

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.

#### Attachment A

[To Be Printed on company letterhead]

[Date]

Dear [distributor]: Alpine Industries, Inc. and Living Air Corp. recently settled a civil dispute with the Federal Trade Commission ("FTC") regarding certain claims for our product, the Living Air Model XL15 ozone generator. As a part of the settlement, we are required to make sure that our distributors and wholesalers stop using or distributing advertisements or promotional materials containing those claims.

We have entered into this agreement to resolve a dispute with the FTC on certain claims it contends are not substantiated. The agreement entered into is not an admission that we have violated the law. However, as part of the agreement, we will not be making certain claims unless they are supported by competent and reliable scientific evidence.

Your assistance will be greatly appreciated in fulfilling the terms of the agreement. We have agreed not to make the following claims unless we have competent and reliable scientific evidence: (1) That the product eliminates or clears indoor air pollutants; (2) that the product creates no harmful by-products; (3) that the product provides relief from specific medical or health-related conditions; and (4) that the use of ozone is more effective in cleaning or purifying indoor air than other air cleaning products such as filters.

We ask each of our dealers, distributors, and sales managers to cooperate with us to ensure that no current advertising or promotional material makes these claims. Again, your assistance in this regard will be greatly appreciated.

Sincerely,

William J. Converse,

*President, Alpine Industries, Inc., and Living Air Corp.*

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

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Alpine Industries, Inc. and Living Air Corp., Tennessee corporations, and William J. Converse, individually and as an officer of the corporations.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) 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 the advertising of ozone generators, including the "Living Air Model XL15," as air cleaning products for use in homes, offices, and other commercial establishments. The Commission's complaint charges that respondents' advertising contained unsubstantiated representations concerning the efficacy of their ozone generator in cleaning the air.

Specifically, the complaint alleges that the respondents lacked substantiation for their claims that: (1) When used as directed, the Living Air Model XL15 eliminates, removes, clears, or cleans formaldehyde, sulfur dioxide, ammonia, trichlorethylene, benzene, chloroform, carbon tetrachloride, odors, nitrogen dioxide, mold, mildew, bacteria, dust, cigarette smoke, pollen, and hydrocarbons from a user's environment; (2) the use of ozone is more effective in cleaning or purifying indoor air than air cleaning products that use filters; (3) the Living Air Model XL15 does not create harmful by-products; and (4) when used as directed, the Living Air Model XL15 prevents or provides relief from colds, flu, allergies, asthma, sinus headaches, and ear, eye, nose and throat infections.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondents from representing any air cleaning product's ability to eliminate, remove, clear, or clean any indoor air pollutant or any quantity of indoor air pollutants from a user's environment, unless respondents possess competent and reliable scientific evidence that substantiates the representation.

Similarly, Part II of the proposed order prohibits respondents from claiming that (1) the use of ozone is more effective in cleaning or purifying indoor air than other air cleaning methods, (2) any air cleaning product does not create harmful by-products, or (3) when used as directed, any air cleaning product prevents or provides relief from any medical or health-related condition, unless respondents possess competent and reliable scientific evidence that substantiates the representation.

As fencing-in relief, Part III of the proposed order provides that if respondents represent the efficacy, performance, or health-related benefit of any air cleaning product, respondents must possess competent and reliable

evidence that substantiates the representation.

The proposed order also requires respondents to maintain materials relied upon to substantiate claims covered by the order; to notify the Commission of certain changes in the business or employment of the named individual respondent; to provide a copy of the consent agreement to their employees involved in the preparation and placement of respondents' advertisements, or in communication with respondents' customer or prospective customers; to distribute a copy of the order or Attachment A of the consent agreement to their present distributors or retailers of their ozone generators; and to file one or more reports detailing compliance with the order.

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

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95-16444 Filed 7-3-95; 8:45 am]

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[File No. 932-3077]

#### Body Wise International, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Carlsbad, California based company from making false claims that a food, drug, or nutritional supplement helps users achieve or maintain weight loss without diet or exercise, and would bar unsubstantiated weight-loss, weight-loss maintenance, cholesterol-reduction, or other health benefits claims for such products. In addition, it would prohibit the deceptive use of consumer testimonials or professional endorsements, and would require clear disclosures of any financial connection between endorsers and the respondent or its products.

