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Judge Pechman

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NO. C01-686P

[proposed]

BRAKE GUARD PRODUCTS, INC.; BRAKE
GUARD LIMITED LIABILITY COMPANY, a
Nevada Limited Liability Company; BRAKE
GUARD LIMITED LIABILITY COMPANY, a
Washington Limited Liability Company;
KIMBERLY BENNETT, in her capacity as
personal representative of the estate of ED F.
JONES, a/k/a Ellsworth F. Jones; and
LAWRENCE H. JONES, an individual,

Defendants.

**JUDGMENT AND ORDER OF
PERMANENT INJUNCTION
AGAINST DEFENDANTS BRAKE
GUARD PRODUCTS, INC.,
BRAKE GUARD LIMITED
LIABILITY COMPANY
(NEVADA), BRAKE GUARD
LIMITED LIABILITY COMPANY
(WASHINGTON), AND
KIMBERLY BENNETT**

On May 11, 2001, the United States filed in this Court a complaint for civil penalties and permanent injunction against defendants Brake Guard Products, Inc., Brake Guard Limited Liability Company, a Nevada Limited Liability Company, Brake Guard Limited Liability Company, a Washington Limited Liability Company, and Ed F. Jones. The complaint alleged that these defendants were selling a product known as "Brake Guard" in a manner that violated a Federal Trade Commission order. The United States served these defendants with a summons and complaint.

C. E. MJP

JUDGMENT AND ORDER AGAINST
BRAKE GUARD COMPANIES AND
KIMBERLY BENNETT (C01-0686P)

10

1 on or about May 29, 2001. After Ed Jones' death, the Court substituted defendant Kimberly Bennett,
 2 in her capacity as the personal representative of the estate of Ed Jones, for the deceased defendant
 3 Ed Jones. Defendants Brake Guard Products, Inc., Brake Guard Limited Liability Company, a
 4 Nevada Limited Liability Company, Brake Guard Limited Liability Company, a Washington
 5 Limited Liability Company, and Kimberly Bennett, in her capacity as the personal representative
 6 of the estate of Ed Jones ("the defendants") have failed to answer the complaint or otherwise defend
 7 and, pursuant to Rule 55 of the Federal Rules of Civil Procedure, on January 31, 2002, the Clerk of
 8 the Court entered default against the defendants.

9 The United States has moved the Court to issue a judgment for civil penalties and an order
 10 for permanent injunction against the defendants.

11 THEREFORE, the Court being fully advised in the premises, it is hereby

12 ORDERED, ADJUDGED, AND DECREED that

13 FINDINGS

- 14 1. This Court has jurisdiction over the subject matter and the parties;
- 15 2. The Complaint states a claim upon which relief may be granted against the defendants
 16 under Sections 5(a), 5(l), 9, 13(b) and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15
 17 U.S.C. §§ 45(a), 45(l), 49, 53(b) and 56(a);
- 18 3. Venue is proper as to all parties in the Western District of Washington;
- 19 4. The product known as Brake Guard Safety System ("Brake Guard") is an after-market
 20 motor vehicle brake device distributed and manufactured by the defendants;
- 21 5. The defendants' activities are in or affecting commerce, as defined in the FTC Act,
 22 15 U.S.C. § 44; and
- 23 6. This Judgment and Order is in the public interest.

24 DEFINITIONS

- 25 7. "Commission's Order" shall mean the Federal Trade Commission ("Commission")
 26 Order in FTC Docket No. 9277 (1998), a copy of which is attached hereto as Attachment A.
- 27 8. "Competent and reliable scientific evidence" means tests, analyses, research, studies,
 28 or other evidence based on the expertise of professionals in the relevant area, that has been

1 conducted and evaluated in an objective manner by persons qualified to do so, using procedures
2 generally accepted in the profession to yield accurate and reliable results.

3 9. "Assisting others" means providing any of the following goods or services to any
4 person or business entity: (a) performing customer service functions, including but not limited to
5 receiving or responding to consumer complaints; (b) formulating, providing, or arranging for the
6 formulation or provision of, any marketing material; (c) formulating, providing for, arranging for,
7 or participating in, the formulation, provision, or creation of any material to substantiate any claims;
8 (d) providing names of, or assisting in the generation of, potential customers; (e) performing
9 marketing services of any kind; or (f) acting as an officer, director, manager or employee of the
10 business entity.

11 10. "Employee" includes, but is not limited to, independent contractors, and independent
12 distributors of Brake Guard.

13 11. Uniform Resource Locator or "URL" is the globally unique address of a resource, file
14 or page on the World Wide Web. Each Web page has a distinct URL, such as
15 *www.brakeguard.com*, that serves as a unique Internet address for that Web page.

