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CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON
BY _____

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

_____)	
UNITED STATES OF AMERICA,)	CV CV '02 - 268 1AS
)	
Plaintiff)	
)	
v.)	COMPLAINT
)	Deceptive Trade
)	Practices Action (28 U.S.C. § 1331)
SOUND CITY 2000, INC.,)	REQUEST FOR CIVIL
an Oregon Corporation, and)	PENALTIES, INJUNCTIVE
LINDA M. SIMMONS, individually)	AND OTHER RELIEF
and as President of Sound City 2000, Inc.)	
)	
Defendants.)	
_____)	

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

1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), 56(a), and 57b to obtain monetary civil penalties and injunctive and other relief for Defendants' violations of the Commission's Trade Regulation Rule Concerning the Sale of Mail or Telephone Order Merchandise (the "Mail Order Rule" or "Rule"), 16 C.F.R. § 435.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b. This action arises under 15 U.S.C. § 45(a)(1).

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

DEFENDANTS

4. Defendant Sound City 2000, Inc. ("Sound City"), is an Oregon corporation with its place of business located within the District of Oregon at 4105 Southeast International Way, Suite 505, Milwaukie, OR 97222. Sound City has transacted business in the District of Oregon, throughout the United States and overseas.

5. Defendant Linda M. Simmons ("Simmons"), is an individual with a place of business at 4105 Southeast International Way, Suite 505, Milwaukie, OR 97222. She is President of Sound City and owns 100% of its stock. Individually or in concert with others, Simmons has directed, controlled, or participated in the acts and practices of Sound City.

DEFENDANTS' COURSE OF CONDUCT

6. Defendants have sold recorded music in the form of compact discs ("CDs"). They have specialized in the sale of rare and hard-to-find CDs. Defendant Simmons began selling CDs as "Simmons Corporation" in 1986; she later operated as "Sound City USA, Inc." and began selling as "Sound City 2000, Inc." in July 1991.

7. Defendants have solicited consumers to purchase CDs through a website, "www.soundcity2000.com." Defendants have told consumers that they can order from among hundreds of thousands of CDs listed in catalogs accessible via the website.

8. Defendants have informed consumers that, "[o]n the average," Sound City ships "commonly available" CDs within one to two weeks, "less common" CDs in four to six weeks, and "'difficult' titles" within a maximum of 90 days.

9. In numerous instances, Defendants have failed to ship ordered CDs within the time that they stated that they would ship them. Many consumers have complained that they did not receive the CDs they ordered from Defendants within 90 days of placing their orders.

10. Some consumers have received a delay option notice from Defendants stating that the consumer's order was not then available. This notice gave the consumer the option of extending the order for six (6) weeks and continuing to wait to receive the same CD, placing a new order for a different CD, or canceling the order and requesting a refund. The Mail Order Rule, however, requires that, where the revised shipping date given in the delay option notice is more than thirty (30) days later than the original shipping date, or where the seller is unable to provide a definite, revised shipping date, a delay option notice must to inform the consumer that the consumer's order will be canceled automatically unless it is shipped within a specified time

and the seller has received no cancellation notice, or the consumer consents to a further delay.

11. In numerous instances, consumers who reported that they did not receive the CDs they ordered from Defendants within 90 days also reported that they did not receive a delay option notice within that time frame.

12. In numerous instances, Defendants have failed to issue refunds to consumers until months after the consumers made their refund requests.

13. FTC staff warned Defendants in the early 1990s that their business practices violated the Mail Order Rule, 16 C.F.R. § 435.

THE MAIL ORDER RULE

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

VIOLATIONS OF THE MAIL ORDER RULE

15. Beginning in 1991, Defendants have engaged in mail and telephone order sales of CDs in commerce, as “mail or telephone order sales” are defined in Section 435.2(a) of the Rule, 16 C.F.R. § 435.2(a), and as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

16. In soliciting orders for the sale of telephone or mail order merchandise, Defendants have violated Section 435.1(a)(1) of the Rule, 16 C.F.R. § 435.1(a)(1), by having no “reasonable basis to expect that [they] will be able to ship any ordered merchandise to the buyer:

(i) Within that time clearly and conspicuously stated in any solicitation, or (ii) if no such time is

clearly and conspicuously stated, within thirty (30) days after receipt of a properly completed order from the buyer.” Mail Order Rule § 435.1(a)(1)(i) and (ii), 16 C.F.R. § 435.1(a)(1)(i) and (ii).

17. In numerous instances, after having solicited an order for the sale of merchandise, after “receipt of a properly completed order,” as defined in Section 435.2(d) of the Rule, 16 C.F.R. § 435.2(d), and after having been unable to ship some or all of the ordered merchandise to the buyer within the applicable time set forth in Section 435.1(a)(1) of the Rule, 16 C.F.R. § 435.1(a)(1), Defendants have:

- a. Violated Section 435.1(b)(1) of the Rule, 16 C.F.R. § 435.1(b)(1), by failing to timely offer the buyer, clearly and conspicuously and without prior demand, an option to consent to a delay in shipping or to cancel the buyer’s order;
- b. Violated Section 435.1(c) of the Rule, 16 C.F.R. § 435.1(c), by failing to deem an order canceled and to make a prompt refund to buyers who are entitled to such refunds under the Rule; and
- c. Violated Section 435.1(b)(1)(iii) of the Rule, 16 C.F.R. § 435.1(b)(1)(iii), by failing to inform expressly the buyer that the buyer’s order will be automatically deemed to have been canceled unless the conditions set forth in Section 435.1(b)(1)(iii)(A) or (B) of the Rule, 16 C.F.R. § 435.1(b)(1)(iii)(A) or (B), are met;

18. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that “unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful.”

19. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of

the Mail Order Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

CIVIL PENALTIES, CONSUMER REDRESS, AND INJUNCTION

20. Defendants have violated the Mail Order Rule as described above with knowledge as required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

21. Each sale or attempted sale, during the five years preceding the filing of this Complaint, in which Defendants have violated the Mail Order Rule in one or more of the ways described above constitutes a separate violation for which Plaintiff seeks monetary civil penalties.

22. 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 Mail Order Rule.

23. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to award such relief as is necessary to redress the injury to consumers or others resulting from Defendants' violation of the Rule.

24. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against Defendants' violating the FTC Act.

PRAYER

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

- (1) Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this Complaint;
- (2) Award Plaintiff monetary civil penalties from Defendants for each violation of the Mail Order Rule;
- (3) Award such relief as the Court finds necessary to redress injury resulting from Defendants' violations of the Mail Order Rule;
- (4) Enjoin Defendants from violating the Mail Order Rule; and
- (5) Award Plaintiff such additional relief as the Court may deem just and proper.

DATED this 5 day of March, 2002.

FOR THE UNITED STATES OF AMERICA:


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