unless there's a fire
23 engine standing by. In fact, it's exactly why people are saying
24 I wouldn't believe it -if I didn't see it. Watch this. We

Complaint Exhibits

1 gathered a bunch of folks in Suffolk County, Long Island,
2 mechanics, a few long time Dura Lube users, and some folks who'd
3 never even heard of the product. When we told the authorities
4 what kind of test we were planning, they insisted that we have a
5 fire truck standing by. They didn't think any engine could
6 withstand the kind of torture we had in mind.

7 First, we started up a big six cylinder engine. Then we
8 drained out all the oil and that engine just kept humming along.
9 No problem.

10 But we wanted to top ourselves. So we said we'd drain out
11 all the water as well.

12 Can you imagine? Now, your radiator's designed to cool the
13 engine, right? Well, sir, what's going to happen if you take the
14 water out of the radiator and you've already taken the oil out.
15 What do you think's going to happen?

16 I think it would seize, blow up, seize up, never run again.

17 Do you think Dura Lube works?

18 We're going to find out I think.

19 We drained that radiator dry as a bone and the engine just
20 purred right along.

21 All right. The oil's gone. Water's gone or just about gone.
22 Why is this still running?

23 [Superscript: Floyd Stevik -- Lubrication Specialist]

Complaint Exhibits

1 Dura Lube. The quality of Dura Lube's what's happening,
2 Jim. Dura Lube actually stays up there and does the lubrication
3 for you. It doesn't leave your engine.
4 So it's not treating the oil, it's treating the metal.
5 That's exactly right. It's treating the metal.
6 You guys get that? Stan, what do you think of that?
7 It's amazing. The push rods are still spinning round.
8 Nothing's seizing up. There's no noise coming from any place.
9 It's got me baffled so far, but I'm watching. I'm watching. I
10 want to see more of this.
11 What else do you want to see?
12 I just want to see how much longer this is going to run
13 before it starts clicking and before I hear some bearings
14 rapping.
15 This test, I mean, you can't deny the test. I mean, I saw
16 it for myself.
17 If I wasn't here, I wouldn't have believed it. Not at all.
18 Do you know anything about engines?
19 No, just put oil in when the little oil light goes on.
20 Well, you always worry that one day you're going to come
21 home from work and the wife tells you that she meant to tell you
22 for the last three days the red light is on in the car. And the
23 next thing you know you've got major problems, major cost
24 factors. With this you wouldn't have that problem.

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 129

Complaint Exhibits

1 No coolant, no oil pressure. No problems. But you folks
2 ain't seen nothing yet.

3 This is nothing but pure old, good old drinking water. It
4 didn't come from Tennessee but it's great water. I'm going to
5 pour this in the distributor cap.

6 Now, wait a minute. Have you treated this with Dura Lube
7 yet?

8 Oh, it's a good idea. Wow.

9 Small detail.

10 I tell you what -

11 Now, what would have happened if you had not treated that?

12 I wouldn't have started.

13 Let me ask you what would happen if you took that
14 distributor, sir, and soaked it with water?

15 Never would have been able to start it up.

16 Why not?

17 Because you can't get water in there, electrical system.

18 What's wrong with getting water in the electrical system?

19 Electrical and water don't mix.

20 Electrical and water don't mix unless -- I'm sorry --

21 Your electricity bounces around instead of going through the
22 ignition wire to the spark plug. It would be like an explosion
23 instead of a pin point.

Complaint Exhibits

1 An explosion? Well, then here's a real test of Dura Lube's
2 protection.
3 Okay, what I'm going to do is I'm going to spray this cap
4 first.
5 Yep.
6 With protectant, with Dura Lube.
7 Get in here Paul. Let's get some witnesses to exactly what
8 he's doing.
9 Okay?
10 Okay.
11 Now I'm going to pour this cup of water in here.
12 Now, did you put enough in there?
13 I think so. Pour a cup of water in here, okay?
14 Hold it. Now, look at this. Can we have a drink of that?
15 Well, I wouldn't touch that one, but, yeah, it's just pure
16 water. Pure water. We're going to put that cap back on and see
17 if we can start this engine.
18 You're going to dump it out. Okay, so that thing is loaded,
19 just loaded with water.
20 All right. We're going to start it up now, Jim, with all
21 that water in the distributor cap.
22 Do you think this is going to start?
23 I'm skeptical.
24 No way.

Complaint Exhibits

1 No way?

2 It's not going to start.

3 Why not?

4 Too much water in there.

5 You'd think so wouldn't you? Just go around there and stand

6 there and wait. We're going to get your camera on the engine

7 here. Let's see what we're going to do, Jack. Oh, man. It

8 wants to turn over.

9 Oh, my. What do you think of that? What do you think of

10 that?

11 Fantastic, fantastic, unbelievable. I had an engine. As a

12 matter of fact, a guy sold me a car. Because every time it would

13 rain, the car wouldn't stop. This is unbelievable.

14 What do you think?

15 I wouldn't believe it if I didn't see it myself.

16 What do you think?

17 It's incredible.

18 Did you expect that to happen?

19 No oil, no water. I didn't expect that to happen.

20 Distributor cap full of moisture. What do you think, sir?

21 It's unbelievable to see how it repels all that water from

22 getting it into the electrical system like that.

23 That's exactly the word. It repelled. It repelled the

24 water. You're amazed, aren't you? What do you think?

Complaint Exhibits

1 No oil, no water, water in the distributor cap.
2 Next thing you'll be telling us you don't need gasoline to
3 run the thing.
4 Let's make sure that everybody here knows we're not just
5 talking about the crank case. Dura Lube. We've got a
6 transmission conditioner. The all purpose spray.
7 Yeah?
8 Can we spray the engine a little bit?
9 Oh, my gosh. Now, wait a minute. Hold it.
10 Should we leave the valve cover on or off? What do you
11 think?
12 Leave it off.
13 Yeah, leave it off.
14 You want to put water in the valve cover?
15 It'll work.
16 Oh, my gosh. I don't know what to say, folks.
17 Maybe I better put a little protection.
18 Yeah, just put a little something here. Come on. Come on.
19 We've got to give it a little hope here. You're going to spray
20 this with water. What do you think should happen?
21 I think the engine's going to die. I really do.
22 Is the engine going to die, Wayne?
23 I would say it would die almost instantly. I keep

Complaint Exhibits

1 looking around for an external oil source or water source. I
2 can't find it. I can't believe what's going on.
3 This is a heck of a legitimate test, isn't it?
4 It's 100 percent legitimate.
5 You're blown away aren't you?
6 I can't believe it. Like I said, I'm still looking for an
7 external oil source and more water from somewhere, but I can't
8 find it anywhere.
9 You think we're faking this?
10 No, it's not a fake, but I wouldn't believe it if I
11 didn't see it. It's amazing.
12 It's good stuff. All right. I guess we've got to try this. I
13 didn't know they were going to do this too. Here we go, folks.
14 Watch it. Here we go. Watch Floyd. Get the electrical. It's
15 still running. What do we think of this?
16 It's amazing. It's amazing.
17 Frank, get over here. I've got to get a couple of comments
18 from people.
19 It's amazing. You drive through a puddle and your car
20 stalls. And this is a whole fire hose.
21 What do you think of this?
22 I can't believe it. I really can't believe it. They're
23 flooding this engine. It shouldn't be running. It just
24 shouldn't be running.

