

Complaint

IN THE MATTER OF

LENTEK INTERNATIONAL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 AND SEC. 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9303; File No. 0123117

Complaint, August 27, 2002--Decision, March 14, 2003

This consent order addresses practices used by Respondent Lentek International, Inc. and individual Respondents Joseph Durek and Lou Lentine related to the advertising, offering for sale, sale, and distribution of various air cleaning products and ultrasonic/electromagnetic pest control devices. The order, among other things, prohibits the respondents from representing – unless they possess competent and reliable scientific evidence that substantiates the representation – (1) that any air cleaning product will eliminate, remove, clear, clean, neutralize, sanitize, oxidize, control, or reduce any indoor air pollutant, or that use of such product will prevent, reduce the incidence of, or provide relief from any medical or health-related condition; (2) that their PestContro products, or similar pest control products, will repel, control, or eliminate, temporarily or indefinitely, any rodent, insect, or other animal pest, or that they will do so in an area of a certain size; (3) that PestContro products, or substantially similar products, will alter the electromagnetic field inside the walls or wiring of a home in a manner that drives away insects, rodents, and other animal pests; or (4) that their MosquitoContro products, or substantially similar products, will repel mosquitoes from a user's body, or that such products are an effective alternative to the use of chemical pesticides or other products formulated to kill or repel mosquitoes. The order also prohibits the respondents from making unsubstantiated representations about the benefits, performance, or efficacy of any product.

Participants

For the Commission: *Elena Paoli, Carol Jennings, Constance M. Vecellio, Edwin Rodriguez, Joni Lupovitz, Robert Frisby, Elaine D. Kolish and Susan Braman.*

For the Respondent: *Alicia Batts, L. Christian Marlin, and Vineeta A. Bathia, Foley & Lardner.*

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The Federal Trade Commission, having reason to believe that Lentek International, Inc., a corporation, and Joseph Durek and Lou Lentine, individually and as officers of the corporation (“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 Lentek International, Inc., is a Florida corporation with its principal office or place of business at 1629 Prime Court, Suite 800, Orlando, Florida 32859.
2. Respondent Joseph Durek is Chairman and Chief Executive Officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Lentek International, Inc.
3. Respondent Lou Lentine is President of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Lentek International, Inc.
4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

Sila Air Cleaning Products

5. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed air cleaning products to the public, including the Sila Plug-In Compact Air Purifier, the Sila Clean Air, the Sila Fresh Air, the Sila My Air Personal Purifier, the Sila My Air Personal Air Source, the My Air Mini Personal Air

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Purifier, the Sila Ionic Fresh Home and the Sila Auto Air Purifier & Deodorizer (collectively, “Sila Air Cleaning Products”). The Sila Air Cleaning Products purport to use ozone and ionization to remove pollutants and clean indoor air. They also purport to provide relief from allergies and other ailments. The Sila Air Cleaning Products are “devices,” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

6. Respondents have disseminated or have caused to be disseminated advertisements for the Sila Air Cleaning Products, including but not necessarily limited to the attached Exhibits A through J. These advertisements contain the following statements:

- A. “People are now able to breathe clean and safe indoor air with our new **Sila™ Air Purifiers/Cleaners**. This innovative line of air purifiers neutralizes unpleasant odors and airborne pollutants, and brings a breath of clean ‘mountain-fresh’ air into the home or workplace using the natural processes that Nature uses to clean outdoor air. Lentek’s ‘Zyonic Technology™’ energizes stale indoor air and cleans it with a Super-Oxidizing sanitizing process called ionization.”
(www.lentek.com/products/AirPurifiers/) (3/9/01) [Exhibit A]
- B. “Do you have allergies? Is the air in your office or home clean?”
(www.lentek.com/products/AirPurifiers/) (3/9/01) [Exhibit B]
- C. “Create ‘Mountain Fresh’ air with the use of Lentek’s Zyonic Technology™! Sila™ Air Purifiers and Deodorizers recreate the natural process that nature uses to combat air pollution by generating low levels of super oxygenated air (O₃) and ionization – at prices everyone will love!”
(www.lentek.com/products/AirPurifiers/true.asp) (6/13/01)

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[Exhibit C]

D. “*Why should you be concerned about the quality of the air you’re breathing?*”

Many people are aware of the damage that outdoor air pollution can cause to your health. What they may not know is that indoor air pollution exists, and can have a significant effect on their health also.

According to EPA studies, certain levels of air pollution indoors may be

2-5 times higher than outdoors, and on occasion more than 100 times higher.

Now consider this ... most people spend 90% of their time indoors.

All of these pollutants could be contributing to those frequent unexplained headaches or the sleepless nights. What can the Sila IO-31 do to help eliminate indoor air pollution?

By introducing negative ions, using Lentek’s ‘**Zyonic™**’ ***Air Energizing Technology***, to pollutants, such as dust, smoke, soot and pollen, the combined molecules drop to the ground, significantly reducing the number of airborne pollutants. Lentek has developed ‘Zyonic Technology™’ to help breakdown the impurities in the air. It helps to destroy pollen, flying dust, mold, mildew, fungi, bacteria and more. For allergy and hay-fever sufferers this is great news.

