

May 5, 2010

**VIA FEDERAL EXPRESS**

Mr. Russell McCubbin  
President  
International Ozone Technologies Group, Inc.  
860-6 North 8th Street  
Lantana, FL 33462

Re: False Advertising in Violation of the Federal Lanham Act

Dear Mr. McCubbin:

We represent HGI Industries, Inc. ("HGI"). This letter deals with International Ozone Technologies Group, Inc.'s ("International") violation of Section 45(a) of the federal Lanham Act, 15 U.S.C. §1145(a). We are writing to you directly because we are not aware of the identity of the lawyer or law firm that represents International in trade regulation matters. Please review this letter with the appropriate International legal counsel, and ask him or her to contact me soon as possible.

**According To Available Ozone Testing Technologies, HGI's Hydroxyl Generators Do Not Emit Ozone**

HGI manufactures hydroxyl generation equipment used to remove atmospheric pollutants in residential, commercial, industrial, and agricultural structures. HGI markets its Hydroxyl Generators under the brand name "Odorox." International competes with HGI, and markets International's products under the brand name "Titan." According to International's website, International markets equipment for atmospheric pollutant removal that uses both ozone and hydroxyl generation technology. On the other hand, HGI only manufactures equipment that relies on hydroxyl generation technology.

As you know, **ozone can be highly toxic to humans and animals.** Therefore, ozone generation pollutant removal equipment cannot safely be used in inhabited structures. On the other hand, atmospheric hydroxyls are not toxic, and hydroxyl generation pollutant removal equipment is safe for use in inhabited structures.

When HGI's hydroxyl generation machines are used properly, the machines do not emit unsafe levels of oxidants into the treated area. HGI has conducted numerous

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FORT LAUDERDALE MIAMI TAMPA WEST PALM BEACH BOCA RATON CORAL GABLES

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engineering and scientific tests on the equipment it manufacturers to assure that this is the case. In addition to in-house testing, HGI has contracted with independent testing laboratories whose tests support HGI's own test results. Furthermore, the HGI equipment meets or exceeds all applicable standards of Underwriters Laboratory (UL) and the Canadian Standards Association (CSA).

As you undoubtedly also know, it is not possible given current oxidant sensor technology to distinguish between the emission of harmful ozone and non-toxic atmospheric hydroxyls. HGI has been advised by the manufacturer of the most precise oxidant sensor that it is not possible with current testing technology to measure ozone in the presence of hydroxyls because the hydroxyl radical produces a response from the sensor that is similar to ozone.

**Your "Buyer Beware—The Hydroxyl Generator Dilemma" Article Is False and Misleading.**

Notwithstanding the overwhelming and uncontradicted scientific evidence establishing the safety of HGI's Odorox Hydroxyl Generators when used in enclosed and inhabited spaces, you recently disseminated an article entitled "Buyer Beware—The Hydroxyl Generator Dilemma" (the "Article") to numerous actual or potential purchasers of HGI Hydroxyl Generators. You have also posted the Article on the International website as part of the printable brochure for International's Titan 4000 Hydroxyl Generator.

The first two sentences of your Article state as follows:

"There are some newfangled machines in town and the companies that manufacture them are making outlandish claims and others are just outright lying. If you are thinking of purchasing one of these "Hydroxyl Generators" or maybe you already own one, do yourself a favor and do your due diligence on the claims of no ozone output and being able to be run in occupied areas such as daycare centers, nursing homes and your children's bedroom just to name a few."

As you undoubtedly know, HGI does make the factually accurate claim in its marketing materials that its Odorox Hydroxyl Generators, when used properly, do not emit dangerous levels of oxidants and are safe to use in inhabited areas, such as the structures you list in your Article. In your Article, you do not distinguish among manufacturers of Hydroxyl Generators. Rather, you characterize all companies that make claims that Hydroxyl Generators are safe for use in inhabited areas, including HGI, as making "outlandish claims" or "just outright lying."

Significantly, International itself manufactures Hydroxyl Generators and on its website asserts that its Titan 4000 Hydroxyl Generator does not emit any ozone and is "100% safe for use in inhabited areas." Your characterization of similar claims by other

Hydroxyl Generator manufactures, including HGI, as “outlandish” or “outright [lies]” is factually false and misleading.