Complaint Exhibits

1 What do you think, sir?

2 A little common sense, seeing is believing. I can't believe
3 it myself. I'm amazed. I'm still looking.

4 They're putting water down through the head, through the
5 cylinder heads, past the push rods, going into the oil. So
6 the oil should be in the pan and this thing is still running.
7 Water is a lubricant for cooling, but not as far as, not as far
8 as keepin' an engine running.

9 But for everyone who really believes in a product, there's
10 always someone who thinks you're trying to pull a fast one.

11 Can you pull the coil wire out to stall it? Just to see.

12 It will stop. It will kill it.

13 If you pull the coil wire, of course it's going to stop.

14 Right. It will stop. I just want to see if that's the
15 distributor.

16 I can hear his challenge. He wants you to prove that's
17 really the distributor cap. Can you do something here without
18 shocking yourself? What can you do?

19 I'd have to stop it, wouldn't I, to pull that coil?

20 Wayne, you're the expert. He wants -

21 It's going to run up the side, isn't it?

22 It should die right out, right.

23 You're not going to hurt yourself, right Floyd?

24 All right, folks. Proof's in the pudding. Are you sold?

Complaint Exhibits

1 Yes, I'm sold.

2 Oh, now watch. He's going to start it up again. He's going
3 to start it up again, folks.

4 Can other spray lubricants protect an engine from so much
5 moisture? No way. Just look at these independent tests. [Chart
6 inset] Dura Lube spray was one-third more effective than a
7 competing product, One Lube, when it came to moisture protection.
8 WD-40 did even worse. It was only one-eighth as effective as Dura
9 Lube spray. And that's why only Dura Lube spray can offer this
10 amazing guarantee. Your car will go in rain or snow or Dura Lube
11 will pay the tow. [Superscript: Dura-Lube Guarantee. Your car
12 will go in rain or snow or Dura-Lube will pay the tow! \$35 per
13 occurrence. Subject to terms and conditions.] That's a
14 guarantee. Dura Lube can protect a distributor cap full of
15 moisture. Only Dura Lube can stand up to a fire hose. The
16 others don't even make such claims.

17 You're pumping water up there and it's still running. It
18 shouldn't be. It shouldn't be. Does he walk on water too?
19 What's the story here? This is like the next best thing to
20 sliced bread. Really. Where did you find this stuff?

21 Introducing Dura Lube. The world's first space age all
22 purpose lubricant that virtually eliminates friction like nothing
23 on earth. In space there is no friction, but inside your engine
24 friction drags on every moving component generating heat, wear

Complaint Exhibits

1 and tear, causing poor fuel economy, more pollution, even engine
2 breakdown. [Superscript: Friction causes: Heat! Wear! Poor Fuel
3 Economy! More pollution! Engine breakdown!] Dura Lube
4 radically reduces friction by penetrating metal surfaces to
5 create a non-friction shield that gives you a more efficient
6 engine. With Dura Lube you'll have a cooler running engine and
7 get more miles per gallon, more horsepower with less pollution
8 and a quieter ride. [Superscript: DURALUBE Cooler engine! More
9 MPG. More horsepower! Less pollution! Quieter ride! Much less
10 wear!] You'll eliminate the damage caused by cold starts saving
11 you hundreds if not thousands of dollars. [Superscript: DURALUBE
12 You'll save hundreds of dollars, if not thousands!] Nothing
13 compares to Dura Lube because it treats the metal, not the oil.
14 [Superscript: Treats the metal, not the oil.] In fact, the
15 higher the temperature and pressure the better it performs.
16 [Insert: chart of torque pressure tests.] Dura Lube eats the
17 heat and saves the engine. [Superscript: Eats the heat! Saves
18 the engine!] Just one bottle added to your engine's oil protects
19 for up to 50,000 miles. [Superscript: Protects for up to 50,000
20 miles!]
21 And introducing Dura Lube spray. Has this ever happened to
22 you? A rainstorm -- even a small puddle stops you instantly.
23 But even a fire hose can't stop an engine once it has Dura Lube
24 protection. That's why you'll get this guarantee. Use Dura Lube

Complaint Exhibits

1 spray as directed, and if you ever get stuck in rain or snow,
2 Dura Lube will pay your tow.
3 And it does so much more. It protects anywhere you need
4 lubrication, door hinges, roller skates, power tools, anywhere
5 there's metal to metal contact. [Superscript: Protects anywhere
6 you need lubrication. Door hinges. Roller skates. Power tools.
7 Metal to metal contact.] And only one can of Dura Lube-spray
8 replaces these ten cans of the leading competition. So why
9 accept anything else? Order now and you'll receive Dura Lube
10 engine treatment. [Superscript: Engine] One bottle protects for
11 up to 15,000 miles. Dura Lube transmission treatment
12 [Superscript: Transmission.] to guard against fluid breakdown
13 and Dura Lube spray [Superscript: Spray], newly formulated, to
14 also protect against your electrical system -- guaranteed. Get
15 all the protection your car needs for only \$29.95. And if you'll
16 order now, we'll also include these blue shield sunglasses, a \$20
17 value, yours absolutely free. [Superscript: Free -- with order]
18 But wait. If you order two Dura Lube kits during this special TB
19 promotion, you'll receive this fabulous car care kit absolutely
20 free. [Superscript: Free -- with order] With color match --
21 covers scratches with the best shine in your car's own color.
22 Dura Shield to protect and restore leather and vinyl.
23 [Superscript: Protects and restores leather.] Glass shield for
24 clear vision through any weather. [Superscript: Clear vision