16 12. A "domain name" is a unique alpha-numeric name used to locate a particular
17 organization or other entity on the Internet. Domain names allow users connected to the Internet
18 to find Web sites with familiar names without having to memorize the complex numerical addresses
19 that computers read. In the URL *www.brakeguard.com/bgpi/rv.htm*, "brakeguard.com" is the
20 domain name. Simply registering a domain name does not link the domain name with a Web site,
21 particular location or computer on the Internet. The registrant must find a host (or "Web server")
22 for the Web site and have the domain name indexed to the server so that a user can locate the Web
23 site.

24 13. A "Host" or "Hosting Company" is the party that provides the infrastructure for a
25 computer service. With respect to Web pages and Web sites, a Host or Hosting Company maintains
26 "Web servers" - the computers on which Web sites and pages reside. The Host or Hosting
27 Company also maintains the communication lines required to link the server to the Internet. Often,
28 the content on the servers (*i.e.*, the content of the Web pages) is controlled by someone other than

1 the Host or Hosting Company.

2 CIVIL PENALTY

3 14. IT IS FURTHER ORDERED that judgment in the amount of _____ *HEM*
4 dollars is hereby entered against the defendants as a civil penalty for their violations of the
5 Commission's Order. The defendants are jointly and severally liable for this civil penalty judgment.

6 INJUNCTIVE PROVISIONS

7 15. IT IS FURTHER ORDERED that the defendants and their agents, representatives and
8 employees, and all persons in active concert or participation with them who receive actual notice
9 of this Judgment and Order by personal service or otherwise, are permanently restrained and
10 enjoined from engaging in, or assisting others engaged in, the manufacturing, labeling, advertising,
11 promotion, offering for sale, sale, or distribution of the Brake Guard Safety System, Advanced
12 Braking System, or Brake Guard ABS or any substantially similar product, in or affecting
13 commerce.

14 16. IT IS FURTHER ORDERED that the defendants, their successors and assigns, and
15 their agents, representatives and employees, and all persons in active concert or participation with
16 them who receive actual notice of this Judgment and Order by personal service or otherwise, in
17 connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or
18 distribution of any product for use in conjunction with a motor vehicle, in or affecting commerce,
19 are permanently restrained and enjoined from falsely representing in any manner, directly or by
20 implication, such product's:

- 21 A. absolute or comparative attributes;
- 22 B. efficacy;
- 23 C. performance;
- 24 D. safety; or
- 25 E. benefits.

26 17. IT IS FURTHER ORDERED that the defendants, their successors and assigns, and
27 their agents, representatives and employees, and all persons in active concert or participation with
28 them who receive actual notice of this Judgment and Order by personal service or otherwise, in

1 connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or
 2 distribution of any product for use in conjunction with a motor vehicle, in or affecting commerce,
 3 are permanently restrained and enjoined from making any representation in any manner, expressly
 4 or by implication, about such product's:

- 5 A. absolute or comparative attributes;
- 6 B. efficacy;
- 7 C. performance;
- 8 D. safety; or
- 9 E. benefits;

10 unless, at the time the representation is made, they possess and rely upon competent and reliable
 11 scientific evidence that substantiates the representation.

12 18. IT IS FURTHER ORDERED that the defendants, their successors and assigns, and
 13 their agents, representatives and employees, and all persons in active concert or participation with
 14 them who receive actual notice of this Judgment and Order by personal service or otherwise, are
 15 hereby permanently enjoined from ever violating, directly or through any partnership, corporation,
 16 subsidiary, division, or other device, any provision of the Commission's Order. Nothing in this
 17 Paragraph or in any other Paragraph of this Judgment and Order shall void any of the ban provisions
 18 set forth in Paragraph 15 of this Judgment and Order.

19 DISTRIBUTION OF JUDGMENT AND ORDER BY THE DEFENDANTS

20 19. IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry
 21 of this Judgment and Order, the defendants, their successors and assigns, shall:

- 22 A. Provide a copy of this Judgment and Order to, and obtain a signed and dated
 23 acknowledgment of receipt of same from, each individual serving in a management capacity, all
 24 personnel involved in responding to consumer complaints or inquiries, and all sales personnel,
 25 whether designated as employees, consultants, independent contractors or otherwise, immediately
 26 upon employing or retaining any such persons, for any business where (1) any one of the defendants
 27 or any of the defendants collectively are the majority owner of the business or directly or indirectly
 28 manages or controls the business, and where (2) the business is engaged in the manufacturing,

1 labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in
2 conjunction with a motor vehicle; and

3 B. Maintain for a period of three (3) years after creation, and upon reasonable
4 notice, make available to representatives of the Commission, the original signed and dated
5 acknowledgments of the receipt of copies of this Judgment and Order, as required in Subsection A
6 of this Paragraph.