...

GREAT USES: ... Help remove the germs & bacteria in public places. Help remove second-hand cigarette smoke.” (Sila™ My Air™ Personal Air Source instruction guide)

[Exhibit D]

E. “Plug in your **Auto Air Purifier** to any standard cigarette lighter to produce a cleaner, healthier driving environment. As you know, airborne toxins are present everywhere, especially in the car when it [sic] is concentrated in a small area. The Auto Air Purifier uses Lentek’s exclusive **Zyonic Technology™** to neutralize pollen, dust, smog,

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exhaust, fumes and other outdoor pollutants from your car's environment.

Zyonic Technology™ electronically oxidates the air sending the odor-neutralizing technology through the air ducts to remove the pollutants from your driving environment. This will help keep you alert while driving.”

(www.lentek.com/Archive/ELetterfiles/feb01.html)

(3/09/01) [Exhibit E]

F. “Sila™ Clean Air uses Zyonic Technology™ to improve the air you breathe!

Indoor air pollution, according to the EPA, is the biggest pollution problem in the United States today. The average person spends 90% of his or her time indoors where pollutants such as bacteria and dust remain trapped. You are much more likely to get sick from the air you breathe indoors than outdoors. How can you fight indoor air pollution and improve the air you breathe? With Sila™ by Lentek.

The effective Zyonic Technology is contained in a compact, portable, and economical device. Remove Odors using Super Oxidating Sanitizer (SOS) technology [sic] actually refreshes oxygen molecules in the air. Great for kitchens, litter box area, or anywhere odor may hide. The Sila Clean Air fights these indoor pollutants: bacteria, mold, mildew, dust, pet dander, fungus, dust mites, dead skin flakes, chemical odors, pet odors, human odors and more. Ideal for people with allergies, hay fever, unexplained headaches and fatigue.” (www.lentek.com/shopping) (10/10/01) [Exhibit F]

G. “Lentek’s new My Air™ Personal Purifier with Pollution Sensor monitors and controls the air quality around you while keeping you energized and stress-free by neutralizing airborne pollutants. Lentek’s Zyonic

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Technology produces ions to clean and neutralize odors in the air you breathe. ...

Ideal for:

Allergies

Areas with stale air

Hay fever sufferers ...” (www.lentek.com/shopping)

(10/10/01) [Exhibit G]

- H. “Sila™ Fresh Air by Lentek uses Zyonic Technology™ to improve the air you breathe!

Indoor air pollution, according to the EPA, is the biggest pollution problem in the United States today. The average person spends 90% of his or her time indoors where pollutants such as bacteria and dust remain trapped. You are much more likely to get sick from the air you breathe indoors than outdoors. How can you fight indoor air pollution and improve the air you breathe? With Sila™ by Lentek.

This effective Zyonic Technology is contained in a compact portable, and economical device. The Sila Fresh Air purifies and cleans the air with trillions of negative ions.

The negative ions attach to airborne pollutants such as dust, smoke, soot and pollen, dropping them to the ground. This significantly reduces the pollutants in the air, cleaning the air you breathe. ... Ideal for people with allergies, hay fever, unexplained headaches, and fatigue.”

(www.lentek.com/shopping) (10/10/01) [Exhibit H]

- I. “My Air™ Mini Personal Air Purifier

Clean and Neutralize Your Air

Allergies getting you down?

Tired of breathing in second-hand smoke?

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Everywhere you go you are in danger of air pollution these days. But now you can take fresh air with you wherever [sic] you go. ‘**My Air**’™ **Mini Personal Air Purifier** keeps you energized and stress-free by cleaning and neutralizing airborne pollutants and odors. Lentek’s Zyonic Technology produces ions to clean and neutralize odors in the air you breathe.”

www.lentek.com/shopping/ (10/10/01) [Exhibit I]

J. “Sila – PURE, CLEAN AIR

Possible indoor pollutants:

Mildew	Mold	Aerosol sprays
Fungus	Dust	Air Fresheners
Dust Mites	Pet Dander	Cleaning Supplies
Dead Skin Flakes	Bacteria	Plastics

PLUS MANY CHEMICALS!

Pollutants	Sources	Symptoms
Benzene	Paint, new carpets, new drapes and upholstery	Headaches, eye/skin irritation, fatigue, cancer
Ammonia	Tobacco smoke, cleaning supplies	Eye/skin irritation, headaches, nosebleeds, sinus problems
Chloroform	Paint, new drapes, upholstery, new carpeting	Headaches, asthma attack, dizziness, eye/skin irritation

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Formaldehyde	Tobacco smoke, plywood, furniture, particle board, office dividers, new carpets, new drapes, wallpaper, paneling	Headaches, eye/skin irritation, drowsiness, fatigue, respiratory problems, memory loss, depression, gynecological problems, cancer
Benzopyrene	Tobacco smoke	Asthma attacks, eye/skin irritation, respiratory irritation
Hydrocarbons	Tobacco smoke, gas burners, furnaces	Headaches, fatigue, nausea, dizziness, breathing difficulty
Trichloroethylene [sic]	Paint, glues, furniture, wallpaper	Headaches, eye/skin irritation, respiratory irritation
Xylene	Paint, new drapes, new carpets, cleaning supplies	Headaches, dizziness, fatigue

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HOW DOES Sila™ HELP ELIMINATE INDOOR AIR POLLUTION?