Complaint Exhibits

1 through any weather.] And fog shield, the fog eliminator.
2 [Superscript: The fog eliminator.] Another \$20 value, yours
3 free when you order two kits. [Superscript: Not available in
4 stores!] Dura Lube tomorrow's technology today. Here's how to
5 order. [Superscript: The program you are watching is a paid
6 advertisement for Dura-Lube.]
7 To order your Dura Lube system, have your credit card ready
8 and call 1-800-215-1500. Or send your check or money order for
9 \$29.95 plus \$6.99 for shipping and handling to Dura Lube, 300
10 McCann Street, Nashville, Tennessee 37210. Dura Lube provides
11 unequalled protection for your car's engine. So call now 1-800-
12 215-1500, and order today.
13 Welcome back. You know, I want you take a look at a
14 moment from our last show. [Superscript: July 1992].
15 If any oil or oil additive company can step forward and
16 prove through the same test that they have a better product than
17 Dura Lube, the Dura Lube Corporation will write a check for
18 \$100,000.
19 You know what's amazing about that challenge? Nobody
20 stepped forward to claim \$100,000. [Superscript: The challenge
21 ran over a year!] Oh, sure. A few of the big oil companies
22 asked for all the details of the test, but that's the last we
23 heard of them. We absolutely shut the competition down.

Complaint Exhibits

1 One test in our \$100,000 challenge was how long an engine
2 could run without any oil. Now, that was a torture test, not
3 something we recommend. But NASCAR driver Steve Hansen
4 experienced exactly that. He didn't mean to. Steve Hansen
5 didn't intend to completely lose his oil pump in the middle of a
6 big race, but it happened. [Superscript: It happened on August
7 7, 1993!]

8 During the feature race [Superscript: Elko, Minnesota
9 September 11, 1993], I started right up front, second car on the
10 outside, green light went on, floored the car wide open, my oil
11 pressure dropped down to nothing. I had no oil pressure. At
12 that time I thought to myself, well, I'm done. I'll pull off the
13 track, but the motor still was running good. So I went for it.
14 I figured if it's going to blow up, it's going to blow up. I
15 continued to race strong. The oil light got brighter and
16 brighter. I couldn't believe it. I kept going. The motor, it
17 wasn't knocking. I was figuring after three or four laps I could
18 start hearing a knock and it wasn't. It wasn't knocking. It
19 wasn't ticking. It was running strong. I finished a 15 lap race
20 which isn't bad considering I had no oil and the motor was still
21 running. I pulled into the pits. I could see that my pit crew -
22 - Cory, he was discouraged. He thought that I blew up the
23 engine.

Complaint Exhibits

1 I thought he was nuts, you know, I was getting mad because
2 he wasn't pulling off or nothing. But I guess he knew what he
3 was doing.

4 Cory just shook his head and I told him, I said, well, Dura
5 Lube did its job.

6 That's what Dura Lube can do in emergencies.

7 Let's see what it's doing for folks day after day.

8 The car was over heating a lot and running hot and I put it
9 right in the motor with the oil and not a problem since.

10 [Superscript: Cools the engine]

11 I used to have this exhaust problem, there would be this
12 little cloud of smoke that was behind my car all the time. After
13 I used Dura Lube it disappeared completely. [Superscript:

14 Cleaner emissions!]

15 I used it in my own personal vehicle and I've noticed almost 40
16 to 45 percent increase in my fuel. [Superscript: More MPG!]

17 Oh, come on.

18 Really. Really. I usually fuel up once a week and now I'm
19 doing it every two weeks. And I only go like five miles a day
20 round trip.

21 So you've got a routine.

22 I've got a routine. Believe me, I've got a routine. Let me
23 tell you. I can honestly say without a word of a lie that I've

Complaint Exhibits

1 almost doubled the amount of time I can go on a tank of gas in my
2 truck.

3 I had first gotten Dura Lube just before that big winter
4 storm we had that hit the whole East Coast. [Superscript:
5 Prevents stalls.]

6 The storm of the century?

7 The storm of the century is what they called it, yeah. And
8 I had some calls that were really far away. People really in
9 emergency situations that needed cab rides. A lot of cars
10 stalled out, but I just kept going. I made it through everything,
11 all kinds of puddles. I would go through the puddle saying here
12 we go, this is it. This is the end. And it just kept going.

13 I think it's fantastic because I had a car and in January
14 when we had the rainy season, every time it would rain, the car
15 would stay there for a week because it wouldn't move and I'd have
16 to wait for the sun to come out. [Superscript: Saves you money!]
17 All right. Now I see they had all this water poured on the car.
18 I could have saved thousands of dollars because I went out and
19 bought another car.

20 I lost an engine similar to this one because the oil filter
21 came off. [Superscript: Saves your engine] I lost the oil. The
22 light came on, but it was too late. The engine was gone. It
23 cost me a couple thousand dollars to get a new engine.

24 So Dura Lube can definitely save you money.

Complaint Exhibits

1 Yeah, it can save you a lot of money.

2 How can one product do so much? Breakthrough technology.

3 And no one knows that better than Astronaut Pete Conrad. You

4 probably know him from his famous walk on the moon. But to Pete

5 that's old news. Just recently he flight managed our nation's

6 latest break through, the DeltaClipper, the rocket ship blasts

7 off and then it stops in mid-air. Now, this is like something

8 out of Buck Rogers. Then it moves sideways. And then it lands,

9 ready to take off again. [Superscript: Pete Conrad]

10 With Delta Clipper, you have an old idea using

11 today's technology that will allow low cost access to space.

12 With Dura Lube, can I say? I knew it was a real advance in

13 engine lubrication. Now everyone knows it. Sure there were

14 skeptics. Just like there were plenty of skeptics regarding the

15 Delta Clipper idea, but now we know they're both winners.

16 Just how is Dura Lube able to do all those things? Well,

17 recently we got together with our lubrication specialist Floyd

18 Stevik. He showed me a very simple demonstration of the secret

19 to Dura Lube's success.

20 Everything's metal in an engine, Jim.

21 Right.

22 And this metal heats up. Every time it meets, it heats.

23 And it actually creates heat and wear inside an engine.

24 All right.

Complaint Exhibits

1 Dura Lube will actually go in and relieve that heat and
2 pressure. That's saving oil, saving maintenance on the car,
3 saving those engines, Jim.
4 Especially the small cars.
5 Especially small cars, Jim. Let me show you what we're
6 going to do here. We have a piece of sheet metal. We're going
7 to stimulate an engine.
8 I see this is flat here. [Superscript: Perfectly level]
9 Let's remove that. What are you going to do?
10 We're going to put some heat in here. We're actually going
11 to put in oil. Hand me some oil over there, Jim.
12 Now, do you care which one?
13 It doesn't make any difference. Dura Lube is completely
14 compatible with all oil, Jim. Synthetics, naturals, it doesn't
15 make any difference.
16 Here you go.
17 We're going to put a little bit of this oil right here in
18 the front, right over the top of that burner.
19 You want that right under the oil?
20 Yes, right-under the oil.
21 Right under the oil. It is now officially under.
22 There we go.
23 Is that high enough? You want it a little higher?
24 Put a little heat to it, Jim.