Your Article next makes the accurate assertion that ozone at any level is not “good to breath” since it is a powerful oxidant that can damage human and animal organs. Your Article then cites two companies, Alpine/EcoQuest and Sharper Image, both of whom were found to have made false claims about the health benefits of their residential indoor air purifiers. Your reference to Alpine/EcoQuest and Sharper Image is clearly intended to draw a parallel between these two companies, on the one hand, and HGI and other companies that manufacture and distribute Hydroxyl Generators, on the other. In fact, HGI’s Hydroxyl Generators are not comparable in any way to the products of Alpine/EcoQuest or Sharper Image that were the object of false advertising claims. Your implication that such a comparison is valid is false and deceptive.

In your Article, you next refer to anonymous “restoration companies and restoration equipment dealers” who allegedly advised you that they “smelled ozone and got a headache” when the Hydroxyl Generator of an, again, unnamed manufacturer was demonstrated to them. You then allege that the anonymous sales representative for the also anonymous Hydroxyl Generator manufacturer at issue assured the restoration company officials that even if the odor resembled ozone, it was not, and that whatever odor they experienced was instead a “by product of the hydroxyls.” The clear implication of your characterization of the sales representative’s comments is that the statements were untrue, and that the Hydroxyl Generator that the representative was promoting in fact emitted ozone.

You further state in your Article that “one of these units was sent to us for ozone output testing.” You next contend that after being tested by three different processes, the unit “did indeed test positive for ozone with the levels being way above the government established allowable limits.” HGI has since been advised that, despite your failure to identify in your Article the specific manufacturer of the Hydroxyl Generator that you tested, in later direct communications to customers of HGI’s dealers, you identify the tested machine as an HGI “Odorox” machine. As set forth above, there is not any accurate test that measures ozone separately from other oxidants, such as atmospheric hydroxyls. Accordingly, your statement that the test you conducted on the Hydroxyl Generator showed that the machine emitted ozone into a treated area that exceeded acceptable limits is factually false or misleading.

For the reasons set forth above, any representation or suggestion by International that the HGI Hydroxyl Generators emit ozone at any level, let alone an unsafe level, is false and misleading. Any test you may have conducted on an HGI Hydroxyl Generator that purports to show otherwise can only have been conducted in a negligent, incompetent, or fraudulent manner.

**Your Article And Subsequent Communications With Actual Or Potential Purchasers of HGI Hydroxyl Generators Violates Section 45(a) of the federal Lanham Act**

For the reasons set forth below, your dissemination of your Article to HGI's actual or potential purchasers of HGI Hydroxyl Generators constitutes false advertising that violates Section 45(a) of the federal Lanham Act, 15 U.S.C. §1125(a). Section 45(a) of the Lanham Act provides in pertinent part as follows:

“(a) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading representations of fact, which . . .

(B) in commercial advertising or promotion misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.”

Courts have held that party violates Section 45(a) of the Lanham Act if the plaintiff can establish that: (1) the defendant's advertising was false or misleading; (2) the advertisements deceived, or had the capacity to deceive, consumers; (3) the deception had a material effect on purchasing decisions; (4) the misrepresented product or device affects interstate commerce; and (5) the plaintiff has been, or is likely to be injured as a result of the false advertising. See *Hickson Corp. v. Northern Crossarm Co., Inc.* 357 F.3d 1256, 1260 (11<sup>th</sup> Cir. 2004). Your dissemination of your Article to actual or potential purchasers of HGI Hydroxyl Generators and your additional communications with those companies satisfies all of the elements of a violation of Section 45(a) of the Lanham Act.

First, as noted above, your Article constitutes “advertising or commercial promotion” as those terms are used in Section 45(a) of the Lanham Act since you have posted the Article on the International website and further disseminated the Article and additional false and misleading information referenced therein to actual or potential purchasers of HGI Hydroxyl Generators. The Article contains several false statements, and when read in context, equates HGI and other manufactures of Hydroxyl Generators with Alpine/EdoQuest and Sharper Image, and otherwise conveys the misleading message that HGI's Hydroxyl Generators emit unsafe levels of ozone. In your subsequent communications with actual or potential purchasers of HGI's Hydroxyl Generators, you make clear that your Article is referring to HGI and its distributors.