Lentek has developed a process called ‘Zyonic™ Technology.’ This technology has two processes that occur simultaneously. The first is called ‘Super Oxidating Sanitizer’ (SOS). SOS restores freshness and neutralizes odors and pollutants by introducing super oxygenated molecules (O_3). The SOS process takes oxygen (O_2) and forces them into O_3 molecules. The third oxygen molecule then splits off and neutralizes the odor or pollutant and leaves the other two oxygen molecules behind as fresh breathable O_2 .

The second process is called Zyonic™ Air Energizing Technology. This process introduces negative ions to the pollutants, such as dust, smoke, soot and pollen. The combined molecules then drop to the ground, significantly reducing the number of airborne pollutants. For allergy and hay fever sufferers, this is ideal!”

(Sila Air Cleaning products brochure) [Exhibit J]

7. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that the Sila Air Cleaning Products eliminate, remove, clear, clean, or substantially reduce airborne pollutants, dust, smoke, soot, pollen, mold, mildew, fungi, bacteria, germs, cigarette smoke, smog, car exhaust, car fumes, pet dander, dust mites, dead skin flakes, chemical fumes, benzene, ammonia, chloroform, formaldehyde, benzopyrene, hydrocarbons, trichloroethylene, and xylene from a user’s breathing zone.

8. Through the means described in Paragraph 6, respondents have represented, expressly or by implication, that the Sila Air Cleaning Products prevent or provide relief from allergies, insomnia, hayfever, headaches and fatigue.

9. Through the means described in Paragraphs 6, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the

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representations set forth in Paragraphs 7 and 8, at the time the representations were made.

10. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraphs 7 and 8, at the time the representations were made. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

PestContro Products

11. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed pest repelling products to the public, including the PestContro Original, PestContro Deluxe, PestContro 1000, PestContro Ultrasonics 1000, PestContro Ultrasonics 2000, PestContro Closet, Select-A-Pest, MoleContro, MoleContro Deluxe, FleaContro Ultrasonic, Digital PestContro II, Ultrasonic 500, PestContro Ultrasonic Dual, PestContro Portable Ultrasonics, XContro, YardContro+, and PestContro Outdoor (collectively, "PestContro Products").

12. Respondents have disseminated or have caused to be disseminated advertisements for the PestContro Products, including but not necessarily limited to the attached Exhibits K through P. These advertisements contain the following statements:

- A. "PestContro Ultrasonic Dual - Advanced innovative indoor/outdoor tabletop design ultrasonic pest repeller technology covers up to 3000 square feet to repel pests but is completely inaudible to humans. Dual transducers provide increased ultrasonic coverage for your home, including a BOOST mode for extra pest repelling power. The adjustable frequency helps you to target your pest problem. PestContro's innovative ultrasonic technology repels pests but is inaudible to humans. Adjustable design allows you to select frequency level to target your pest problem. One

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setting has higher frequencies to affect small insect pests, while the second setting can be used for larger rodent pests. Using ‘Sweep Sound Technology’ (SST), the unit creates a fluctuating ultrasonic sound to target pests within these ranges. This creates a very uncomfortable environment for pests, driving them from their hiding places within your home. ...

Repels Unwanted Insect [sic] and Rodents, such as: Rats, Mice, Ants, Roaches, Flies, Crickets, Squirrels, Bees, Spiders, Fleas.”

(www.lentek.com/shopping/) (10/10/01) [Exhibit K]

- B. “Lentek’s Original PestContro is award-winning and our best seller. Plug into a [sic] AC outlet and our MagnetoSonic technology goes to work. This technology works within the walls and wiring of your home creating a very unfriendly place for pests. **Sweeping Sound Ultrasonic Technology** works within the living areas of the home creating a constant change in the audio frequency preventing the pest from becoming accustomed to the sounds.

Designed to repel: **ants, mice, rats, cockroaches, squirrels, bats, fleas, crickets, spiders, bees and waterbugs.**

Effective coverage 2500 sq. ft.”

(www.lentek.com/shopping/) (10/10/01) [Exhibit L]

- C. “The new PestContro Deluxe allows you to make adjustments to suit your home’s specific needs. Effectively chases away **rats, mice, squirrels, ants, fleas, roaches, waterbugs, and other household pests.** Only one unit needed per household (coverage approximately 5000 sq. ft.) ... Adjustable dual, ultrasonic frequency transducers transmit in stereo to maximize coverage area in the room that the unit is in. This technology is used to alter the normal electrical field around wiring in your home’s walls to chase pests from areas you can’t access.”