Complaint Exhibits

1 That is really going against that metal now. Okay, cooking.

2 We're going to watch that Jim. We're going to see that

3 actually it's really going to start cooking down and it will

4 actually move away from the flames.

5 You can certainly see that it is spreading out.

6 Spreading out and you can see it's starting to cook a little

7 along this edge and moving away from that heat over here.

8 Okay.

9 Now, I'm going to pour some Dura Lube in here and we're

10 going to see what happened. Now, you know this is perfectly

11 level.

12 Right.

13 Look at how it's going to travel. It's traveling towards

14 that heat. Jim, it goes to the heat. That's what's really

15 important. Dura Lube eats the heat and saves those engines.

16 Look at that. Look at that moving to that heat. Isn't that

17 amazing? Look what it's doing. It's going to come in and marry

18 up to that oil and do the lubrication job that's necessary on

19 that engine. Look at that. Look at that, Jim. Look at it --

20 it's still moving toward....

21 Now, let's take a look at that again. Look at the hot spot,

22 the-circle directly above the flame. The oil moves away from the

23 hot spot. You can see the circle it's leaving. But on this

24 totally level surface, Dura Lube goes towards the heat. It likes

Complaint Exhibits

1 heat. Dura Lube eats the heat. That's Dura Lube's secret.
2 Look, it's going right into the hot spot. Dura Lube eats the
3 heat caused by friction. Just look at this heat and pressure
4 test conducted by the Falex Corporation. [Insert: chart of
5 torque-pressure tests] Now, this independent laboratory found
6 premium oil failing at 1,250 pounds. STP hit the failure mark at
7 1,750 pounds. Slick 50 fared a little bit better, but it too
8 failed at 4,250 pounds. Now look at Dura Lube. It ran in the
9 optimal temperature zone the whole way. It never failed. Dura
10 Lube ran off the chart. [Superscript: No Failure]
11 I insisted that they run that test. [Superscript: Pete
12 Conrad] They did it and it passed with flying colors.
13 Then we decided to try a similar test ourselves, this time
14 pitting Dura Lube spray against three popular competitors.
15 First, a silicone spray made by Gunk.
16 Okay, we turn it. It's rotating now. We're going to put the
17 pressure on.
18 It was stopped dead at only five pounds of pressure as
19 measured on a simple scale. Then we tried the Teflon spray One
20 Lube made by Slick 50.
21 I believe that's probably plenty.
22 All right, let's try that.
23 We're going to do the same thing, Jim.

Complaint Exhibits

1 The result? Exactly the same, five pounds once again as you
2 can see. Now, you'd think WD-40 would outperform the rest.

3 We're going to apply the pressure again.

4 What have we got? The same place. In fact, it's a little
5 less. About four, four-and-one-half pounds, virtually the same
6 as the other two. Then came Dura Lube spray. We couldn't even
7 get it to stop. It ran right off the scale. That's just one
8 reason everybody's talking about Dura Lube. [Superscript: Actual
9 elapsed time 46 seconds]

10 You're cruising to the grocery store or something and your
11 oil light comes on. Middle of the night, what are you going to
12 do? Are you going to sit there and walk? If you have Dura Lube
13 in your car, you're going to make it to your destination.

14 Introducing Dura Lube. The space age lubricant that
15 radically reduces friction by penetrating metal surfaces to
16 create a non-friction shield. With Dura Lube your engine will
17 run cooler and get more miles per gallon, more horsepower with
18 less pollution and a quieter ride. [Superscript: DURALUBE
19 Cooler engine! More mpg. More horsepower! Less pollution!
20 Queter ride! Much less wear!] And introducing Dura Lube spray.
21 Has this ever happened to you? A rainstorm, even a small puddle
22 stops you instantly. But even a fire hose can't stop an engine
23 once it has Dura Lube protection. That's why you'll get this
24 guarantee. Use Dura Lube spray as directed, and if you ever get

Complaint Exhibits

1 stuck in rain or snow, Dura Lube will pay your tow.
2 [Superscript: Dura-Lube Guarantee. Your car will go in rain or
3 snow or Dura-Lube will pay the tow! \$35 per occurrence. Subject
4 to terms and conditions.]
5 And it does so much more. It protects anywhere you need
6 lubrication, door hinges, roller skates, power tools, anywhere
7 there's metal to metal contact. [Superscript: Protects anywhere
8 you need lubrication. Door hinges. Roller skates. Power tools.
9 Metal to metal contact.] And only one can of Dura Lube spray
10 replaces these ten cans of the leading competition. So why
11 accept anything else? Order now and you'll receive Dura Lube
12 engine treatment. One bottle protects for up to 15,000 miles.
13 [Superscript: Dura-Lube contains no chlorinated solvents or
14 esters and no ingredients listed as halogenated wastes by USEPA.
15 CONTAINS NO SOLIDS!]
16 Dura Lube transmission treatment to guard against fluid
17 breakdown and Dura Lube spray, newly formulated, to also protect
18 your electrical system guaranteed. Get all the protection your
19 car needs for only \$29.95. And if you order now, we'll also
20 include these blue shield sunglasses, a \$20 value, yours
21 absolutely free. But wait. If you order two Dura Lube kits
22 during this special TV promotion, you'll receive this fabulous
23 car care kit absolutely free. With Color Match covers scratches
24 with the best shine in your car's own color. Dura Shield to

Complaint Exhibits

1 protect and restore leather and vinyl. [Superscript: Protects
2 and restores leather.] Glass Shield for clear vision through any
3 weather. [Superscript: Clear vision through any weather.] And
4 Fog Shield, the fog eliminator. [Superscript: The fog
5 eliminator.] Another \$20 value, yours free when you order two
6 kits. Dura Lube. Tomorrow's technology today. Here's how to
7 order. [Superscript: The program you are watching is a paid
8 advertisement for Dura-Lube]

9 To order your Dura Lube system, have your credit card ready
10 and call 1-800-215-1500. Or send your check or money order for
11 \$29.95 plus \$6.95 for shipping and handling to Dura Lube, 300
12 McCann Street, Nashville, Tennessee 37210. Dura Lube provides
13 unequalled protection for your car's engine. So call now. 1-800-
14 215-1500, and order today.