Second, your Article and subsequent communications have deceived, and certainly have the capacity to deceive, consumers. Upon receipt of your Article several

customers of HGI distributors have contacted the distributors and expressed reluctance to use the HGI machines that they had purchased. This is proof that your Article and communications have actually deceived consumers, and certainly have the capacity to do so.

Third, the reluctance of HGI customers to use HGI Hydroxyl Generators after reading your Article shows that the deceptive statements in your Article are material to a consumer's purchasing decision.

Fourth, the market for Hydroxyl Generators is national in scope; therefore, the manufacture and sale of Hydroxyl Generators is in, or affecting, interstate commerce.

Fifth, International and HGI compete in the market for the sale and distribution of Hydroxyl Generators. Your dissemination of your Article has had your intended effect of causing HGI to lose sales, or likely lose sales, that it otherwise would have made but for the deceptive statements in your Article.

Accordingly, HGI demands that you do the following:

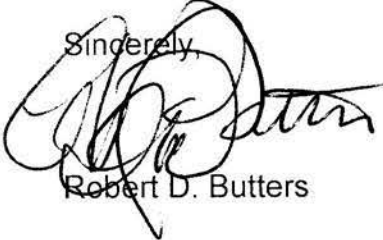
1. Immediately remove the Article from the International website and cease any further dissemination of the Article or any results of so-called "tests" showing that HGI's Hydroxyl Generators emit unsafe levels of oxidants to any person or entity.
2. Post on the International website a statement to be approved in advance by HGI that HGI Hydroxyl Generators, contrary to your prior representations, do not emit ozone, are safe for use in enclosed inhabited spaces, and that retracts any inference to the contrary created by your Article.
3. Provide HGI with a sworn affidavit from an International corporate officer attaching (a) a list of names, employers, and contact information of all persons to whom you delivered a copy of the Article or any "test results" performed by International, or any company on International's behalf, on any HGI Hydroxyl Generator, (b) the identity of the manufacturer that you allege in the Article is distributing an Hydroxyl Generator that emits ozone, (c) the identity of the company's sales representatives that you allege in the Article misrepresented that that the machine did not emit ozone, (d) the identity of the restoration company representatives, and the companies they represent, who allegedly advised you that they smelled ozone when a Hydroxyl Generator was demonstrated to them, and (e) a copy of the results of the test conducted by International, or a testing company on International's behalf, purporting to show that the tested Hydroxyl Generator emitted ozone at levels above acceptable limits, and copies of all documentation or exhibits referenced in such test results.

4. Deliver by certified mail at International's expense a copy of the statement and retraction identified in Item 1 above to all persons on the list identified in Item 3(a).

Should you or your legal counsel fail within ten (10) business days from your receipt of this letter to advise our firm that International will undertake the actions enumerated above, we have recommended to HGI that it file suit against International, and you in your personal capacity, for violations of Section 45(a) of the federal Lanham Act, as well as Sections 817.40 and 817.41 of the Florida Statutes, which also prohibit false and deceptive advertising.

In any such action, HGI will request the court under 15 U.S.C. §1117(a) not only to issue an injunction prohibiting you and International from further dissemination of the Article or any similar communications, but also to award HGI the illicit profits gained by International and all money damages sustained by HGI that were proximately caused by your false and misleading advertising. As a prevailing party in any litigation under the federal Lanham Act, HGI will also be permitted to petition for an award of its attorneys fees and costs incurred in prosecuting the action.

Please ask your lawyer to contact me within the next ten (10) business days.

Sincerely,  
  
Robert D. Butters

RDB:lp

cc: Mr. Brian Macintosh  
Ronald R. Fieldstone, Esq.

Pursuant to Internal Revenue Service guidance, be advised that any federal tax advice contained in this written or electronic communication, including any attachments or enclosures, is not intended or written to be used and it cannot be used by any person or entity for the purpose of (i) avoiding any tax penalties that may be imposed by the Internal Revenue Service or any other U.S. Federal taxing authority or agency or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.