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(www.lentek.com/shopping/) (10/10/01) [Exhibit M]

- D. “FleaContro 1000 - Help control your flea problem within a single room. Using **Ultra-Sonic Technology™**, this unique pest repeller is aimed specifically at fleas. Unit blasts harsh, ultrasonic siren (inaudible to humans) which helps repel fleas and control them within the area. ... Covers up to 1000 square feet.”

(www.lentek.com/shopping/) (10/10/01) [Exhibit N]

- E. “Lentek’s new PestContro Ultrasonics 1000 is our latest ultrasonic powered pest repeller using advanced technology to miniaturize the size. ... Designed for **rats, mice, ants, flies, crickets, squirrels, bees, bats, waterbugs, spiders, and fleas**. Sound output will cover up to 1,000 square feet.”

(www.lentek.com/shopping/) (10/10/01) [Exhibit O]

- F. “Lentek Pest Repelling Products ...
PESTCONTRO’S UNIQUE SYSTEM: PestContro® utilizes Lentek’s patented **Magneto-Sonic™ Technology**. This combines Electro-Magnetic Interference and Ultrasonic Sound Waves. By plugging a Pest Contro® device into any electrical outlet, the **Electro-Magnetic Interference** ... alters the normal field around the existing wiring already within the walls. This effects [sic] the central nervous system of the pests that dwell there and drives them out. The **Ultrasonic Sound** feature ... using Lentek’s exclusive ‘Sweep Sound Technology’ (SST), blasts a constantly changing sound pattern that causes auditory stress to any pests within the living area.

There is no opportunity for these pests to get comfortable enough to nest in your home. They just don’t stand a chance against the one-two punch that only Lentek’s PestContro® can deliver!”

(Pest Repelling Products brochure, p. 1) [Exhibit P]

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G. “XContro™ – Radar Sensor System

- Keeps most insect pests, mice, cats, squirrels, skunks, raccoons and other rodents away using a slide ultrasonic switch ...”

(Pest Repelling Products Brochure, p. 4) [Exhibit P]

H. “YardContro+™ – Radar Sensor System

- Repels most animals, including deer, raccoons, skunks, squirrels, rabbits, dogs, cats, rats, using a slide ultrasonic switch ...”

(Pest Repelling Products Brochure, p. 5) [Exhibit P]

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

- A. When used indoors, PestContro Products effectively repel or eliminate rats, mice, ants, cockroaches, flies, crickets, squirrels, bees, spiders, fleas, ants, bats, waterbugs, and other pests from a user’s home;
- B. When used outdoors, PestContro Products effectively repel or eliminate insects, mice, cats, squirrels, skunks, raccoons, deer, rabbits, dogs, rats and other pests and rodents from a user’s outdoor space;
- C. One FleaContro 1000 or PestContro Ultrasonics 1000 effectively repels or eliminates pests throughout a 1000 square foot home;
- D. One PestContro Original effectively repels or eliminates pests throughout a 2500 square foot home;
- E. One PestContro Ultrasonic Dual effectively repels or eliminates pests throughout a 3000 square foot home or outdoor area; and
- F. One PestContro Deluxe effectively repels or eliminates pests throughout an approximately 5000 square foot home.

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

15. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 13, at the time the representations were made. Therefore, the representation set forth in Paragraph 14 was, and is, false or misleading.

16. Through the means described in Paragraph 12, respondents have represented, expressly or by implication, that certain of the PestContro Products, including, without limitation, PestContro Original and PestContro Deluxe, use electromagnetic technology to alter the electromagnetic field inside a home's walls and wiring in a manner that drives away insects, rodents, and other pests.

17. In truth and in fact, these Pest Contro Products do not alter the electromagnetic field inside a home's walls and wiring in a manner that drives away insects, rodents, and other pests. Therefore, the representation in Paragraph 16 was, and is, false or misleading.

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

19. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 16, at the time the representation was made. Therefore, the representation set forth in Paragraph 18 was, and is, false or misleading.

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MosquitoContro Products

20. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed mosquito repelling products to the public, including the MosquitoContro Card, MosquitoContro Portable, MosquitoContro Plus, and MosquitoContro Plug-in/Portable (collectively, “MosquitoContro Products”).

21. Respondents have disseminated or have caused to be disseminated advertisements for the MosquitoContro Products, including but not necessarily limited to the attached Exhibits P through T. These advertisements contain the following statements:

- A. “The recent detection of the lethal West Nile virus in New York City and Boston has prompted city officials to begin spraying pesticide to kill the mosquitoes. This has angered some because of the problems insecticides may impose on humans’ endocrine and immune systems. City health officials also warned that pesticides might affect asthmatics and those with allergies as well.