15 Get the electrical.

16 It's still running. What do you think of this?

17 It's amazing. It's amazing.

18 A little common sense, seeing is believing.

19 The preceding program was a paid advertisement for Dura Lube
20 sponsored by the Media Group.

21 //

22 //

23 //

24

Complaint Exhibits

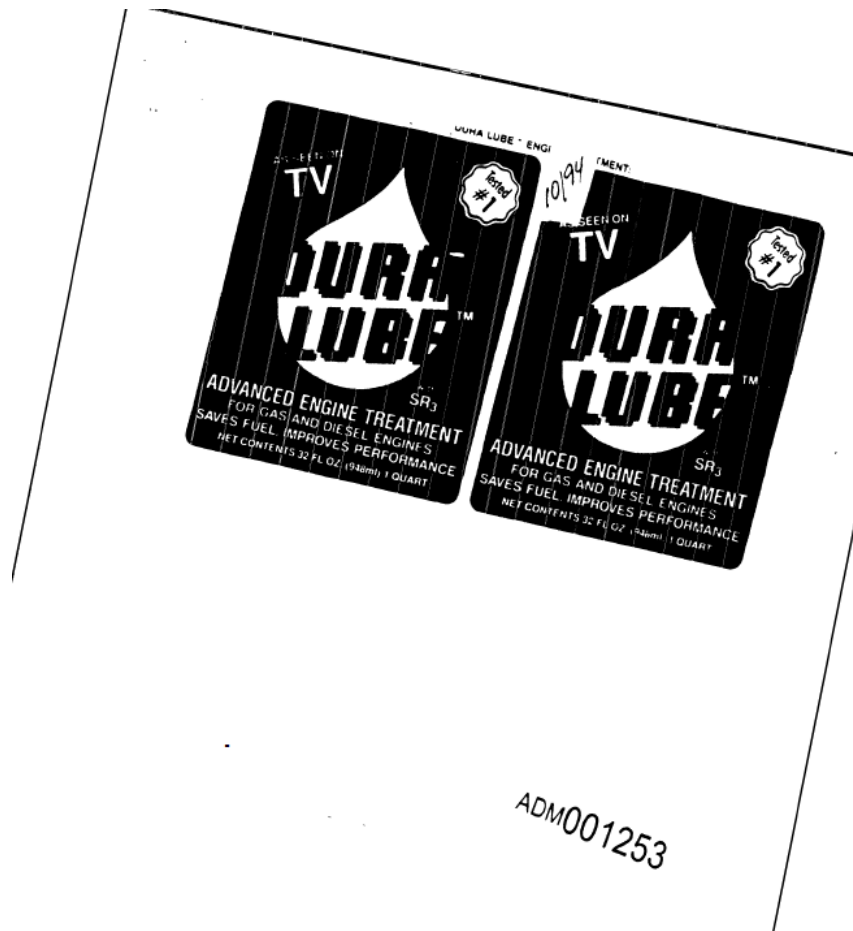
Exhibit B



ADM001273

Complaint Exhibits

Exhibit C



Complaint Exhibits

Exhibit D

A REVOLUTIONARY NEW PRODUCT THAT WILL SAVE YOU MONEY ON GAS!

SAVE UP TO \$25 PER MONTH* ON GAS... or it's FREE!

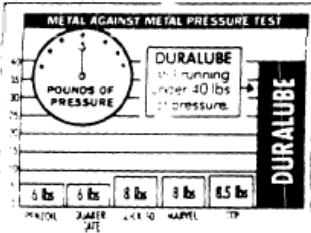


DURALUBE
Will Save You up to 35% on Gasoline!
—and Add Thousands of Miles
To The Life of Your Car's Engine—
in Just One Treatment

WE CHALLENGE THE OIL COMPANIES
We challenge the oil companies to match our results. We challenge them to offer a product like ours—they won't—and do you know why? Maybe because they're concerned about selling more gas, while our revolutionary product will **SAVE YOU GASOLINE AND ENGINE WEAR!**

DURALUBE WILL SAVE YOU AS MUCH AS 35%
A revolutionary new oil treatment helps you **save gas** and **FIGHT BACK** against the recent in-rease in gas prices. Oil embargoes, oil spills, New Taxes on Gas, Dangers to the environment, all pinch you, the consumer. And you had nowhere to turn! Well now you do! Our new product actually saves you money on gas by improving the efficiency of your engine and increasing your gas mileage by 15, 25, even 35%!

THE EXPERTS AGREE
We knew we'd have doubters, but we have the proof on our side. In tests performed by the U.S. Government's Environmental Protection Agency DuraLube clearly increased gas mileage and cut down on harmful emissions. But we knew some people still wouldn't be convinced, so we contracted



with another independent testing laboratory... and then another and all agree that DuraLube Works.

AND ALL YOU HAVE TO DO IS ADD ONE 8 oz. BOTTLE TO YOUR ENGINE.
DuraLube, the car treatment of the 90's works in your engine to reduce friction, reduce harmful emissions, increase engine power, and **SAVE YOU MONEY ON GAS!** DuraLube is an oil-soluble heat-stable hydro-carbon compound containing patented properties that lubricate metal surfaces to decrease wear and corrosion, preserve the metal parts O-rings, seals and gaskets in your engine by adding a durable lubricant seal right to the metal surfaces in your engine.

30 Day MONEY BACK GUARANTEE
DURALUBE, Dept. 300 McCann St. Nashville, TN 37210
We'll want to save on gas and protect my car's engine against wear.
Send me one 8 oz. bottle of DuraLube for only \$19.95 plus \$3.00 shipping and handling.
SAVE—Two 8 oz. bottles of DuraLube only \$29.95 plus \$4.00 shipping and handling.
Money back guarantee of your purchase price if you are not completely satisfied with the performance of DuraLube—no questions asked. TN residents add sales tax.
Credit Card Buyers—Call (855) 254-1238 Enclosed is my check or Money Order for \$_____ or charge my _____ MASTERCARD.
Act No. _____ Exp. Date _____
Name _____
Address _____
City _____ State _____ Zip _____
All orders processed promptly. Shipment guaranteed within 90 days. © 1991 A.M.

Complaint Exhibits

Exhibit E



DECISION AND ORDER

The Federal Trade Commission having issued its complaint charging the respondents named in the caption hereof with violation of Section 5(a) of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the complaint issued by the Commission; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1.a. Respondent Dura Lube Corporation ("DLC") is a New York corporation with its principal office or place of business at 102-3 Hamilton Avenue, Stamford, Connecticut 06902.

