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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Heary Bros. Lightning Protection Co.,) No. CIV 96-2796 PHX/ROS
Inc.)
et al.,)
) **INJUNCTION AND ORDER RE:**
) **HEARY BROS. LIGHTNING**
) **PROTECTION, INC; LIGHTNING**
vs.) **PREVENTOR OF AMERICA, INC;**
) **AND NATIONAL LIGHTNING**
National Fire Protection Association,) **PROTECTION CORP.**
Inc.;, et al.,)
) Defendants.

WHEREAS, East Coast Lightning Equipment, Inc. has brought a counterclaim action against Heary Bros. Lightning Protection, Inc., Lightning Preventor of America, Inc., and National Lightning Protection Corporation (hereinafter, "Plaintiffs") alleging that Plaintiffs have engaged in false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a); and

WHEREAS, THE COURT, having considered the matter, and after oral argument on May 2, 2003, entered a written Order dated October 23, 2003, determining that East Coast Lightning Equipment, Inc. has established by unrefuted evidence that the tests on which Plaintiffs base their advertising claims are not sufficiently reliable to

1 establish that Plaintiffs’ air terminal products provide an enhanced zone of protection
2 with in a specific, measurable radius and protection against lightning strikes in open
3 spaces; and
4

5 **WHEREAS**, the Court, having therefore determined that Plaintiffs’ advertising
6 claims regarding the range of protection provided by their air terminal products and the
7 claims of protection from lightning in outdoor settings are “literally false” under Section
8 43(a) of the Lanham Act, 15 U.S.C. §1125(a);
9

10 **THEREFORE, IT IS ORDERED THAT** an injunction shall issue enjoining and
11 restraining the Plaintiffs, their successors, officers, agents, employees, dealers,
12 distributors, and attorneys and on all persons, partnerships or corporations in present or
13 future active concert or participation with the Plaintiffs or any other person, partnership
14 or corporation acting on behalf of the Plaintiffs, from advertising, whether explicitly or
15 implicitly, that any or all Plaintiffs sell a lightning protection air terminal or similar
16 product that has been proven to significantly extend the maximum range of protection
17 against lightning damage beyond that afforded by NFPA 780 requirements.
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20 For purposes of this Order and Injunction, the term “advertising” shall encompass
21 oral and written statements made in the context of commercial advertisement or
22 promotion of Plaintiffs’ air terminal products and systems utilizing Plaintiffs’ air terminal
23 products, for the purpose of influencing even a single potential customer to buy, or
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1 recommend the purchase of, Plaintiffs’ air terminal products and systems utilizing
2 Plaintiffs’ air terminal products.
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4 **AND FURTHERMORE THAT:**

5 1. Plaintiffs are enjoined and restrained from advertising that
6 they sell a lightning protection system utilizing air terminals that provide a
7 measurable zone of protection, greater than systems installed in accordance
8 with NFPA 780; and/or that the system can function effectively to protect
9 open spaces; and

10 2. Plaintiffs are enjoined and restrained from advertising that
11 they sell an “improved,” “enhanced,” or “more efficient” lightning
12 protection system utilizing air terminals that rely on calculations of an
13 enhanced range of protection; and

14 3. Plaintiffs are enjoined and restrained from advertising that
15 any “enhanced” air terminal system manufactured, marketed, and/or sold by
16 Plaintiffs (including but not limited to the “Early Streamer Emission” air
17 terminal product, the “Electronically Activated Streamer Emission” air
18 terminal product, so-called “Active” air terminal products, “Radioactive”
19 air terminal products, and “Ionizing” air terminal products):

20
21 a) Is accepted by Underwriters Laboratories (“UL”), the
22 National Fire Protection Association (“NFPA”), the Institute of
23 Electrical and Electronics Engineers (“IEEE), the International
24 Electrotechnical Commission (“IEC”), the National Electric Code
25 (NEC) and/or the Lightning Protection Institute (“LPI”);
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b) Has been tested and certified by a private testing lab to provide a measurable zone of protection greater than systems installed in conformance with NFPA 780;

c) Is able to protect open areas, including but not limited to amusement parks, golf courses, stadiums, and playing fields;

Plaintiffs are further **ORDERED:**

4. To file with the Court and serve on counsel for East Coast Lightning Equipment, Inc., within 30 days after the entry of this Order and Injunction, or within such period as this Court may direct, a report in writing and under oath, setting forth in detail the manner and form in which each Plaintiff has complied with this Order, including copies of all advertising and promotional material demonstrating compliance herewith; and

5. To post a copy of this Injunction and Order, and attached Judgment on Plaintiffs' websites and other sources of electronic advertising.

AND FURTHERMORE:

The Court shall retain jurisdiction of this action, and noncompliance by any person or entity subject to this Order and Injunction shall be subject to the Court's power of contempt.