**DATES:** Comments must be received on or before September 5, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary,

Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey A. Klurfeld or David Newman, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, California 94103. (415) 744-7920.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order to Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Body Wise International, Inc. ("Body Wise"), a corporation, and it now appearing that Body Wise, sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Body Wise, by its duly authorized officers and its attorneys, and counsel for the Federal Trade Commission that;

1. Proposed respondent Body Wise is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business at 6350 Palomar Oaks Court, Suite A Carlsbad, California 92009.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

- (a) Any further procedural steps;
- (b) The requirement that the

Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is

accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) day, and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement containing the agreed-to order shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it may be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each

violation of the order after it becomes final.

**Order**

*Definitions*

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

A. "Distributor" means any person, other than direct employees of Body Wise, who has sold nutritional supplements on behalf of Body Wise or who has received any compensation in connection with the sale of nutritional supplements on behalf of Body Wise, whether such person is characterized as a consultant, associate, distributor or otherwise.

B. "Competent and reliable scientific evidence" means 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.

**I**

It is ordered that Body Wise International, Inc., a corporation, its successors and assigns, and its officers, directors, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of nutritional supplements, food or drugs, as "food" and "drug" are defined in sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting or assisting others in misrepresenting, in any manner, directly or by implication, that the nutritional supplement, food or drug:

a. Can cause, aid, facilitate or contribute to achieving or maintaining weight loss without a reduction in total caloric intake or an increase in exercise; or

b. Contains any ingredient that, individually or in connection with other ingredients, can cause, aid, facilitate or contribute to achieving or maintaining weight loss without a reduction in total caloric intake or an increase in exercise.

**II**

It is further ordered that Body Wise International, Inc., a corporation, its successors and assigns, and its officers, directors, representatives, agents, and employees, directly or through any

corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of nutritional supplements, food or drugs, as "food" and "drug" are defined in sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing or assisting others in representing, in any manner, directly or by implication, that the nutritional supplement, food or drug:

- a. Can cause, aid, facilitate or contribute to achieving or maintaining weight loss;
- b. Contains any ingredient that, individually or in connection with other ingredients, can cause, aid, facilitate or contribute to achieving or maintaining weight loss;
- c. Reduces, can reduce or helps reduce serum cholesterol levels;
- d. Contains any ingredient that, individually or in connection with other ingredients, reduces, can reduce or helps reduce serum cholesterol levels; or
- e. Provides, can provide, or helps provide any other health benefit; unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

### III

It is further ordered that Body Wise International, Inc., a corporation, its successors and assigns, and its officers, directors, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of nutritional supplements, food or drugs, as "food" and "drug" are defined in sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

### IV

It is further ordered that Body Wise International, Inc., a corporation, its successors and assigns, and its officers, directors, representatives, agents, and employees, directly or through any corporation, subsidiary, division or

other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of nutritional supplements, food or drugs, as "food" and "drug" are defined in sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing or assisting others in representing, in any manner, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of such nutritional supplement, food or drug represents the typical or ordinary experience of members of the public who use the nutritional supplement, food or drug, unless such representation is true and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates such representation.

Provided, however, respondent may use such endorsements if the statements or depictions that comprise the endorsements are true and accurate, and if respondent discloses clearly, prominently, and in close proximity to the endorsement:

- a. What the generally expected performance would be in the depicted circumstances; or
- b. The limited applicability of the endorser's experience to what consumers may generally expect to achieve; *i.e.*, that consumers should not expect to experience similar results.

It is further ordered that Body Wise International, Inc., a corporation, its successors and assigns, and its officers, directors, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of nutritional supplements, food or drugs, as "food" and "drug" are defined in sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose, clearly and prominently, a material connection, when one exists, between a person providing an endorsement for any such product, as "endorsement" is defined in 16 CFR 255.0(b), and respondent or any other individual or entity manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing such product. For purposes of this Order, "material connection" shall

mean any relationship that might materially affect the weight or credibility of the endorsement and would not reasonably be expected by consumers.