1.b. Respondent American Direct Marketing, Inc. ("ADM") is a Delaware corporation with its office and principal place of business located at 1000 Apex Street, Nashville, Tennessee 37210.

Decision and Order

1.c. Respondent Howe Laboratories, Inc. ("Howe") is a Delaware corporation with its office and principal place of business located at 102-3 Hamilton Avenue, Stamford, Connecticut 06902.

1.d. Respondent Crescent Manufacturing, Inc. ("Crescent") is a New York corporation with its office and principal place of business located at 8800 South Main Street, Eden, New York 14057.

1.e. Respondent The Media Group, Inc. ("Media Group") is a New York corporation with its office and principal place of business located at 102-3 Hamilton Avenue, Stamford, Connecticut 06902.

1.f. National Communications Corporation ("National") is a Delaware corporation with its office and principal place of business located at 102-3 Hamilton Avenue, Stamford, Connecticut 06902.

1.g. Respondent Herman S. Howard is or was at relevant times herein an officer of the corporate respondents. Individually or in concert with others, he has formulated, directed, or controlled the acts and practices of the corporate respondents, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of DLC, Howe, Media Group, and National.

1.h. Respondent Scott Howard is or was at relevant times herein an officer of the corporate respondents. Individually or in concert with others, he has formulated, directed, or controlled the acts and practices of the corporate respondents, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of DLC, Howe, Media Group, and National.

Decision and Order

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

ORDER

Definitions

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

“Dura Lube” shall mean the aftermarket motor oil additive known as Super Dura Lube Engine Treatment, Advanced Dura Lube Engine treatment, or any product of substantially similar composition marketed as a motor oil product.

“Motor oil product” shall mean a product for use in conjunction with or in place of fully formulated motor oil.

“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.

Unless otherwise specified, “respondents” shall mean Dura Lube Corporation, American Direct Marketing, Inc., Howe Laboratories, Inc., Crescent Manufacturing, Inc., The Media Group, Inc., and National Communications Corporation, corporations, their successors and assigns, and their officers, agents, attorneys, representatives, and employees; and Herman S. Howard and Scott Howard, individually and as officers of the corporations, whether acting directly or through any corporation, subsidiary, division, trust or other device, or any of them.

Decision and Order

“Commerce” shall be as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of Dura Lube, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that:

- A. Dura Lube contains no chlorinated compound unless such is the case;
- B. Dura Lube has been tested by the U.S. Environmental Protection Agency unless such is the case; or
 - 1. Dura Lube meets the specifications, requirements or standards of any governmental or standard setting organization, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for use in any motor vehicle, in or affecting commerce, do forthwith cease and desist from:

- A. Making any representation, in any manner, expressly or by implication:

Decision and Order

1. That, compared to motor oil alone or motor oil treated with any other product, using such product:
 - a. Reduces engine wear;
 - b. Reduces engine wear by any percentage, dollar or other figure;
 - c. Prolongs engine life;
 - d. Reduces emissions;
 - e. Reduces the risk of serious engine damage when oil pressure is lost;
 - f. Improves gas mileage;
 - g. Improves gas mileage by any percentage, miles per gallon, dollar, or other figure;
2. That one or any other number of treatments of such product reduces wear for 50,000 or any other number of miles; or,
3. Regarding the performance, benefits, efficacy, attributes or use of such product,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

- B. Misrepresenting, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Decision and Order

III.

IT IS FURTHER ORDERED that respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that any demonstration, picture, experiment, illustration or test proves, demonstrates or confirms any material quality, feature or merit of such product, or the superiority or comparability of the product in a material respect relative to any other product.

IV.

IT IS FURTHER ORDERED that, respondents, in connection with the manufacturing, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for use in any motor vehicle, in or affecting commerce, shall cease and desist from representing, directly or by implication, that such product has been endorsed by a person, group or organization that is an expert with respect to the endorsement message, unless:

- A. The endorser's qualifications give the endorser the expertise that the endorser is represented as possessing with respect to the endorsement; and
- B. The endorsement is supported by an objective and valid evaluation or test using procedures generally accepted by experts in that science or profession to yield accurate and reliable results.

Decision and Order

V.

IT IS FURTHER ORDERED that, for five (5) years after the last date of dissemination of any representation covered by this order, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All labeling, packaging, advertisements and promotional materials setting forth any representation covered by this order;
- B. All materials that were relied upon to substantiate any representation covered by this order; and
- C. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control, or of which they have knowledge, that contradict, qualify, or call into question such representation, or the basis relied upon for the representation, including complaints and other communications with consumers, third-party dispute mediators, or governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that:

- A. The corporate respondents and their successors and assigns shall notify the Federal Trade Commission at least thirty (30) days prior to any change in the corporate respondents that may affect compliance obligations arising under this order, including but not limited to 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

Decision and Order

which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as practicable after obtaining such knowledge.

- B. Each of the individual respondents, for a period of ten (10) years after the date of issuance of this order, shall notify the Federal Trade Commission of the discontinuance of his current business or employment, or his affiliation with any new business or employment. The notice shall include the respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities.

All notices required by this Part shall be sent by certified mail to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that the corporate respondents and their successors and assigns and the individual respondents 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 this order. Respondents shall deliver this order to current personnel within thirty (30) days after the service of this order, and to future personnel within thirty (30) days after the person assumes such position and responsibilities.

Decision and Order

VIII.

IT IS FURTHER ORDERED that respondents shall:

- A. Within fifteen (15) days after the date of service of this order, send by first class certified mail, return receipt requested, to each purchaser for resale of Dura Lube with which respondents have done business since January 1, 1994, notice of this order in the form attached as Attachment A. The mailing shall not include any other documents;
- B. By May 15, 2000, send a representative to all facilities operated by each purchaser for resale to which respondents sent Attachment A to replace the Dura Lube labels and packaging with labels and packaging that comply with this order.
- C. In the event that respondents receive any information that subsequent to its receipt of notice of this order any purchaser for resale is using or disseminating any advertisement or promotional material specified in Attachment A, respondents shall: (1) immediately send such purchaser for resale a letter requesting that it stop using or disseminating any item specified in Attachment A and notifying it that the respondents will report its use or dissemination of any item specified in Attachment A to the Commission; and (2) within thirty (30) days notify the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, in writing, of such purchaser for resale's identity and its use or dissemination of any item specified in Attachment A.

Decision and Order

IX.

IT IS FURTHER ORDERED that respondents 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 signed statements obtained from persons or entities pursuant to part VII of this order;
- B. Copies of all notification letters sent to purchasers for resale pursuant to subparagraph A of part VIII of this order; and
- C. Copies of all communications with purchasers for resale pursuant to subparagraph C of part VIII of this order.