7 MONITORING COMPLIANCE OF SALES PERSONNEL

8 20. IT IS FURTHER ORDERED that the defendants, their successors and assigns, and
9 their agents, representatives and employees, and all persons in active concert or participation with
10 them who receive actual notice of this Judgment and Order by personal service or otherwise, in
11 connection with any business where (1) any one of the defendants or any of the defendants
12 collectively are the majority owner of the business or directly or indirectly manages or controls the
13 business, and where (2) the business is engaged in the manufacturing, labeling, advertising,
14 promotion, offering for sale, sale, or distribution of any product for use in conjunction with a motor
15 vehicle, shall:

16 A. Take reasonable steps sufficient to monitor and ensure that all employees and
17 independent contractors engaged in sales or other customer service functions comply with
18 Paragraphs 15 through 18 of this Judgment and Order. Such steps shall include adequate monitoring
19 of sales presentations, and shall also include, at a minimum, the following: (1) listening to the oral
20 representations made by persons engaged in sales or other customer service functions; (2)
21 establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining
22 the number and nature of consumer complaints regarding transactions in which each employee or
23 independent contractor is involved;

24 B. Investigate fully and promptly any consumer complaint received by any
25 business to which this Paragraph applies; and

26 C. Take corrective action with respect to any salesperson whom the defendants
27 determine is not complying with this Judgment and Order, which may include training, disciplining,
28 and/or terminating such salesperson.

RECORD KEEPING PROVISIONS

1
2 21. IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry
3 of this Judgment and Order, the defendants, their successors and assigns, and their agents,
4 representatives and employees, and all persons in active concert or participation with them who
5 receive actual notice of this Judgment and Order by personal service or otherwise, in connection
6 with any business where (1) any one of the defendants or any of the defendants collectively are the
7 majority owner of the business or directly or indirectly manages or controls the business, and where
8 (2) the business is engaged in the manufacturing, labeling, advertising, promotion, offering for sale,
9 sale, or distribution of any product for use in conjunction with a motor vehicle, shall create and
10 retain for a period of three (3) years following the date of such creation, unless otherwise specified:

11 A. Books, records and accounts that, in reasonable detail, accurately and fairly
12 reflect the cost of goods or services sold, revenues generated, and the disbursement of such
13 revenues;

14 B. Records accurately reflecting: the name, address, and telephone number of
15 each person employed in any capacity by such business, including as an independent contractor; that
16 person's job title or position; the date upon which the person commenced work; and the date and
17 reason for the person's termination, if applicable;

18 C. Records containing the names, addresses, phone numbers, dollar amounts paid,
19 quantity of items or services purchased, and description of items or services sold, for all consumers
20 to whom such business has sold, invoiced, provided or shipped any goods or services;

21 D. Records that reflect, for every consumer complaint or refund request, whether
22 received directly or indirectly or through any third party:

23 (1) the consumer's name, address, telephone number and the dollar amount paid
24 by the consumer;

25 (2) the written complaint or refund request, if any, and the date of the complaint
26 or refund request;

27 (3) the basis of the complaint, including the name of any salesperson
28 complained against, and the nature and result of any investigation conducted concerning any

1 complaint;

2 (4) each response and the date of the response;

3 (5) any final resolution and the date of the resolution; and

4 (6) in the event of a denial of a refund request, the reason for the denial; and

5 E. Copies of all sales scripts, training materials, advertisements, or other
6 marketing materials utilized; provided that copies of all sales scripts, training materials,
7 advertisements, or other marketing materials utilized shall be retained for five (5) years after the last
8 date of dissemination of any such materials.

9 22. IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry
10 of this Judgment and Order, the defendants, their successors and assigns, and their agents,
11 representatives and employees, and all persons in active concert or participation with them who
12 receive actual notice of this Judgment and Order by personal service or otherwise, in connection
13 with any business where (1) any one of the defendants or any of the defendants collectively are the
14 majority owner of the business or directly or indirectly manages or controls the business, and where
15 (2) the business is engaged in the manufacturing, labeling, advertising, promotion, offering for sale,
16 sale, or distribution of any product for use in conjunction with a motor vehicle, shall retain all tests,
17 reports, studies, surveys, demonstrations, or other evidence in their possession or control that
18 support, contradict, qualify, or call into question any representation covered by this Judgment and
19 Order, or the basis relied upon for the representation, including complaints and other
20 communications with consumers or with governmental or consumer protection organizations, for
21 a period of five (5) years following the date on which they obtained possession or control of those
22 materials.