Consumers no longer have to risk their health and the environment with toxic chemicals. Lentek International, a leader in the chemical free pest control industry, offers a product that repels mosquitoes without the use of hazardous chemical sprays or lotions. MosquitoContro Plus™ ingeniously combines the laws of nature and technology.

Using the most advanced Ultra-Sound technology, MosquitoContro Plus™ replicates sounds known in nature to repel the female mosquitoes, the only sex that bites humans. One sound replicates the wing speed frequency of the dragonfly, the mosquito’s natural predator. The other sound replicates the wing speed frequency of the aggressive male mosquito ...”

(www.lentek.com) (3/13/01) [Exhibit Q]

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B. “Bugged by Mosquitos?”

... This year start planning ahead for mosquito season by giving the kids or the outdoor adventurer in the family the environmentally safe and wearable MosquitoContro™ Plus from Lentek International. It uses Ultra Sound Technology to repel the biting female mosquito and best of all, you can wear it like a watch or attach it to a belt or pocket for easy pest repelling. Combining the laws of nature and technology, the MosquitoContro™ Plus replicates both the wing-beat frequency of the Dragonfly, the mosquito’s most feared predator, and the wing-speed sound of the aggressive male mosquito, which the blood-thirsty female mosquito instinctively steers clear of after mating.”
(www.lentek.com) (10/11/01) [Exhibit R]

C. “News and Events

Pesticide Exposure Linked to Parkinson’s Disease
Date: 11/14/00 - (Orlando, FL) - A recent study published in Nature Neuroscience indicates that exposure to a widely used gardening pesticide may cause the debilitating physical symptoms of Parkinson’s, as well as killing brain cells. ... Lentek International, a leader in the chemical free pest control industry, offers products that repel various household and garden pests without the use of hazardous pesticides. By not using pesticides, there is a lessened chance of ingesting any chemicals that could lead to Parkinson’s or another deadly disease.”
(www.lentek.com) (3/03/01) [Exhibit S]

D. “MosquitoContro™ emits a frequency that matches the wing speed (noise) of a male mosquito. Female mosquitoes instinctively steer clear of male mosquitoes, and since female mosquitoes are the only ones that bite humans, by replicating this sound the female mosquito is repelled from biting within the area.”
(Lentek products brochure, p. 8) [Exhibit P]

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E. “Lentek -- A World Leader in Electronic Pest Control Technology™

MosquitoContro™

Repels mosquitoes from your personal space.”

...

“MosquitoContro+ is an environmentally friendly, electronic repeller that replicates the wing-beat frequency of the dragonfly, the foremost predator of the mosquitoes that bite. Taking advantage of the mosquitoes [sic] natural avoidance of the dragonfly, the MosquitoContro+ keeps them at a distance without odors, oils, creams or chemicals. In addition, in order to provide protection for various mosquito species (over 2,000), MosquitoContro+ is the first electronic repellent that also mimics the wing beat frequency of a male mosquito. Female mosquitoes are the only ones that bite humans and animals, by replicating this sound the MosquitoContro+ helps to repel the female mosquitoes within the area. The combination of both dragonfly and male mosquito frequencies makes ***MosquitoContro+ the most effective electronic repellent available.***”

(MosquitoContro+ product packaging) [Exhibit T]

22. Through the means described in Paragraph 21, respondents have represented, expressly or by implication, that the MosquitoContro Products effectively repel mosquitoes from a user’s body.

23. In truth and in fact, the MosquitoContro Products do not effectively repel mosquitoes from a user’s body. Therefore, the representation set forth in Paragraph 22 was, and is, false or misleading.

24. Through the means described in Paragraph 21, respondents have represented, expressly or by implication, that the MosquitoContro Products are an effective alternative to the use of

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chemical pesticides or other products formulated to kill or repel mosquitoes in the prevention of the West Nile Virus.

25. In truth and in fact, the MosquitoContro Products are not an effective alternative to the use of chemical pesticides or other products formulated to kill or repel mosquitoes in the prevention of the West Nile Virus. Therefore, the representation set forth in Paragraph 24 was, and is, false or misleading.

26. Through the means described in Paragraph 21, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraphs 22 and 24, at the time the representations were made.

27. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraphs 22 and 24, at the time the representations were made. Therefore, the representation set forth in Paragraph 26 was, and is, false or misleading.

28. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

NOTICE

Proceedings on the charges asserted against you in this complaint will be held before an Administrative Law Judge (ALJ) of the Federal Trade Commission, under Part 3 of the Commission's Rules of Practice, 16 C.F.R. Part 3. A copy of Part 3 of the Rules is enclosed with this complaint.

You may file an answer to this complaint. Any such answer must be filed within 20 days after service of the complaint on you. If you contest the complaint's allegations of fact, your answer

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must concisely state the facts constituting each ground of defense, and must specifically admit, deny, explain, or disclaim knowledge of each fact alleged in the complaint. You will be deemed to have admitted any allegations of the complaint that you do not so answer.