X.

IT IS FURTHER ORDERED that:

- A. Not later than five (5) days after the date this Order becomes final, respondents shall deposit by electronic funds transfer into an escrow account to be established by the Federal Trade Commission for the purpose of receiving the payment due under the provisions of this order, the sum of two million dollars (\$2,000,000). In the event of any default on any obligation to make payment under this Part, interest, computed pursuant to 28 U.S.C. § 1961(a) shall accrue from the date of default to the date of payment. In the event of default, respondents shall be jointly and severally liable for the two million dollar (\$2,000,000) payment required by this paragraph and any interest on such payment.

Decision and Order

- B. The funds paid by respondents pursuant to subpart A above, together with accrued interest, less any amount necessary to pay the costs of administering the redress program herein, shall be used by the Federal Trade Commission or a Redress Administrator designated by the Federal Trade Commission to provide refunds to Dura Lube purchasers. Payment to such persons represents redress and is intended to be compensatory in nature, and no portion of such payment shall be deemed a payment of any fine, penalty, or punitive assessment. A consumer shall have the right to participate in the redress distribution only upon signing a waiver of rights and release of all claims against respondents. The Federal Trade Commission has sole discretion to determine how any redress funds are administered and distributed. Respondents shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Federal Trade Commission. The Federal Trade Commission, or its designated Redress Administrator, shall in its sole discretion select the escrow agent.
- C. Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds shall vest in the Treasurer of the United States unless and until such funds are disbursed to the designated purchasers of Dura Lube. Respondents shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any respondent, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.
1. Not later than the date this Order becomes final, respondents shall, to the extent available, provide to the Federal Trade Commission, in computer readable form (standard MS-DOS diskettes or IBM-mainframe

Decision and Order

compatible tape) and in computer print-out form, a list of the name and address of all consumers in the United States who purchased Dura Lube from January 1, 1994, to December 31, 1999.

- D. The Redress Administrator shall destroy all records relating to this matter six (6) years after the transfer of any remaining redress funds to the U.S. Treasury or the closing of the account from which such funds were disbursed, whichever is earlier, provided that no records shall be destroyed unless and until a representative of the Federal Trade Commission has received and approved the Administrator's final accounting report. Records shall be destroyed in accordance with disposal methods and procedures to be specified by the Federal Trade Commission. The Federal Trade Commission may, in its sole discretion, require that such records, in whole or in part, be transferred, in lieu of destruction, to the Federal Trade Commission.

XI.

IT IS FURTHER ORDERED that respondents shall, within sixty (60) days after service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied or intend to comply with this order.

XII.

IT IS FURTHER ORDERED that this order will terminate on May 3, 2020, 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 later occurs;

Decision and Order

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 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 had never been filed, except that the order will not be terminated 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.

By the Commission.

ATTACHMENT A

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

[To be printed on respondents' letterhead]

[date]

Dear [purchaser for resale]:

Decision and Order

As you may be aware, on April 29, 1999, the Federal Trade Commission ("FTC") issued a complaint against Dura Lube Corporation, American Direct Marketing, Inc., Howe Laboratories, Inc., Crescent Manufacturing, Inc., National Communications Corporation, The Media Group, Inc., Herman S. Howard, and Scott Howard.

In its complaint, the FTC alleged that advertisements for Dura Lube Engine Treatment have made unsubstantiated claims that, compared to motor oil alone or motor oil treated with any other product, using Dura Lube Engine Treatment: (1) Reduces engine wear; (2) Reduces engine wear by more than 50%; (3) Prolongs engine life; (4) Reduces emissions; (5) Reduces the risk of serious engine damage when oil pressure is lost; (6) Improves gas mileage; and (7) Improves gas mileage by up to 35%. In addition, the FTC alleged that Dura Lube Engine Treatment advertisements made an unsubstantiated claim that one treatment of Dura Lube Engine Treatment continues to protect the engine for up to 50,000 miles.

Further, the FTC alleged that Dura Lube Engine Treatment advertisements falsely claimed that tests prove that, compared to motor oil alone, using Dura Lube Engine Treatment: (1) Improves gas mileage; (2) Improves gas mileage by up to 35%; (3) Reduces emissions; (4) Prolongs engine life; (5) Reduces engine wear; and (6) Reduces the risk of serious engine damage when oil pressure is lost. The FTC also alleged that Dura Lube Engine Treatment advertisements falsely claimed that tests prove that one treatment of Dura Lube Engine Treatment continues to protect the engine for up to 50,000 miles. Finally, the FTC alleged that Dura Lube Engine Treatment advertisements set forth two deceptive demonstrations and a deceptive expert endorsement.

Decision and Order

The FTC also alleged that advertisements for Dura Lube Engine Treatment have made false and unsubstantiated claims that: (1) Dura Lube Engine Treatment does not contain any chlorinated compound; and (2) Dura Lube Engine Treatment has been tested by the U.S. Environmental Protection Agency.

On [date] the FTC issued a consent order to cease and desist which prohibits certain claims for Dura Lube Engine Treatment. We consented to the issuance of the order for settlement purposes only and without admitting any of the FTC's allegations that we violated the law. The order requires us to request that our distributors and wholesalers stop using or distributing advertisements or promotional materials containing claims challenged by the FTC. As one of our distributors or wholesalers, we are required to send [purchaser for resale] this letter.

Specifically, the FTC order prohibits us in the future from making false claims that Dura Lube Engine Treatment (1) contains no chlorinated compound; and (2) has been tested by the U.S. Environmental Protection Agency. The order also requires that we have a reasonable basis for any performance claims we make for Dura Lube Engine Treatment or any other product for use in a motor vehicle. Finally, the order prohibits us from disseminating (1) any deceptive demonstrations regarding Dura Lube Engine Treatment or any other product, or (2) any expert endorsements regarding Dura Lube Engine Treatment or any other product for use in a motor vehicle.

We request your assistance by asking you to discontinue using, distributing, or relying on any of your advertising or promotional material for Dura Lube Engine Treatment received from us prior to January 1, 2000. Please also notify any of your customers who resell these products and who may have such materials to discontinue using those promotional materials. Under separate cover, we will be sending you replacement promotional material that you will be able to use. You do not need to dispose of your existing inventory of Dura Lube Engine Treatment because we will send someone to your facility to replace the Dura

Analysis to Aid Public Comment

Lube Engine Treatment labels and packaging with labels and packaging that comply with the FTC order shortly. If we receive information that you are continuing to use materials that do not comply with the FTC order, we are required to notify the FTC of your failure to comply with this request.

