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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

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CENTRAL DISTRICT OF CALIFORNIA
02-3186 WMB
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13 UNITED STATES OF AMERICA,) No. ~~SA~~ CV No. 02-_____
14 v.)
15 AMDEN CORPORATION,) COMPLAINT FOR CIVIL
a corporation,) PENALTIES, INJUNCTIVE AND
16 Defendant.) OTHER RELIEF
17)

18 Plaintiff, the United States of America, acting upon
19 notification and authorization to the Attorney General by the
20 Federal Trade Commission ("Commission"), for its Complaint
21 alleges the following:

22 1. Plaintiff brings this action under Sections 5(a)(1),
23 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act
24 ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and
25 56(a), to obtain monetary civil penalties and injunctive and other
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1 relief for defendant's violations of the Commission's Trade
2 Regulation Rule Concerning the Sale of Mail or Telephone Order
3 Merchandise (the "Rule"), 16 C.F.R. Part 435.

4 **JURISDICTION AND VENUE**

5 2. This Court has jurisdiction over this matter under 28
6 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§
7 45(m) (1) (A), 53(b), and 56(a). This action arises under 15
8 U.S.C. § 45(a) (1).

9 3. Venue in the Central District of California is proper
10 under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b-c) and
11 1395(a).

12 **DEFENDANT**

13 4. Defendant Amden Corporation is a Nevada corporation
14 with its principal place of business located within the Central
15 District of California at 27132-B Paseo Espada, San Juan
16 Capistrano, CA 92675. Defendant was incorporated in 1992 and has
17 transacted business continuously in the Central District of
18 California since then.

19 **DEFENDANT'S COURSE OF CONDUCT**

20 5. Since May 2000, defendant has offered for sale and
21 sold, by mail or telephone, the Cybersonic® sonic toothbrush, and
22 the Cybersonic Complete Sonic Oral-Care System, comprised of the
23 Cybersonic® sonic toothbrush and various teeth whitening,
24 flossing, and tongue cleaning attachments ("Cybersonic system"),
25 to consumers throughout the United States. Defendant solicits
26 these sales in 30-minute infomercials and shorter television
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1 advertisements, and on its Internet website,
2 www.sonictoothbrush.com.

3 6. Beginning May 2000 and continuing until May 2001, in
4 the course of soliciting orders for the merchandise by mail or
5 telephone, defendant has represented to buyers paying in one lump
6 sum payment that the Cybersonic system is shipped within 10 days,
7 and to buyers paying in installments that the Cybersonic system
8 is shipped in time for delivery within 3 to 4 weeks of its
9 receipt of the buyers' orders.

10 7. In numerous instances, having received the buyers'
11 properly completed orders, defendant has failed to ship the
12 merchandise within the promised time, or to notify the buyers
13 within that time of the delay and obtain their agreement to
14 delayed shipment, or to cancel the orders and provide refunds.

15 THE RULE

16 8. The Rule was promulgated by the Commission on October
17 22, 1975, under the FTC Act, 15 U.S.C. § 41 et seq., and became
18 effective February 2, 1976. On September 21, 1993, the Rule was
19 amended under Section 18 of the FTC Act, 15 U.S.C. § 57a, and the
20 amendments took effect on March 1, 1994. The Rule applies to
21 orders placed by mail, telephone, facsimile transmission or on
22 the Internet.

23 VIOLATIONS OF THE RULE

24 9. At all times material hereto, defendant has engaged in
25 the sale of merchandise ordered by mail or telephone ("the
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1 merchandise"), in commerce, as "commerce" is defined in Section 4
2 of the FTC Act, 15 U.S.C. § 44.

3 10. In numerous instances, after having solicited orders
4 for the merchandise and received "properly completed orders," as
5 that term is defined in Section 435.2(d) of the Rule, and having
6 been unable to ship the merchandise to the buyer within the
7 Rule's applicable time, as set forth in Section 435.1(a)(1) of
8 the Rule (the "applicable time"), defendant:

9 a. Violated Section 435.1(b)(1) of the Rule by failing,
10 within the applicable time, to offer to the buyer,
11 clearly and conspicuously and without prior demand, an
12 option either to consent to a delay in shipping or to
13 cancel the order and receive a prompt refund; and,

14 b. Having failed within the applicable time to ship the
15 merchandise or to offer the buyer the option to either
16 consent to a delay in shipping or to cancel the buyer's
17 order and receive a prompt refund, violated Section
18 435.1(c)(5) of the Rule by failing to deem the order
19 canceled and to make a prompt refund to the buyer, as
20 "prompt refund" is defined in section 435.2(f) of the
21 Rule.

22 11. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C.
23 § 57a(d)(3), a violation of the Rule constitutes an unfair or
24 deceptive act or practice in violation of Section 5(a)(1) of the
25 FTC Act, 15 U.S.C. § 45(a)(1).

CIVIL PENALTIES AND INJUNCTIVE RELIEF

12. Defendant has violated the Rule as described above with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

13. Each sale or attempted sale, during the five years preceding the filing of this Complaint, in which defendant has violated the Rule in one or more of the ways described above constitutes a separate violation for which plaintiff seeks monetary civil penalties.

14. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each such violation of the Rule.

15. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against defendant's violating the FTC Act and provide such other equitable relief as is necessary to redress injury to consumers or others resulting from defendant's violations of the FTC Act.

PRAYER

WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b) and 56(a), and the Court's own equitable powers to:

- (a) Enter judgment against defendant and in favor of plaintiff for each violation alleged in this Complaint;
- (b) Award plaintiff monetary civil penalties from defendant for each violation of the Rule;
- (c) Permanently enjoin defendant from violating the Rule; and
- (d) Award plaintiff such additional relief as the Court may deem just and proper.

Dated: April 16, 2002

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