IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,	)	
Plaintiff	)	
	)	Civil Action No.
v.	)	
	)	COMPLAINT FOR CIVIL
DEER CREEK PRODUCTS, INC.,	)	PENALTIES, INJUNCTIVE
a corporation,	)	AND OTHER RELIEF
GOLDEN AGE PRODUCTS, INC.,	)	
a corporation	)	
a/k/a LAKESIDE PRODUCTS, and	)	
MICHAEL DISTEPHANO,	)	
individually,	)	
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), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a), 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 ("Rule"), 16 C.F.R. Part 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), and 56(a). This action arises under 15 U.S.C. § 45(a)(1).

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

DEFENDANTS

4. Defendant Deer Creek Products, Inc. is a Florida corporation with its office and principal place of business located within the Southern District of Florida at 3038 N.W. 25th Avenue, Pompano Beach, Florida 33069. Defendant Deer Creek Products, Inc. transacts business in the Southern District of Florida.

5. Defendant Golden Age Products, Inc. is a Florida corporation with its office and principal place of business located within the Southern District of Florida at 3038 N.W. 25th Avenue, Pompano Beach, Florida 33069. Defendant Golden Age Products, Inc. transacts business in the Southern District of Florida.

6. Defendant Michael DiStephano is the President of Deer Creek Products, Inc. and Golden Age Products, Inc. and is responsible for their day-to-day operations. He has formulated, directed, or controlled the acts or practices of Deer Creek Products, Inc. and Golden Age Products, Inc., including the various acts and practices set forth herein. His business address is the same as that of the corporate defendants. In connection with the matters alleged herein, Michael DiStephano transacts business in the Southern District of Florida.

DEFENDANTS' COURSE OF CONDUCT

7. From January 2000 through December 2001, defendants offered for sale and sold by mail and telephone consumer goods, including the Bio Ear Electronic Sound Amplifying Device, the Ink Jet Refill Kit, a Flag Case, the Big Mouth Billy Bass, and the Indoor TV Antenna to consumers throughout the United States. Defendants solicited these sales through their catalog and space ads in print media.

8. During 2000 and 2001 defendants made no express shipment representation in their advertisements. The Rule accordingly requires defendants to have a reasonable basis to expect that they will be able to ship within 30 days of receiving consumers' properly completed orders.

9. In numerous instances during 2000 and 2001, defendants failed to ship merchandise within 30 days of receiving consumers' properly completed orders and either failed to send timely delay notices to consumers or sent delay notices that were deficient. Defendants failed to ship within 30 days between 29% of the time for some merchandise and 89% for other merchandise. Moreover, defendants failed to provide a prepaid means for consumers to cancel their delayed orders and failed to deem orders canceled when required to do so by the Rule and to make prompt refunds to consumers who were entitled to such refunds.

THE RULE

10. The 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 the Internet.

VIOLATIONS OF THE RULE

11. At all times material hereto, defendants have engaged in the sale of merchandise ordered by mail and telephone, in commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

12. In numerous instances, after having solicited mail and telephone orders for merchandise and received "properly completed orders," as that term is defined in Section 435.2(d) of the Rule, 16 C.F.R. § 435.2(d), and having been unable to ship some or all of the ordered merchandise to the buyer within the Rule's applicable time, as set out in Section 435.1(a)(1) of the Rule, 16 C.F.R. § 435.1(a)(1) ("applicable time"), defendants have:

a. Violated Section 435.1(a)(1) of the Rule by soliciting orders for the sale of telephone or mail order merchandise when they had no reasonable basis to expect that they would be able to ship some or all of such merchandise within thirty (30) days after receipt of a properly completed order;

b. Violated Section 435.1(b)(1) of the Rule by failing to timely offer to the buyer an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund;

c. Violated Section 435.1(b)(1) of the Rule by failing to provide to the buyer a definite revised shipping date;

d. Violated Section 435.1(b)(2) of the Rule by failing to offer to the buyer a renewed option either to consent to a delay in shipping or to cancel the order and receive a prompt refund;

e. Violated Section 435.1(b)(3) of the Rule by failing to provide a prepaid means for buyers to cancel their orders;

f. Violated Section 435.1(c)(1) of the Rule by failing to deem an order canceled and to make prompt refunds to buyers who exercised their option to cancel under the Rule; and

g. Violated Section 435.1(c)(5) of the Rule by failing to deem an order canceled and to make prompt refunds to buyers in instances where defendants failed to ship within 30 days or to offer the buyer an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund.

13. 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."

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

15. Defendants have 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). In March 1993, Defendants signed an Assurance of Voluntary Compliance with the State of Florida, agreeing to comply with the Rule. In May 1994, Defendants agreed to a Permanent Injunction and Consent Judgement to settle a Complaint filed by the State of Florida against them for, among other things, violations of the Rule and the 1993 AVC. The order became final in September 1995.

16. Each sale or attempted sale, during the five years preceding the filing of this

Complaint, in which defendants have violated the Rule in one or more of the ways described above constitutes a separate violation for which plaintiff seeks monetary civil penalties.

17. 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.

18. 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 Rule;

(3) Enjoin defendants from violating the Rule; and

(4) Award plaintiff such additional relief as the Court may deem just and proper.

DATED:

THE UNITED STATES OF AMERICA:

ROBERT D. McCALLUM, Jr.
Assistant Attorney General
Civil Division
U.S. Department of Justice

GUY A. LEWIS
United States Attorney
Southern District of Florida

By: ___________________________

Assistant U.S. Attorney
99 N.E. 4th Street
Miami, Florida 33132
Tel. No.:

EUGENE M. THIROLF
Director
Office of Consumer Litigation

By: ________________________

Attorney
Office of Consumer Litigation
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

OF COUNSEL:

ELAINE D. KOLISH
Associate Director
Division of Enforcement
Federal Trade Commission

ROBERT M. FRISBY
Assistant Director
Division of Enforcement
Federal Trade Commission

JOEL N. BREWER
Attorney
Division of Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-2967