If you elect not to contest the allegations of fact set forth in the complaint, your answer shall state that you admit all of the material allegations to be true. Such an answer will 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 ALJ will file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. Such an answer 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.

If you do not answer within the specified time, you waive your right to appear and contest the allegations of the complaint. The ALJ is then authorized, without further notice to you, to find that the facts are as alleged in the complaint and to enter an initial decision and a cease and desist order.

The ALJ will schedule an initial prehearing scheduling conference to be held not later than 14 days after the last answer is filed by any party named as a respondent in the complaint. Unless otherwise directed by the ALJ, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

A hearing on the complaint will begin on December 2, 2002, at 10:00 A.M. in Room 532, or such other date as determined by the

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ALJ. At the hearing, you will have the right to contest the allegations of the complaint and to show cause why a cease and desist order should not be entered against you.

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 the record facts developed in any adjudicative proceedings in this matter that the proposed order provisions as to Lentek International, Inc., and Joseph Durek and Lou Lentine, individually and as officers of Lentek International, Inc., 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:

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons

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

2. Pest-control product” shall mean any PestContro, YardContro, MoleContro, FleaContro, or MosquitoContro product, or any other product designed, advertised, or intended to repel, control, or eliminate any animal pest, including but not limited to, rodents and insects.

3. “Air cleaning product” shall mean any Sila Air Cleaning product or any other product designed, advertised, or intended to remove, treat, or reduce the level of any pollutant(s) in the air.

4. “Indoor air pollutant(s)” or “pollutant(s)” shall mean one or more of the following: dust, smoke, soot, pollen, mold, mildew, fungi, bacteria, germs, cigarette smoke, smog, car exhaust, car fumes, pet dander, dust mites, dead skin flakes, chemical fumes, benzene, ammonia, chloroform, formaldehyde, benzopyrene, hydrocarbons, trichloroethylene, and xylene, or any other gaseous, microbial, or particulate matter found in indoor or vehicular air.

5. Unless otherwise specified, “respondents” shall mean Lentek International, Inc., a corporation, its successors and assigns and its officers; Joseph Durek and Lou Lentine, individually and as officers of the corporation; and each of the above’s agents, representatives, and employees.

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

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any air cleaning product, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that:

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- A. such product will eliminate, remove, clear, clean, neutralize, sanitize, oxidize, control or reduce any indoor air pollutant in a user's environment; or
- B. use of such product prevents, reduces the incidence of, or provides relief from any medical or health-related condition,

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

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any pest-control product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such pest-control product will:

- A. repel, control, or eliminate, temporarily or indefinitely, any rodent, insect, or other animal pests; or
- B. repel, control, or eliminate any rodent, insect, or other animal pest in a desired area or an area of a certain size,

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

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the PestContro Original, PestContro Deluxe, or any substantially similar product,

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in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that such product will alter the electromagnetic field inside the walls or wiring of a home in a manner that drives away insects, rodents, and other animal pests. For purposes of this Part, “substantially similar product” shall mean any pest-control product that uses or purports to use electromagnetic technology.

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the MosquitoContro products, or any substantially similar product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that:

- A. such product repels mosquitoes from a user’s body; or
- B. such product is an effective alternative to the use of chemical pesticides or other products formulated to kill or repel mosquitoes.

For purposes of this Part, “substantially similar product” shall mean any product that uses or purports to use ultrasonic technology to repel mosquitoes from the user’s body.

V.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, or efficacy of such product, unless, at the time the representation is made, respondents possess and rely upon

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competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

VI.

IT IS FURTHER ORDERED that respondent Lentek International, Inc., and its successors and assigns, and respondents Joseph Durek and Lou Lentine shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VII.

IT IS FURTHER ORDERED that respondent Lentek International, Inc., and its successors and assigns, and respondents Joseph Durek and Lou Lentine shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future

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personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall retain the signed, dated statements acknowledging receipt of the order for a period of five (5) years and upon request make them available to the Federal Trade Commission for inspection and copying.

VIII.

IT IS FURTHER ORDERED that respondent Lentek International, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondents Joseph Durek and Lou Lentine, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of their current business or employment, or of their 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

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Associate Director, Division of Enforcement, Bureau of
Consumer Protection, Federal Trade Commission, Washington,
D.C. 20580.

X.

IT IS FURTHER ORDERED that respondent Lentek International, Inc., and its successors and assigns, and respondents Joseph Durek and Lou Lentine shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XI.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

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 Part as though the complaint had never been filed, except that the order

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will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

THEREFORE, the Federal Trade Commission this twenty-seventh day of August, 2002, has issued this complaint against respondents.

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DECISION AND ORDER

The Commission having heretofore issued its Complaint charging the Respondents named in the caption hereof with violation of Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52, as amended, and Respondents having been served with a copy of that Complaint, together with a notice of contemplated relief; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order, an admission by 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 that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The 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. Respondent Lentek International, Inc., is a Florida corporation with its principal office or place of business at 1629 Prime Court, Suite 800, Orlando, Florida 32859.