Thank you very much for your assistance.

Sincerely,

[name]
President
[respondents]

**Analysis of Proposed Consent Order to Aid Public
Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement for entry of a consent order from Dura Lube Corporation, Inc., American Direct Marketing, Inc., Howe Laboratories, Inc., Crescent Marketing, Inc. (d/b/a Crescent Manufacturing, Inc.), National Communications Corporation, The Media Group, Inc., and Herman S. Howard and Scott Howard, the principals who control these corporations (referred to collectively as "Respondents"). The agreement would settle a complaint by the Federal Trade Commission that Respondents engaged in unfair or deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

Analysis to Aid Public Comment

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising representations made about Super Dura Lube Engine Treatment and Advanced Dura Lube Engine Treatment (referred to collectively as "Dura Lube"), engine oil additives. The administrative complaint alleged that Respondents violated the FTC Act by disseminating ads that made unsubstantiated performance claims about Dura Lube. The Complaint alleged that Respondents represented that, compared to motor oil alone or oil treated with any other product, Dura Lube: (1) reduces engine wear; (2) reduces engine wear by more than 50%; (3) prolongs engine life; (4) reduces emissions; (5) reduces the risk of serious engine damage when oil pressure is lost; (6) improves gas mileage; and (7) improves gas mileage by up to 35%. The Complaint alleged that one treatment continues to protect engines for up to 50,000 miles. The Complaint alleged that Respondents represented that they had a reasonable basis for making these claims, but in fact did not possess competent evidence supporting them.

The Complaint also challenged, as false, claims that tests prove that, compared to motor oil alone, Dura Lube: (1) reduces engine wear; (2) prolongs engine life; (3) reduces emissions; (4) reduces the risk of serious engine damage when oil pressure is lost; (5) improves gas mileage; and (6) improves gas mileage by up to 35%. The Complaint also challenged as false claims that tests prove that one treatment continues to protect engines for up to 50,000 miles. Additionally, the Complaint challenged, as false, claims that Dura Lube: (a) has been tested by the U.S. Environmental Protection Agency; and (b) contains no chlorinated compound.

Analysis to Aid Public Comment

The Complaint alleged that Respondents represented that product demonstrations in their advertising proved, demonstrated, or confirmed that, (a) compared to motor oil alone, Dura Lube reduces the risk of serious engine damage when oil pressures is lost, and (b) without Dura Lube, motor oil fails to protect automobile engines under hot running conditions, when in fact the demonstrations do not prove, demonstrate, or confirm these product attributes. Finally, the Complaint alleged that Respondents represented that former astronaut Charles "Pete" Conrad had endorsed the product based on a valid exercise of his expertise in the evaluation of automobile engine lubricants, when in fact Mr. Conrad did not have expertise in the evaluation and testing of automobile engine lubrication.

The Complaint gave notice that the Commission had reason to believe that a proceeding under Section 19 of the FTC Act for consumer redress ultimately might be appropriate, depending upon the adjudicative record and other relevant factors.

The proposed consent order contains provisions designed to prevent Respondents from engaging in acts and practices similar to those alleged in the complaint in the future. Part I of the proposed consent order prohibits Respondents from falsely claiming that Dura Lube contains no chlorinated compound or that it has been tested by the Environmental Protection Agency. It also prohibits them from claiming that Dura Lube meets the requirements or standards of any governmental or standard setting organization unless they possess competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, substantiating the claim.

Part II of the proposed consent order prohibits Respondents from making unsubstantiated representations regarding the performance, benefits, efficacy, attributes or use of any product for use in an automobile, or from misrepresenting the results of

Analysis to Aid Public Comment

any study. It specifically prohibits unsubstantiated claims that, compared to motor oil alone or oil treated with any other product, the product reduces engine wear or reduces it by any percentage, dollar or other figure; prolongs engine life; reduces emissions; reduces the risk of serious engine damage when oil pressure is lost; or improves gas mileage or improves it by any percentage, miles per gallon, dollar or other figure. It also prohibits unsubstantiated claims that one treatment reduces engine wear for 50,000 or any other number of miles. The evidence required to substantiate such claims includes competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence.

Part III of the proposed consent order prohibits Respondents from using misleading demonstrations in the sale of any product.

Part IV of the proposed consent order prohibits Respondents from representing that any endorser of any product for use in a motor vehicle is an expert unless the endorser possesses the expertise he or she is represented to have and the endorsement is adequately supported by evidence that would be accepted by experts in the area.

Part X of the proposed consent order requires Respondents to pay \$2 million in consumer redress. The Federal Trade Commission would administer and distribute the redress as the Commission, in its sole discretion, deemed appropriate. Respondents would be required to provide the Commission with the identities of consumers known to have purchased Dura Lube between January 1, 1994, and December 31, 1999. Consumers electing to accept the redress would release any claims against Respondents.

The remainder of the proposed consent order also contains provisions regarding distribution of the order, replacement of product packaging and labeling with compliant packaging and labeling, record-keeping, notification of changes in corporate

Analysis to Aid Public Comment

status, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

Complaint

IN THE MATTER OF

DUKE ENERGY CORPORATION, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket C-3932; File No. 0010080
Complaint, March 13, 2000--Decision, May 5, 2000

This consent order addresses the merger of natural gas interests by Respondents Duke Energy Corporation and Phillips Petroleum Company into Duke Energy Field Services L.L.C., a company that will be majority owned by Duke Energy, and Respondent Duke Energy's acquisition of certain gas gathering and processing assets owned by Conoco, Inc. and Mitchell Energy and Development Corporation. The order requires Duke to divest pipeline in seven relevant markets where anticompetitive increases in gather costs would likely occur.

Participants

For the Commission: *Kristin L. Malmberg, Gary D. Kennedy, James R. Golder, Debra H. Spears, Elizabeth A. Piotrowski, Geary A. Gessler, Louis Silvia, and Gregory S. Vistnes.*

For the Respondents: *Paul L. Yde, Cathy A. Lewis, Robert S. Field, and Joseph E. Hunsader, Vinson & Elkins, Brent L. Backes, Duke Energy Corporation, William J. Kolasky, Eric J. Mahr, and Janet D. Ridge, Wilmer, Cutler & Pickering, Neal F. Lehman, Phillips Petroleum Company, Rufus Oliver, Baker Botts, Thomas D. Carmel, Conoco, Inc., Joseph Krause, Hogan & Hartson, John S. Hathaway, Mitchell Energy & Development Corporation, Brian Mohr, Skadden, Arps, Slate, Meagher & Flom, and John Walter, Western Gas Resources.*