23 WEB SITE CLOSURE

24 23. IT IS FURTHER ORDERED that, the defendants, and/or any agent, employee or
25 associate of the defendants, or any Host or Hosting Company for the defendants shall immediately
26 take whatever steps may be necessary to ensure that the following Web pages or Web sites operated,
27 in whole or in part, by the defendants cannot be accessed by the public:

28 A. <http://brakeguard.com>

1 B. <http://brakeguard.com/bgpi>

2 C. <http://brakeguard.com/bgpi/brakeguard.htm>

3 D. Any other URL or domain name that promotes or offers for sale Brake Guard or any
4 similar after-market braking device.

5 **COMPLIANCE REPORTING BY THE DEFENDANTS**

6 24. IT IS FURTHER ORDERED that, to ensure that compliance with the provisions of
7 this Judgment and Order may be monitored by the Commission:

8 A. Each of the defendants shall provide, one hundred eighty (180) days after the
9 date of entry of this Judgment and Order, a written report to the Commission, sworn to under penalty
10 of perjury, setting forth in detail the manner and form in which they have complied and are
11 complying with this Judgment and Order. This report shall include but not be limited to:

12 (1) Each of the defendants' then current address and telephone number for their
13 then current chief executive or chief management officer, and for their then current agent for service
14 of process;

15 (2) Kimberly Bennett shall provide her then current address and telephone
16 number;

17 (3) A copy of each acknowledgment of receipt of this Judgment and Order
18 obtained by the defendants pursuant to Paragraph 19.A; and

19 (4) A statement describing the manner in which the defendants have complied
20 and are complying with Paragraphs 15 through 22 of this Judgment and Order;

21 B. The defendants, upon written request by a representative of the Commission,
22 shall submit additional written reports (under oath, if requested) and produce documents on fifteen
23 (15) days' notice with respect to any conduct subject to this Judgment and Order;

24 C. The Commission is authorized to communicate directly with the defendants for
25 purposes of the compliance reporting required by this Paragraph; and

26 D. The defendants shall, unless otherwise directed by the Commission's authorized
27 representatives, mail all written notifications for the purposes of this Judgment and Order to the
28 Commission to:

Associate Director
Division of Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Brake Guard

COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

25. IT IS FURTHER ORDERED that the Commission is authorized without further leave of Court to monitor the defendants' compliance with this Judgment and Order by all lawful means, including but not limited to the following means:

A. Obtaining discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating the defendants' compliance with any provision of this Judgment and Order;

B. Using representatives posing as consumers and suppliers to the defendants, their employees, or any other entity managed or controlled in whole or in part by them, without the necessity of identification or prior notice;

26. Nothing in this Judgment and Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether the defendants have violated any provision of this Judgment and Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

27. IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Judgment and Order, the defendants shall notify the Commission of the following:

A. Any changes in their residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

B. Any changes in their officers, and the residence, mailing addresses, and telephone numbers of their officers within ten (10) days of such change; and

C. Any proposed change in the structure of any of the defendants or any business entity owned or controlled by the defendants, such as creation, incorporation, dissolution, assignment, sale, creation or dissolution of subsidiaries, or any other change that

1 may affect compliance obligations arising out of this Judgment and Order, thirty (30) days prior
2 to the effective date of any proposed change.

3 RETENTION OF JURISDICTION

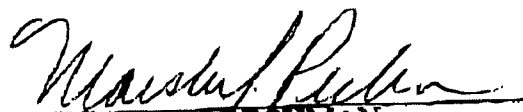
4 28. This Court shall retain jurisdiction of this matter for the purpose of enabling any of
5 the United States to apply to the Court at any time for such further orders or directives as may be
6 necessary or appropriate for the interpretation or modification of the injunctive relief set forth in
7 this Judgment and Order, for the enforcement of compliance therewith, for the redress of any
8 violations thereof, or for the punishment of any violations thereof.

9 ENTRY OF THIS JUDGMENT


10 29. IT IS FURTHER ORDERED that there is no just reason for delay of entry of this
11 judgment, and, pursuant to Federal Rule of Civil Procedure 54(b), the Clerk shall enter this
12 Judgment and Order immediately.

13 This Judgment and Order IS THEREFORE ENTERED in favor of plaintiff, the United
14 States of America, and against defendants Brake Guard Products, Inc., Brake Guard Limited
15 Liability Company, a Nevada Limited Liability Company, Brake Guard Limited Liability
16 Company, a Washington Limited Liability Company, and Kimberly Bennett, in her capacity as
17 personal representative of the estate of Ed F. Jones, pursuant to all the terms and conditions
18 recited above.

19 Dated this 27 day of July, 2002.

20 
21 MARSHA J. PECHMAN
22 United States District Judge

23 Presented by:

24 
25 Allan Gordus
26 Trial Attorney