2. Respondent Joseph Durek was the Chairman and Chief Executive Officer of the corporate respondent while the respondents engaged in the practices alleged in the complaint issued by the Federal Trade Commission. He exercised

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managerial responsibilities with respect to administrative and accounting functions; international operations; press releases and media relations; evaluation and testing of Lentek products; and labeling, packaging, and advertising of Lentek products. He resides at 5404 Monterrey Club Court, Windermere, FL 34786.

3. Respondent Lou Lentine is President of the corporate respondent. He has exercised managerial responsibilities with respect to domestic sales and operations; the manufacturing, purchasing and development of Lentek products; and the advertising of Lentek products. His principal office or place of business is the same as that of Lentek International, Inc.

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

ORDER

DEFINITIONS

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

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. "Pest control product" shall mean any PestContro, YardContro, MoleContro, FleaContro, or MosquitoContro product, or any other product utilizing sonic, ultrasonic, and/or electromagnetic technology, which is designed, advertised, or intended to repel, control, or eliminate any animal pest, including but not limited to, rodents and insects.

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3. “Air cleaning product” shall mean any Sila Air Cleaning product or any other product designed, advertised, or intended to remove, treat, or reduce the level of any pollutant(s) in the air.
4. “Indoor air pollutant(s)” or “pollutant(s)” shall mean one or more of the following: dust, smoke, soot, pollen, mold, mildew, fungi, bacteria, germs, cigarette smoke, smog, car exhaust, car fumes, pet dander, dust mites, dead skin flakes, chemical fumes, benzene, ammonia, chloroform, formaldehyde, benzopyrene, hydrocarbons, trichloroethylene, and xylene, or any other gaseous, microbial, or particulate matter found in indoor or vehicular air.
5. Unless otherwise specified, “respondents” shall mean Lentek International, Inc., a corporation, its successors and assigns and its officers; Joseph Durek, individually; Lou Lentine, individually and as an officer of the corporation; and each of the above’s agents, representatives, and employees.
6. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any air cleaning product, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that:

- A. such product will eliminate, remove, clear, clean, neutralize, sanitize, oxidize, control or reduce any indoor air pollutant in a user’s environment; or
- B. use of such product prevents, reduces the incidence of, or provides relief from any medical or health-related condition,

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

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any pest control product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such pest control product will:

- A. repel, control, or eliminate, temporarily or indefinitely, any rodent, insect, or other animal pests; or
- B. repel, control, or eliminate, any rodent, insect, or other animal pest in a desired area or an area of a certain size,

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

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the PestContro Original, PestContro Deluxe, or any substantially similar product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product will alter the electromagnetic field inside the walls or wiring of a home in a manner that drives away insects, rodents, and other animal pests, unless the representation is true and, at the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For

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purposes of this Part, “substantially similar product” shall mean any pest control product that uses or purports to use electromagnetic technology.

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the MosquitoContro products, or any substantially similar product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. such product repels mosquitoes from a user’s body; or
- B. such product is an effective alternative to the use of chemical pesticides or other products formulated to kill or repel mosquitoes,

unless the representation is true and, at the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Part, “substantially similar product” shall mean any product that uses or purports to use sonic or ultrasonic technology to repel mosquitoes from the user’s body.

V.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, or efficacy of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be

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competent and reliable scientific evidence, that substantiates the representation.

VI.

IT IS FURTHER ORDERED that respondent Lentek International, Inc., and its successors and assigns, and respondents Joseph Durek and Lou Lentine shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VII.

IT IS FURTHER ORDERED that respondent Lentek International, Inc., and its successors and assigns, and respondents Joseph Durek and Lou Lentine shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver, by certified mail return receipt requested, a copy of this order to all current and future agents and representatives having responsibilities with respect to the subject matter of this order, and

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shall maintain a record of all such agents and representatives to whom the order was delivered. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall retain the signed, dated statements acknowledging receipt of the order, and the records, including return receipts, showing the agents and representatives to whom the order was delivered by mail, for a period of five (5) years and upon request make these documents available to the Federal Trade Commission for inspection and copying.

VIII.

IT IS FURTHER ORDERED that respondent Lentek International, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondents Joseph Durek and Lou Lentine, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the

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discontinuance of their current business or employment, or of their affiliation with any new business or employment involving the sale of consumer products or services. 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, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

X.

IT IS FURTHER ORDERED that respondent Lentek International, Inc., and its successors and assigns, and respondents Joseph Durek and Lou Lentine shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XI.

This order will terminate on March 14, 2023, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

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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 Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order by respondents Lentek International, Inc., Joseph Durek, individually, and Lou Lentine, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for thirty (30) days for reception 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 and take other appropriate action or make final the agreement's proposed order.