### VI

It is further ordered that Body Wise International, Inc., a corporation, its successors and assigns, and its officers, directors, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of nutritional supplements, food or drugs, as "food" and "drug" are defined in sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from disseminating or assisting others in disseminating any advertisement which contains any reference to physicians or other health care professionals unless respondent discloses clearly and conspicuously that physicians and other health care professionals who endorse Body Wise products may be Body Wise distributors and have a financial interest in promoting the sale of Body Wise products.

### VII

Nothing in this Order shall prohibit respondent from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

### VIII

Nothing in this Order shall prohibit respondent from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

### IX

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

## X

It is further ordered that for three (3) years following the dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, copies of:

A. All materials that were relied upon in disseminating such advertisement; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, including complaints from consumers.

## XI

It is further ordered that respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, and employees engaged in the preparation or placement of advertisements or other materials covered by this Order.

## XII

It is further ordered that respondent shall distribute a copy of this Order to each of its current distributors; *provided* that respondent may satisfy the requirements of this section with respect to current distributors by publishing the full text of this Order clearly and prominently in any periodical which is published by respondent and which is distributed to all of its distributors.

## XIII

It is further ordered that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

### 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 from Body Wise International, Inc. ("Body Wise" or "respondent"). The agreement would settle a proposed complaint by the Federal Trade Commission that respondent has engaged in unfair or deceptive acts or practices in violation of section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received

during this period will become part of the public record. After sixty (60) 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.

### The Proposed Complaint

The administrative complaint which the Commission proposed to issue would charge that respondent markets a number of nutritional supplements, for which it makes deceptive representations concerning their efficacy in promoting weight loss and weight management and in the reduction of serum cholesterol levels. The complaint also charges Body Wise with using testimonials from physicians and consumers, when the experiences described in the testimonials are not typical of the likely experiences of Body Wise customers, and without disclosing that the endorsers have a financial interest in promoting the sale of Body Wise products. Finally, the complaint alleges that Body Wise has encouraged the use of physicians and other health professionals as references without disclosing to consumers that they have a direct financial interest in promoting the sale of Body Wise products.

The definition section of the proposed order defines certain terms used throughout the order.

Section I of the proposed order bars Body Wise from making claims that its nutritional supplements can cause or contribute to achieving or maintaining weight loss without a reduction in caloric intake or an increase in exercise and or that its supplements contain any ingredients that have that effect. Section II of the order bars unsubstantiated weight loss, weight management and cholesterol reduction claims. It also contains fencing-in relief that applies the same substantiation standard to any claims regarding the health benefits of its nutritional supplements. Section III bars Body Wise from misrepresenting tests or studies. Section IV bars Body Wise from using testimonials to represent the typical experience of Body Wise's customers unless it can substantiate that such claims are in fact typical or it clearly discloses that the endorser's experience is not typical. Section V requires the affirmative disclosure of any material connection between Body Wise and any endorser.

Section VI requires Body Wise, in any advertisement that contains any reference to physicians or other health professionals, to disclose that health care professionals who endorse Body Wise products or act as references may be distributors and have a financial

interest in promoting the sale of Body Wise products. This section addresses Body Wise's use of physicians as references to support the sales activities of other Body Wise distributors.

Sections VII and VIII harmonize the requirements of the order with the requirements of the Nutrition Labeling and Education Act of 1990 and with Food and Drug Administration procedures. The remaining sections are standard reporting, record-keeping and notice provisions.

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.

**Donald S. Clark,**

*Secretary.*

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[Dkt. C-3578]

### Felson Builders, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, three California firms and an officer to comply with the full disclosure requirements of the Truth in Lending Act and Regulation Z, its implementing regulation, in advertising credit terms, and requires the respondents to make full written disclosure of the true costs and terms of the financing prior to consummation of credit agreements.

**DATES:** Complaint and Order issued May 15, 1995.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744-7920.

**SUPPLEMENTARY INFORMATION:** On Tuesday, February 28, 1995, there was published in the **Federal Register**, 60 FR 10861, a proposed consent agreement with analysis in the Matter of Felson Builders, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.