

North Pearl Street, Dallas, Texas 75201-2272:

1. *Ronald Franklin Yates, Sr.*, Marble Falls, Texas; to acquire an additional 3.34 percent, for a total of 13.31 percent, of the voting shares of Marble Falls National Bancshares, Inc., Marble Falls, Texas, and thereby indirectly acquire Marble Falls National Bank, Marble Falls, Texas.

Board of Governors of the Federal Reserve System, June 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-16384 Filed 7-3-95; 8:45 am]

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FEDERAL TRADE COMMISSION

[File No. 932-3112]

Alpine Industries, Inc., et al.; 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, two Minnesota-based sister companies and their principal officers from making unsubstantiated claims about the ability of any air cleaning product to eliminate, remove, clear or clean any indoor air pollutant—or any quantity of indoor air pollutants—from a user's environment.

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, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, Kerry O'Brien, and Linda Badger, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 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 Alpine Industries, Inc. and Living Air Corp., corporations, and William J. Converse individually and as an officer of Alpine Industries, Inc. and Living Air Corp. ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between proposed respondents, by their duly authorized officers, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Alpine Industries, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 9199 Central Avenue, NE., in the City of Blaine, State of Minnesota.

Proposed respondent Living Air Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 11673 Tulip Street, in the City of Coon Rapids, State of Minnesota.

Proposed respondent William J. Converse is an officer of Alpine Industries, Inc. and Living Air Corp. He formulates, directs, and controls the policies, acts and practices of Alpine Industries, Inc. and Living Air Corp. and his address is the same as that of Living Air Corp.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

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) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, 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 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 respondents, (a) 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 (b) 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 respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they 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 respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

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

A. The term "air cleaning product" shall mean any products, equipment, or appliance designed or advertised to remove, treat, or reduce the level of any pollutant(s) in the air.

B. The terms "indoor air pollutant(s)" or "pollutant(s)" shall mean one or more of the following: Formaldehyde, sulfur dioxide, ammonia, trichlorethylene, benzene, chloroform, carbon tetrachloride, odors, nitrogen dioxide, mold, mildew, bacteria, dust, cigarette smoke, pollen, and hydrocarbons, or any other gaseous or particulate matter found in indoor air.

C. The term "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondents Alpine Industries, Inc. and Living Air Corp., corporations, their successors and assigns, and their officers; William J. Converse, individually and as an officer of Alpine Industries, Inc. and Living Air Corp.; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, or distribution of any air cleaning product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication,

A. Such product's ability to eliminate, remove, clear, or clean any indoor air pollutant from a user's environment; or

B. Such product's ability to eliminate, remove, clear, or clean any quantity of indoor air pollutants from a user's environment;

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 Alpine Industries, Inc. and Living Air Corp., corporations, their successors and assigns, and their officers; William J. Converse, individually and as an officer of Alpine Industries, Inc. and Living Air Corp.; and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection

with the manufacturing, labelling, advertising, promotion, offering for sale, or distribution of any air cleaning product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. The use of ozone is more effective in cleaning or purifying indoor air than other air cleaning methods;

B. The product does not create harmful by-products; or

C. When used as directed, the product prevents 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.

III

It is further ordered that respondents Alpine Industries, Inc. and Living Air Corp., corporations, their successors and assigns, and their officers; William J. Converse, individually and as an officer of Alpine Industries, Inc. and Living Air Corp.; and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, or distribution of any air cleaning product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the efficacy, performance, or health-related benefit of any such product, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

IV

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

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

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied

upon for such representation, including complaints from consumers.

V

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

VI

It is further ordered that the individual respondent shall, for a period of five (5) years after the date of service of this Order upon him, promptly notify the Commission, in writing, of his discontinuance of his present business or employment and of his affiliation with a new business or employment. For each such new affiliation, the notice shall include the name and address of the new business or employment, a statement of the nature of the new business or employment, and a description of respondent's duties and responsibilities in connection with the new business or employment.

VII

It is further ordered that the corporate respondents shall, within ten (10) days from the date of service of this Order upon them, distribute a copy of this Order to each of their officers, agents, representatives, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, or who is in communication with customers or prospective customers, or who has any responsibilities with respect to the subject matter of this Order; and for a period of three (3) years, from the date of issuance of this Order, distribute a copy of this Order to all of respondents' future such officers, agents, representatives, independent contractors, and employees.

VIII

It is further ordered that the corporate respondents shall, within ten (10) days from the date of service of this Order upon them, deliver by first class mail or in person a copy of this Order or Attachment A to each of their present distributors or retailers of their ozone generators.

It is further ordered that respondents shall, within sixty (60) days from the date of service of this order upon them, 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 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.

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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,