This matter concerns practices related to the advertising, offering for sale, sale, and distribution of various air cleaning products and ultrasonic/electromagnetic pest control devices. The Commission's complaint charged that respondents violated the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, by making numerous representations that were false and/or for which they lacked a reasonable basis of substantiation. These representations concerned the following: the ability of Lentek's Sila Air Cleaning Products to eliminate various pollutants from indoor air; the health benefits of using the Sila Air Cleaning Products; the ability of Lentek's PestContro products to repel or eliminate various animal or insect pests from a user's home or outdoor space; the ability of various PestContro products to eliminate animal or insect pests within a space of a given size; the ability of the electromagnetic devices to drive away pests by altering the electromagnetic field inside the walls and wiring of a home; the ability of Lentek's MosquitoContro Products to repel mosquitoes from a user's body; and that the MosquitoContro Products are an effective alternative to the use of chemical pesticides or other products formulated to kill or repel mosquitoes in the prevention of West Nile Virus.

Analysis

Part I of the proposed order prohibits any representation that any air cleaning product will eliminate, remove, clear, clean, neutralize, sanitize, oxidize, control, or reduce any indoor air pollutant, or that use of such product will prevent, reduce the incidence of, or provide relief from any medical or health-related condition, unless respondents possess competent and reliable scientific evidence that substantiates the representation.

Part II of the proposed order prohibits any representation that PestContro products (or similar pest control products utilizing sonic, ultrasonic, and/or electromagnetic technology) will repel, control, or eliminate, temporarily or indefinitely, any rodent, insect, or other animal pest, or that they will do so in an area of a certain size, unless respondents possess competent and reliable scientific evidence that substantiates the representation.

Part III of the proposed order prohibits any representation that PestContro products, or substantially similar products, will alter the electromagnetic field inside the walls or wiring of a home in a manner that drives away insects, rodents, and other animal pests, unless the representation is true and respondents possess competent and reliable scientific evidence that substantiates the representation.

Part IV of the proposed order prohibits any representation that MosquitoContro products, or substantially similar products, will repel mosquitoes from a user's body, or that such products are an effective alternative to the use of chemical pesticides or other products formulated to kill or repel mosquitoes, unless the representation is true and respondents possess competent and reliable scientific evidence that substantiates the representation.

Part V of the proposed order prohibits unsubstantiated representations about the benefits, performance, or efficacy of any product.

Part VI of the proposed order is a record keeping provision that requires the respondents to maintain certain records for five (5)

Analysis

years after the last date of dissemination of any representation covered by the order. These records include: (1) all advertisements and promotional materials containing the representation; (2) all materials relied upon in disseminating the representation; and (3) all evidence in respondents' possession or control that contradicts, qualifies, or calls into question the representation or the basis for it.

Part VII of the proposed order requires distribution of the order to current and future principals, officers, directors, and managers, and to current and future employees, agents, and representatives having responsibilities with respect to the subject matter of the order.

Part VIII of the proposed order requires that the Commission be notified of any change in the corporation that might affect compliance obligations under the order. Part IX of the proposed order requires that for a period of ten (10) years, each individual respondent notify the Commission of the discontinuance of his current business or employment or of his affiliation with any new business or employment involving the sale of consumer products or services.

Part X of the proposed order requires the respondents to file a compliance report with the Commission.

Part XI of the proposed order states that, absent certain circumstance, the order will terminate twenty (20) years from the date it is issued.

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

Complaint

IN THE MATTER OF

QUEST DIAGNOSTICS INCORPORATED, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT*Docket C-4074; File No. 0210140
Complaint, February 21, 2003--Decision, April 3, 2003*

This consent order addresses the acquisition by Respondent Quest Diagnostics Incorporated – the largest supplier of clinical laboratory testing services in the United States,, headquartered in Teterboro, New Jersey – of Respondent Unilab Corporation, the largest supplier of clinical laboratory testing services in California, and headquartered in Tarzana, California. The order, among other things, requires the respondents to divest assets used to provide clinical laboratory testing services to physician groups in Northern California – including in particular 46 patient service centers; five stat laboratories; one Unilab and all Quest capitated contracts with physician groups; and all related assets necessary for the provision of laboratory services to physician groups, including customer lists and information – to Laboratory Corporation of America, or a more extensive package of assets to another acquirer approved by the Commission. The order also requires Respondent Quest to maintain the viability, marketability, and competitiveness of its laboratory services business assets in Northern California pending transfer of the divested assets, and to provide transitional services that the acquirer of the divested assets may need until the assets are completely divested and transferred. In addition, the order prohibits Respondent Quest, for one year, from soliciting any employees of Quest or Unilab that accept offers of employment from the acquirer of the divested assets.

Participants

For the Commission: *Jaqueline Mendel, Jill Frumin, Norris Washington, James Southworth, Goldie Veronica Walker, Shai Littlejohn, Valicia Spriggs-Hutchinson, Elizabeth Vail, Michael G. Cowie, Naomi Licker, Elizabeth A. Piotrowski, Robert Kneuper, Laura Bivins, Leslie Farber and Mary T. Coleman.*

For the Respondents: *Richard Parker, Michael Antalics, and Gregg Vicinanza, O'Melveny & Myers LLP.*